



NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE  
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TESTIMONY OF  
**BENJAMIN TODD**  
**JEALOUS**

*President & Chief Executive Officer*

**NAACP**

*on*

**“EXCLUDED FROM DEMOCRACY:  
THE IMPACT OF RECENT STATE  
VOTING LAW CHANGES”**

*November 14, 2011*

[www.naacp.org](http://www.naacp.org)



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Good afternoon, Congressmen Conyers, Hoyer, Nadler, Ellison, and others gathered here to talk about a very serious topic: voting rights and recent attempts to restrict them.

I am Benjamin Todd Jealous, President and CEO of the NAACP. The NAACP is our nation's oldest, largest and most widely-recognized grassroots based civil rights organization. We currently have more than 2,200 membership units in every state across the United States, and as you are all undoubtedly aware, NAACP members are some of the most committed, hard working, dedicated, vocal and outspoken leaders in our communities.

The NAACP, as part of our original mandate, has worked to strengthen our nations democracy by protecting voters' rights since 1909. Throughout our more than 102-year history, the NAACP has advocated and worked against such racist and heinous obstacles as America's Jim Crow laws and the Black Codes.

As such, we were instrumental in the development and enactment of the 1965 Voting Rights Act, and its reauthorizations, the 1992 Motor Voter Law, and the 2002 Help America Vote Act as well as several other key pieces of Federal legislation aimed at ensuring and protecting the rights of all eligible Americans to cast an unfettered vote and be certain that our vote has been counted.

Tragically, our country, which promotes itself as the beacon of democracy throughout the world, has seen a reversal in the century-old struggle for achieving the goal of “one person, one vote.” This reversal has been strategic and multi-faceted and sadly targeted disproportionately at the very people whom I would argue could use a louder, more consistent voice among our elected officials. Specifically, a majority of those currently being disenfranchised by these malevolent laws are racial and ethnic minorities, low-income Americans, the elderly, students and women.

Whether through bogus photo identification requirements, racially disparate ex-felon disenfranchisement laws, shortened early voting periods, or initiatives making it harder for third parties to register qualified voters, states are abridging the voting rights of millions of Americans.

### **Photo Identification Requirements**

There are racially discriminatory voter disenfranchising proposals, at the federal, state and local levels, which would require all voters to show some form of federally or state-approved photo identification before being able to cast their vote. These proposals fly in the face of our right, guaranteed by the Constitution, to cast a free and unfettered ballot, as well as the recently reauthorized 1965 Voting Rights Act, which mandates that no state or municipality shall in any way infringe on our right to vote.

While supporters of these initiatives purport to be combating “voter fraud,” (a “problem” which, as numerous studies have shown, is not really a problem), what these laws are in fact doing is creating a barrier to keep the up to 21 million Americans, or 11% of the entire voting-eligible population, who do not have government-issued photo IDs, out of the ballot booth. Sadly, a disproportionate number of these people who do not have eligible government-issued IDs are racial and ethnic minorities, the elderly or low-income Americans. A full 25% of African Americans who would otherwise be eligible to vote do not have a qualified photo ID<sup>1</sup>.

For example, under the new Texas law, voters are allowed to use a concealed handgun license as proof of identity, but precludes voters from using a student ID, even if the student ID was issued by a state university. As the Texas Department of Public Safety recently noted, African Americans are significantly underrepresented among the state’s handgun license holders. Of the more than 100,000 concealed handgun licenses issued in Texas last year, only 7.69% were issued to African Americans, even though African Americans constitute 12.1% of the state’s voting age population. In contrast, African Americans are more likely to attend a public university in Texas than whites. According to the 2009 American Community Survey, 8.0% of voting-age African Americans in Texas attended a public university compared with only 5.8% of voting age whites<sup>2</sup>.

These proposals re-create new obstacles in voting akin to a modern day “poll-tax” by forcing Americans to pay for government approved ID. Many of our most vulnerable citizens do not have or cannot easily obtain the paperwork needed to obtain a photo ID, such as passports, birth certificates or naturalization papers. Furthermore, obtaining a photo ID may require taking as much as a day off of work or traveling far distances, both of which may prove to be almost insurmountable chores. The requirement that all voters present a state issued photo ID before being able to cast a regular ballot will disproportionately disenfranchise African Americans and other racial and ethnic minority Americans, as well as the elderly, individuals with disabilities, Americans living in rural

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<sup>1</sup> The Advancement Project: *What’s Wrong with This Picture? New Photo ID Proposals Part of a National Push to Turn Back the Clock on Voting Rights*. Page ii

<sup>2</sup> The Brennan Center for Justice: *Voting Law Changes in 2012*. Weiser, Wendy and Norden. Lawrence. 10/3/2011. Page 24

areas, students, Native American voters, the homeless, and low-income people who are less likely to have or carry a photo ID.

