BRENNAN
CENTER
FOR JUSTICE

United States House of Representatives

Statement of
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November 14, 2011

Excluded From Democracy: The Impact of Recent State Voting Changes

On behalf of the Brennan Center for Justice, I thank Representative Conyers and the other Members present today for holding this important forum. Congress' efforts to increase public awareness of the array of new voting laws is an important step toward halting the most dramatic increase in voting restrictions in the United States since before the passage of the Voting Rights Act.

My name is Lawrence Norden, and I am Deputy Director of the Brennan Center's Democracy Program. The Brennan Center for Justice is a nonpartisan think thank and legal advocacy organization that focuses on issues of democracy and justice. Among other things, we seek to ensure fair and accurate voting procedures and systems and to promote policies that maximize citizen enfranchisement and participation in elections. We have done extensive work on a range of issues relating to voting rights, including work to remove unnecessary barriers to voter registration; to make voting machines more secure, reliable, usable, and accessible; and to expand access to the franchise. Our work on these topics has included the publication of studies and reports; assistance to federal and state administrative and legislative bodies with responsibility over elections; and, when necessary, participation in litigation to compel states to comply with their obligations under federal law and the Constitution.

In my testimony today, I will share with you the results of a recent Brennan Center study I co-authored entitled "Voting Law Changes in 2012,"[1] which documents the record number of bills introduced and passed restricting access to voting this year. I intend to provide you with a summary of the laws and legislation, along with an overview of the key issues underlying these laws, and potentially even newer restrictions to come from the states in the next several months. I will also suggest constructive steps that Congress can take to make our elections more secure and accessible to all Americans.

[1] WENDY R. WEISER & LAWRENCE NORDEN, VOTING LAW CHANGES IN 2012 (2011), *available at* http://brennan.3cdn.net/d16bab3d00e5a82413_66m6y5xpw.pdf.

New Laws Restricting Voting in the States

For several decades, our nation has expanded the franchise and knocked down old barriers to full electoral participation. This year has seen an abrupt change in that narrative, with a wave of state laws and legislation that create new restrictions on voting access. In our report released last month, the Brennan Center analyzed twenty-one new laws and executive actions in more than a dozen states;[2] we found that, taken together, they would make it more difficult for at least 5 million Americans to cast ballots.[3] Forty-two additional bills that would further restrict access to the ballot are currently pending in states around the country.[4] The new barriers will fall most heavily on the young, students, the elderly, minorities, women, and low-income voters, as well as voters with disabilities. They may sharply tilt the political terrain in the 2012 election and beyond.

The restrictions fall into six major categories: (1) requirements that voters provide specific kinds of government-issued photo ID to vote or have their votes counted; (2) requirements to provide documentary proof of citizenship in order to register and vote; (3) new restrictions on voter registration drives; (4) the elimination of same day registration; (5) cutbacks on the availability of early and absentee voting, and; (6) actions permanently depriving previously incarcerated citizens of their right to vote.

Photo ID bills were enacted in seven states. Alabama, Kansas, Rhode Island, South Carolina, Tennessee, Texas, and Wisconsin passed laws that will require registered voters to show photo identification in order to vote.[5] All but Rhode Island require government-issued ID for voting at the polls, a type of ID that 11% of voting age Americans do not have.[6] Prior to this year, only two states had imposed strict photo ID requirements.[7] A few other states requested,

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[2] Since our report was released, Maine voters overturned the state legislature's repeal of Election Day Registration and opponents of Ohio's omnibus election bill appear to have gained enough signatures to stay that law and put it to a referendum in November 2012. Eric Russell, *Mainers Vote to Continue Election Day Registration*, BANGOR DAILY NEWS, Nov. 8, 2011, *available at* http://bangordailynews.com/2011/11/08/politics/early-results-indicate-election-day-voter-registration-restored/; Ann Banner, *Opponents put Ohio's Early Voting Law on Temporary Hold*, ASSOCIATED PRESS, Sept. 30, 2011, *available at* http://www.news-herald.com/articles/2011/09/30/news/doc4e853e7fb11c2639400337.txt?viewmode=default.
Mississippi voters, however, added new restrictions with a constitutional amendment that would require government-issued photo ID to vote. Associated Press, *Mississippi Voters Approve Voter ID Proposal*, Nov. 8, 2011, *available at* http://www.wapt.com/r/29719209/detail.html.