To add insult to injury, these proposals would do little or nothing to prevent actual instances of voter fraud. Nothing in the legislation addresses actual documented problems of election and voter fraud, such as the improper purges of voters, distributing false information about when and where to vote, stuffing ballot boxes, and tampering with registration forms, most of which are perpetrated by corrupt election officials, not voters. Rather, many of these proposals appear to be a blatant attempt to change the political outcome of elections. In North Carolina, for example, an estimated 270,000 African American voters lack a photo ID; the Presidential victor of North Carolina in 2008 won the state by less than 14,000 votes.

Sadly, the trend toward requiring a photo identification is growing, as more state legislatures pass new photo identification requirements or make existing requirements more stringently restrictive. 29 states currently have laws on the books requiring all voters to show some form of identification before voting. Of these, 14 must show an identification which contains a photo of the voter; in the remaining 15 states non-picture IDs are acceptable. 8 of the 14 states currently have extremely strict voter ID laws, which require a voter to show a government issued photo ID to vote. In most of those states, if the voter cannot or does not produce a photo ID, he / she is allowed to cast a provisional ballot, which is counted only after the voter returns to election officials within a certain time frame (usually just a few days) with a photo ID. I should point out that the strict voter ID laws in 2 of these states, Texas and South Carolina, can only take effect after the state receives pre-clearance from the US Department of Justice under the Voting Rights Act.

In 2011, 47 states either already had voter ID requirements on the books or saw voter ID laws introduced. Of the 47 states, 20 states did not have any prior voter ID laws, and 14 states saw moves to toughen existing voter ID laws to require photo identification. Of these proposals, 15 failed, 6 were enacted, 5 were vetoed, 4 were carried over to the 2012 session and 4 states still have proposals pending. I should also point out that in Mississippi, a state in which a proposed voter photo ID law had been defeated in the state legislature, voters approved a photo id amendment to their state Constitution just last week, in a vote on November 8, 2011.

The NAACP would like to applaud the 5 Governors who have done the right thing and vetoed photo ID legislation: Governor Dayton in Minnesota, Governor Nixon in Missouri, Governor Schweitzer in Montana, Governor Lynch in New Hampshire and Governor Perdue in North Carolina.

Esteemed Members of Congress, you will most likely hear much about the impact of new state photo identification laws, as they tend to be the most widespread legislative development this session in a season packed with attempts to disenfranchise eligible American voters. Suffice it to say that we at the NAACP will continue to vehemently

oppose these modern day offenses to democracy that add up to nothing more than a good old fashion pole tax, just like those outlawed by the Voting Rights Act of 1965.

### **Ex-offender disenfranchisement**

For decades, the NAACP has fought for the rights of ex-felony offenders to cast a free and unfettered ballot once they have been released from prison. This is an issue that continues to be critical to the NAACP, as nationally, 5.3 million American citizens are not allowed to vote because of a criminal conviction; of those, 4 million have completed their sentences and live, work, and raise families in their communities. This disenfranchisement disproportionately impacts African-American men. Nationwide, 13% of African-American men have lost the right to vote, a rate that is seven times the national average<sup>3</sup>. Given current rates of incarceration, three in ten of the next generation of African-American men across the country can expect to lose the right to vote at some point in their lifetime.

As we all know, state laws vary when it comes to defining which felony offenses are disenfranchising offenses and in determining how and if people who are no longer incarcerated can regain their right to vote. Thus it is possible that in some states a person can functionally lose their right to vote forever if he or she writes one bad check. Furthermore, the process to regain one's right to vote in some states is often difficult and cumbersome to say the least. Most states require specific gubernatorial action, however in 16 states, the only clear means for federal ex-felons is a presidential pardon to regain their voting rights.