[3] WEISER & NORDEN, *supra* note 1 at 2.

[4] *See id.* At least two more bills have been introduced since the release of the report.

[5] H.B. 19, 2011 Gen. Assemb., Reg. Sess., Act No. 2011-673 (Ala. 2011), *available at* http://alisondb.legislature.state.al.us/acas/searchableinstruments/2011RS/Printfiles//HB19-enr.pdf; H.B. 2067, 2011 Leg., Reg. Sess. (Kan. 2011), *available at* http://kslegislature.org/li/b2011_12/year1/measures/documents/hb2067_enrolled.pdf; S.B. 400 Sub. A, 2011 Leg., Jan. Sess. (R.I. 2011), *available at* http://www.rilin.state.ri.us//BillText11/SenateText11/S0400A.pdf; H. 3003, 119th Gen. Assemb., Reg. Sess. (S.C. 2011), *available at* http://www.scstatehouse.gov/sess119_2011-2012/prever/3003_20110511.htm; S.B. 16, 107th Gen. Assemb., 2011 Reg. Sess. (Tenn. 2011), *available at* http://www.capitol.tn.gov/Bills/107/Bill/SB0016.pdf; S.B 14, 82d Leg., Reg. Sess. (Tex. 2011), *available at* http://www.capitol.state.tx.us/tlodocs/82R/billtext/pdf/SB00014F.pdf#navpanes=0; Assemb. B. 7, 2011 Leg., Reg. Sess. (Wis. 2011), *available at* http://legis.wisconsin.gov/2011/data/acts/11Act23.pdf.

[6] BRENNAN CENTER FOR JUSTICE, CITIZENS WITHOUT PROOF (2006), *available at* http://www.brennancenter.org/content/resource/citizens.

[7] WEISER & NORDEN, *supra* note 1, at 4.

and continue to request, photo ID in order to vote,[8] but voters without ID are still permitted to vote ballots that will count after an alternative verification procedure. Under most of the new photo ID laws passed this year, voters who do not have photo ID are either required to vote a provisional ballot or are not allowed to vote at all. Only Tennessee allows voters without ID to vote a regular ballot if they swear an affidavit of identity.[9]

Three states enacted "Proof of Citizenship" laws. At least 7% of Americans do not have the kind of proof of citizenship documentation required by these laws.[10] Alabama[11] and Kansas[12] will require all new voter registration applicants to produce documentary proof of citizenship, while Tennessee[13] will require individuals flagged by state officials as potential non-citizens to produce such documentation. The Alabama and Kansas laws apply only to those registering to vote for the first time; those who have already registered do not need to provide any documentation. Until this year, only Arizona, prompted by the controversial Ballot Proposition 200, had required that individuals produce documentary proof of citizenship in order to be allowed to register to vote.[14] In contrast, all other states rely on the affidavit signed by a new registrant, under penalty of perjury, swearing that she is a U.S. citizen of voting age and meets all other eligibility requirements.

Other states enacted laws to make the voter registration process more difficult. Florida and Texas enacted laws which have shut down registration drives that previously registered hundreds of thousands of citizens in those states.[15] Florida will now require groups and individuals who wish to register voters to first pre-register with the state, submit within 48 hours every voter registration application received, and keep track of every voter registration application they distribute.[16] While Texas law had already required private citizens to be deputized by a local election official before they could register anyone to vote, the new law now requires these individuals to complete certain training requirements, which may include a final exam, before they can register any new voters.[17] Ohio and Maine, meanwhile, eliminated same-day voter registration, used by tens of thousands in 2008 alone, although the people of Maine voted to restore same-day voter registration,[18] and Ohio's law is now being challenged with a ballot referendum in November 2012.[19]

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[8] *Id*.
[9] *Id.* at 6.
[10] CITIZENS WITHOUT PROOF, *supra* note 6.
[11] 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.
[12] H.B. 2067, 2011 Sess. (Kan. 2011), *available at* http://www.kslegislature.org/li/b2011_12/year1/measures/hb2067/.
[13] S.B. 352, 107th Gen. Assemb., 2011 Sess. (Tenn. 2011), *available at* http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=SB0352.
[14] ARIZ. REV. STAT. §§ 16-152(A)(23), 16-166 (2011).
[15] H.B. 1355, 114th Reg. Sess. (Fla. 2011), *available at* http://www.flsenate.gov/Session/Bill/2011/1355; H.B. 1570, 82d Leg., Reg. Sess. (Tex. 2011), *available at* http://www.capitol.state.tx.us/tlodocs/82R/billtext/pdf/HB01570F.pdf#navpanes=0.
[16] WEISER & NORDEN, *supra* note 1, at 21.
[17] *Id*.
[18] *Russell*, *supra* note 2.
[19] *Id.* at 25-26.

States also cut back on early voting, used by nearly one-third of all voters in 2008.[20] Five states—Florida, Georgia, Ohio, Tennessee, and West Virginia— enacted laws that shortened the early voting period.[21] Ohio cut the early voting period from thirty-five to eleven days and eliminated early voting on Saturday afternoon and Sunday.[22] Florida shortened the early voting period from two weeks to one, and eliminated voting on the Sunday before Election Day.[23]

Two Governors reversed progress on the restoration of voting rights to previously incarcerated citizens, making it virtually impossible for hundreds of thousands of people with past felony convictions to get such rights restored. Governors Terry Branstad of Iowa and Rick Scott of Florida both issued executive orders reversing recently enacted policies of restoring voting rights to citizens with past felony convictions.[24] In Iowa, 80,000 citizens in the last six years had their voting rights restored under this now reversed policy.[25] In Florida, up to one million people could have benefited from the practice reversed by Governor Scott; based on the rates of restoration in Florida between 2007 and 2010, the Brennan Center estimates that approximately 100,000 Floridians would have had their voting rights restored by 2012 but for the governor's actions.[26]

The Impact of the New Voting Laws

The new laws significantly alter the rules by which many Americans register and vote, placing new restrictions on the ways citizens can register and vote, and requiring more administrative steps in order to vote. As already mentioned, the Brennan Center estimates that this change in rules will make it significantly harder for over 5 million eligible Americans to vote.[27] To put that number in some perspective, it is larger than the margin of victory in two of the last three presidential elections.

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[20] R. MICHAEL ALVAREZ ET AL., 2008 SURVEY OF THE PERFORMANCE OF AMERICAN ELECTIONS 12 (2009), *available at* http://www.vote.caltech.edu/drupal/files/report/Final%20report20090218.pdf.

[21] H.B. 1355, 2011 Leg. Sess. (Fla. 2011), *available at* http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=_h1355er.docx&DocumentType=Bill&BillNumber=1355&Session=2011; H.B. 92, 2011 Gen. Assemb. (Ga. 2011), *available at* http://www.legis.ga.gov/Legislation/20112012/116254.pdf; H.B. 194, 129th Gen. Assemb., Reg. Sess. (Ohio 2011), *available at* http://www.legislature.state.oh.us/BillText129/129_HB_194_PS_N.html; S.B. 772, 107th Gen. Assemb., 2011 Reg. Sess. (Tenn. 2011), *available at* http://www.capitol.tn.gov/Bills/107/Bill/SB0772.pdf; S.B. 581, 80th Leg., 1st Sess. (W. Va. 2011), *available at* http://www.legis.state.wv.us/Bill_Text_HTML/2011_SESSIONS/RS/pdf_bills/sb581%20ENR.pdf.

[22] H.B. 194, 129th Gen. Assemb., Reg. Sess. § 3509.01(B) (Ohio 2011), *available at* http://www.legislature.state.oh.us/BillText129/129_HB_194_PS_N.html.

[23] 2011 FLA. LAWS 40, *available at* http://laws.flrules.org/files/Ch_2011-040.pdf; *see also* Justin Levitt, *A Devil in the Details of Florida's Early Voting Law*, ELECTION LAW BLOG (May 23, 2011), http://electionlawblog.org/?p=18296.