The "war on drugs" has had a disproportionate impact on African Americans; between 1985 and 1995, there was a 707% increase in the number of African Americans in state prison for a drug related offense, compared to a 306% increase for whites over the same period. Thus, African Americans are disproportionately losing their right to vote, and having greater difficulty in reclaiming it, even after they have paid their debt to society.

Because voting is such an integral part of being a productive member of American society, the NAACP has worked closely with other like-minded groups to develop legislation that would allow felons who are no longer incarcerated to reintegrate themselves into society and vote in federal elections.

It is due in large part to our overriding opposition to ex-offender disenfranchisement laws that we were deeply dismayed when two states this year —Florida and Iowa—reversed prior executive actions that made it easier for citizens with past felony convictions to restore their voting rights, affecting hundreds of thousands of voters. In effect, both states now permanently disenfranchise most citizens with past felony convictions.

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<sup>3</sup> The Sentencing Project. <http://www.sentencingproject.org/template/page.cfm?id=133>

These actions marked the end of 15 years of progress, in which twenty-three states either restored voting rights or eased the restoration process; nine of these states repealed or amended lifetime disenfranchisement laws. Furthermore, earlier this year in Nevada, Governor Brian Sandoval vetoed a bill which had received broad bipartisan support that would have automatically restored voting rights to anyone who honorably completed a felony sentence of imprisonment, probation, or parole. Five other states saw legislation introduced in 2011 which would have rolled back the voting rights of ex-offenders.

Given the vastly disproportionate impact ex-offender disenfranchisement laws have on racial and ethnic minorities, and specifically African American men, it is hard for the NAACP not to take these so called “public policy initiatives” as an affront to the very core of our democratic values. As such, we will continue to support legislative vehicles such as the *Democracy Restoration Act*, which would restore the federal voting rights to all eligible Americans once they leave prison.

### **Other Legislative challenges to voting rights**

This year, 2011, we have seen several other roadblocks to voting rights put up at the state level which would disproportionately disenfranchise racial and ethnic minorities, students, low-income Americans and the elderly. These include proof of citizenship requirements, the elimination of same-day registration, a shortening of voting periods, and the enactment of laws making it more difficult for non-partisan third parties to register voters.

Florida, in particular, has been particularly egregious in the area of restricting voting rights. In May, 2011, Florida Governor Rick Scott signed HB3155 into law. This new law will result in making it harder to register voters, harder to cast a ballot and harder to have a ballot counted. Furthermore, this law will disproportionately disenfranchise racial and ethnic minorities, women, the working poor, and young voters.

There were three major components to this law. The first would require voters who wished to change either their name or address at the polls to cast a “provisional ballot”, which is much less likely to be counted. Prior to enactment of this law, voters may update their information at the polls and cast a normal ballot. The new law disallowing informational changes at the polls, disproportionately affects women, young voters, low-income and racial and ethnic minority voters, who are more likely to change their name or address.

The second change in this problematic law is that it cuts early voting from 13 days, down to 5 days, starting 7 days before and ending 2 days before the election. Florida voters cast 2.6 million votes at early voting sites in 2008. Prior to the enactment of early voting, high turnout resulted in long lines with up to an eight hours wait at the polls. Election jurisdictions are already burdened with long lines at early voting sites even under the existing system (7-hour wait times in Dade County; 5-hour wait times in Broward). If early voting is reduced to one week during working hours, it could double wait times at the polls during early voting and even worse on election-day.

The third objectionable provision in the new Florida law is that it places onerous restrictions on voter registrations by third-parties, such as the NAACP, the League of Women Voters and other non-partisan organizations and groups. Texas also passed laws in 2011 to make it harder for nonpartisan groups to register voters. The first H.B. requires that anyone who registers voters first be deputized and attend a mandatory training; the law delegates the development of the training to the Secretary of State, and explicitly permits an “exam” at the end of the training. The second new Texas law requires anyone registering others to be a Texas resident and qualified voter, and prohibits performance-based compensation for anyone who is paid to register voters.

These new restrictions on voter registration drives are especially problematic for the NAACP since third-party registration groups are a primary access to voter registration in poor and racial and ethnic minority communities. Nationally, Census data demonstrates that Hispanic and African-American voters are approximately twice as likely to register to vote through a voter registration drive as white voters<sup>4</sup>.

Not all the news is bad, however. Just last Tuesday, in Maine, voters struck down a law which was enacted in June of this year. The law which was rejected by the voters would have repealed Maine’s 38-year old practice of allowing same-day registration (also known as “Election Day Registration”, or “EDR”).

The NAACP has consistently supported Election Day Registration as states with EDR have consistently had higher turnout than states without, and the top five states for voter turnout in 2008 were all EDR states. There is also evidence that EDR specifically increases turnout among young voters<sup>5</sup>

### **What can be done**

Federally, the NAACP supports a number of initiatives which would go a long way towards defeating this trend of truncating Americans’ democratically-guaranteed voting rights.

Specifically, we strongly and have consistently supported Congressman Conyers’ legislation, H.R. 108, the *Voting Opportunity and Technology Enhancement Rights Act of 2011*. This seminal legislation would: require guaranteed early voting throughout the country with no excuse required; allow same-day registration nationally; outlaw “voter caging”, a practice by which mail is sent to a registered voter's address and, if the mail is returned as "undeliverable" or if it is delivered and the voter does not respond, his or

<sup>4</sup> In 2004, while 7.8% of non-Hispanic whites registered with private drives, 12.7% of blacks and 12.9% of Hispanics did the same. *Voting and Registration in the Election of November 2004 – Detailed Tables*, U.S. Census Bureau, <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2004/tables.html> (download Table 14) (last visited Aug. 2, 2011). In 2008, African Americans and Hispanics nationally remained almost twice as likely to register through a voter registration drive as whites. While 5.4% of non-Hispanic whites registered at private drives, 11.1% of African-Americans and 9.6% of Hispanics did the same. *Voting and Registration in the Election of November 2008 – Detailed Tables*, U.S. Census Bureau, <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2008/tables.html> (download Table 14) (last visited Aug. 2, 2011).

<sup>5</sup> The Brennan Center for Justice: *Voting Law Changes in 2012*. Weiser, Wendy and Norden. Lawrence. 10/3/2011. Page 25

her registration is challenged; clarify and strengthen the use of provisional ballots; make voter intimidation and deception punishable by law, with strong penalties so that people who commit these crimes suffer more than just a slap on the wrist, and establish a process for reaching out to misinformed voters with accurate information so they can cast their votes in time; and allow ex-offenders, once they are out of prison, the opportunity to register and vote in federal elections without challenges or complication.

As I said earlier, the NAACP also strongly supports, and has testified on behalf of, the *Democracy Restoration Act*. This important legislation, which has been introduced in the House by Congressman Conyers (H.R. 2112) and is expected to be introduced in the Senate soon by Senator Cardin of Maryland would restore the federal voting rights to all eligible Americans once they leave prison.

Finally, the NAACP is pleased to support two bills which were just introduced earlier this month by Congressman Ellison, H.R. 3316, the *Voter Access Protection Act of 2011* and H.R. 3317, the *Same Day Voter Registration Act of 2011*. Together, these two bills will rescind much of the damage which has been done over the past years by states in the arena of voting rights. H.R. 3316 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. The second bill, H.R. 3317, would require states to accept same day registration from any individual who wished to vote in a federal election.

The NAACP strongly supports H.R. 108, H.R. 2212, H.R. 3316 and H.R. 3317. Together these bills represent a huge step forward in addressing many of the problematic, disenfranchising and immoral state bills and laws which may result in millions of Americans not being able to cast a free and unfettered ballot next November.

### **Conclusion**

The right of all eligible citizens to vote and to have their vote count is the cornerstone of our democracy, and it is a fundamental civil right guaranteed by our Constitution. The NAACP believes strongly that it is the obligation of Congress to ensure that everything that can be done will be done to ensure that every eligible American is allowed to vote and to be sure that his or her vote has been counted.

Sadly, our nation's history is riddled with efforts to curtail voter registration and voter participation, especially by racial and ethnic minorities. Even more tragically, this trend of suppressing minority votes continues today.

As reported by the Brennan Center, more than five million Americans could be affected by the new rules already put in place this year<sup>6</sup>. It is my sincere hope that Congress does the morally and democratically right thing and correct these state trends toward disenfranchisement. Our Constitution demands nothing less.

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<sup>6</sup> The Brennan Center for Justice: *Voting Law Changes in 2012*. Weiser, Wendy and Norden. Lawrence. 10/3/2011.

Mr. Conyers, Members, I thank you again for holding this hearing and for asking me to testify before you today. I welcome your questions.