[24] IOWA EXEC. ORDER NO. 42 (July 4, 2005), *available at* http://brennan.3cdn.net/563fe831695be5a1fa_nwm6bvbik.pdf (repealed by Gov. Branstad); FLA. PAROLE COMM'N, RULES OF EXECUTIVE CLEMENCY (Mar. 9, 2011), *available at* https://fpc.state.fl.us/PDFs/clemency_rules.pdf.

[25] WEISER & NORDEN, *supra* note 1, at 34.

[26] *See id.* at 34-35.

[27] *See* WEISER & NORDEN, *supra* note 1, at 37 n.1 (explaining basis of estimate).

Among the states that have seen or are considering such new restrictions in 2011, several are "battleground" states, among them Florida, Ohio, Iowa, Georgia, North Carolina, Pennsylvania and Michigan.[28] Combined, states that have already cut back on voting rights make up approximately two-thirds of the electoral votes needed to win the presidency.

The New Restrictions on Voting and Registration Do Not Affect All Voters Equally

The litany of new state voting laws could substantially reduce registration and turnout among all citizens, but they will have a disproportionately large impact on certain voters, especially the young, students, the elderly, minorities, women, low-income, and disabled voters. These groups will be most affected by the new laws for a variety of reasons. In some cases, they are less likely to have access to the type of documentation required by the new laws, or lack documentation with a current name or address. In other cases, they may rely on methods of voting and registration eliminated or restricted by the laws at higher levels than the general population. Below is some statistical evidence of how each of these groups may be especially affected by particular laws that have been passed.

Voter ID Laws

As already mentioned, 11% of voting-age Americans do not have the kinds of current government-issued photo ID required by the most restrictive identification laws.[29] The numbers are far worse for specific populations. For example, 18% of 18-24 year old citizens lack government-issued photo ID with a current name and address;[30] 18% of citizens 65 or over do not have current government issued photo ID;[31] among African Americans, approximately one in four do not possess such ID.[32] For some subcategories within these groups, the numbers are even starker. For instance, according to one study, 78% of African-Americans in Wisconsin aged 18-24 do not have a driver's license.[33]

These laws have real consequences for real people. Dorothy Cooper, a 96-year-old African American woman in Tennessee, illustrates what can happen to women when the names on their birth certificate do not match the married names on their registration cards: she was reportedly denied a free ID card and told she could not vote at her polling place, as she had in almost every election in the last 75 years. [34] In South Carolina, it has been reported that husband-and-wife physicians who have been registering their patients to vote for the past 29 years are

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[28] "Battleground states" as determined by Chuck Todd et al., *First Thoughts: One Year Out*, FIRST READ (November 7, 2011), http://firstread.msnbc.msn.com/_news/2011/11/07/8680214-first-thoughts-one-year-out.
[29] CITIZENS WITHOUT PROOF, *supra* note 6.
[30] *Id.*
[31] *Id.*
[32] *Id.*
[33] JOHN PAWASARAT, THE DRIVER LICENSE STATUS OF THE VOTING AGE POPULATION IN WISCONSIN 3 (2005), *available at* http://www4.uwm.edu/eti/barriers/DriversLicense.pdf.
[34] Ansley Haman, *96 Year Old Chattanooga Resident Denied Voting ID*, CHATTANOOGA TIMES-FREE PRESS, Oct. 5, 2011, *available at* http://timesfreepress.com/news/2011/oct/05/marriage-certificate-required-bureaucrat-tells/.

unable to help many of their patients register to vote, even though they have offered to pay for IDs, because many of their patients do not have birth certificates.[35]

Notably, many of these new laws are drafted in a way that places extra burdens on younger voters and voters of color. South Carolina, Texas, and Tennessee explicitly exclude student IDs from the list of acceptable identification,[36] and Wisconsin effectively does the same by listing requirements that no state university's student ID currently meets.[37] Texas and Tennessee, despite not allowing student IDs, do allow the use of concealed-carry handgun permits to vote. This legislative choice disproportionately harms African Americans, who are under-represented among concealed-carry handgun permit holders and over-represented among students. For instance, African Americans make up 16.9% of the public university student population,[38] but received less than 7.7% of the state's concealed-carry permits last year.[39]

Racial minorities will also frequently have to travel farther in order to obtain the newly required documentation. For example, in Texas, Latino voters make up about 33% of the citizen voting age population in the state, but make up more than 60% of voting-age citizens who live more than 20 miles from a state driver's license office in Texas.[40]

New Proof of Citizenship Requirements

The Brennan Center estimates that well over half a million citizens may not have the necessary proof of citizenship documentation now required in Alabama, Kansas and (in some cases) Tennessee to register to vote.[41] Nationwide, as many as 7% of United States citizens do not have ready access to citizenship documents. New proof of citizenship requirements may especially harm women, who are much less likely to have updated proof of citizenship documents that reflect their current legal name. According to a 2006 Brennan Center report, one third of voting-age women do not have access to proof of citizenship with their current legal name.[42]

Citizens with low income may also have difficulty complying with proof of citizenship requirements. At least 12% of citizens earning less than $25,000 lack ready access to proof of

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[35] Dawn Hinshaw, *S.C. Husband-and-Wife Doctor Couple at Center of Voting Rights Movement*, THE SUN TIMES, July 18, 2011, *available at* http://www.thesunnews.com/2011/07/18/2283993/sc-husband-and-wife-doctor-couple.html.
[36] *See* WEISER & NORDEN, *supra* note 1, at 34.
[37] *Id.* at 8.
[38] U.S. CENSUS BUREAU, 2009 AMERICAN COMMUNITY SURVEY *available at* http://dataferrett.census (last visited Sept. 7, 2011).
[39] TEX DEP'T OF PUBLIC SAFETY, CONCEALED HANDGUN LICENSING BUREAU, INFORMATION BY RACE/SEX, http://www.txdps.state.tx.us/administration/crime_records/chl/PDF/2010Calendar/ByRace/CY10RaceSexLicAppIssued.pdf (last visited Sept. 6, 2011).
[40] Sundeep Iyer, *Unfair Disparities in Voter ID*, BRENNAN CENTER BLOG (Sept. 13, 2011), http://www.brennancenter.org/blog/archives/the_accessibility_of_texas_dlo_locations/.
[41] The citizen voting age population of the states is around 9 million, and approximately 7% of citizens do not have proof of citizenship documentation. CITIZENS WITHOUT PROOF, *supra* note 6.
[42] *Id.*

citizenship documentation.[43] Moreover, such documentation can be prohibitively expensive for the poorest citizens; for example, birth certificates cost between $15 and $25.[44] Other documents, such as a certificate of naturalization, can cost hundreds of dollars.[45] Although Alabama and Kansas provide for free birth certificates if needed in order to register, Tennessee does not. Moreover, Alabama and Kansas' free birth certificates will not help those born out of state.

New Voter Registration Restrictions

Many of the new restrictions on voter registration will disproportionately harm minority and young voters. In Florida, for example, African Americans and Latinos registered to vote through voter registration drives at twice the rate as white voters in 2004 and 2008.[46] The large emphasis on voter registration drives in Florida is a major reason why racial disparities in voter registration are lower in Florida than most states.[47] Because of Florida's new law, however, many organizations and individuals have been forced to suspend their voter registration efforts.[48] New voter registrations among minorities will likely be significantly lower as a result.

Early Voting Changes

Minority voters will also bear the brunt of new laws restricting early voting. In 2008, a large number of American-American churches in Florida and Ohio organized successful "souls to the polls" drives, whereby churchgoers were provided free rides to the polls for early voting on Sunday. In Florida, 33% of citizens who voted early on the Sunday before Election Day were African American, even though African Americans make up only 13% of the citizen voting age population.[49] Additionally, 24% were Latino, even though Latinos make up only 16% of the citizen voting age population.[50] Now, Florida has eliminated voting on the Sunday before the election, and Ohio has eliminated Sunday voting entirely.

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[43] *Id.*

[44] *Texas Vital Statistics – Birth Certificates*, TX. DEP'T OF STATE HEALTH SERVS., http://www.dshs.state.tx.us/vs/reqproc/certified_copy.shtm (last visited Nov. 8, 2011) ($22); *Ordering Birth Certificates*, KAS. DEP'T OF HEALTH AND ENV'T, http://www.kdheks.gov/vital/birth_howto.html (last visited Nov. 8, 2011) ($15); *Vital Records*, GA. DEP'T OF PUB. HEALTH, http://health.state.ga.us/programs/vitalrecords/birth.asp (last visited Nov. 8, 2011) ($25).

[45] U.S. CITIZENSHIP AND IMMIGRATION SERVICES, N-600, APPLICATION FOR CERTIFICATE OF CITIZENSHIP, *available at* http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=a936cac09aa5d010VgnVCM10000048f3d6a1RCRD.

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

[47] *See id.*

[48] *Election Bill Prompts League of Women Voters to Stop Registration*, ORLANDO SENTINEL, May 9, 2011, available at http://blogs.orlandosentinel.com/news_politics/2011/05/elections-bill-prompts-league-of-women-voters-to-stop-registration.html.

[49] Rowland & Posner, *supra* note 46.

[50] *Id.*

Making It Harder to Restore Voting Rights

Actions to prevent the restoration of voting rights to previously incarcerated citizens will disproportionately hurt African-Americans and Latinos. A total of 5.3 million American citizens are not allowed to vote because of a criminal conviction, even though 4 million of those have completed their sentences.[51] A disproportionately high number of these citizens are African American and Latino. Nationwide, 13% of African-American men have lost the right to vote, a rate that is seven times the national average.[52] Latinos are incarcerated at higher rates than Whites. Latinos represent 20.7% of the prison population despite representing only 16.3% of the total U.S. population.[53]

Florida and Iowa, by reversing the policy of restoring voting rights to previously incarcerated individuals, will exacerbate this disparity by keeping a population with a disproportionately high number of African Americans and Latinos off the voter rolls.

Additional Restrictions to Voting Rights on the Horizon

In addition to laws already in effect, current action in the states could soon add more barriers to voter participation, in the form of bills, ballot petitions, administrative action, and lawsuits.

At least forty-two bills that would further restrict voting rights are under consideration around the country. Among the states considering restrictive voting laws are Pennsylvania, where a photo ID requirement bill is pending, and Michigan, where a bill that would impose restrictions on voter registration organizations similar to those in effect in Florida has been introduced.[54] With the 2012 legislative session on the horizon, we expect further legislation to be introduced. Missouri has an initiative on the ballot in 2012 that would require photo ID for voting,[55] and Minnesota likely will as well.[56]

State officials also have the ability to create barriers to voting through administrative actions and restrictive interpretations of laws. The manner in which a law regulating registration and voting is interpreted is often as important as what it says. For instance, in one state a secretary of state issued an order to prevent voters who did not vote in the 2010 general election

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[51] JEFF MANZA & CHRISTOPHER UGGEN, LOCKED OUT: FELON DISENFRANCHISEMENT AND AMERICAN DEMOCRACY 76 (2006).
[52] SENTENCING PROJECT, FELONY DISENFRANCHISEMENT LAWS IN THE UNITED STATES 1 (Mar. 2011), *available at* http://sentencingproject.org/doc/publications/fd_bs_fdlawsinusMar11.pdf.
[53] BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2009 (2010), *available at* http://felonvoting.procon.org/sourcefiles/usdojbsj_prisoners_2009.pdf.
[54] S.B. 754, 96th Leg., Reg. Sess. (Mich. 2011), *available at* http://www.legislature.mi.gov/(S(esw55lruvzmm4sf0m2rwln45))/mileg.aspx?page=GetObject&objectname=2011-SB-0754.
[55] S.J.R. 2, 96th Gen. Assemb., 1st Reg. Sess. (Mo. 2011), http://www.senate.mo.gov/11info/pdf-bill/tat/SJR2.pdf.
[56] *See* WEISER & NORDEN, *supra* note 1, at 14.

from receiving mail ballots for this year's all-mail election.[57] In another, a secretary of state investigated and sent threatening letters to students regarding voter fraud, even though the students had done nothing wrong.[58]

A number of states and state jurisdictions have also launched a facial attack on the Voting Rights Act, arguably the most successful piece of civil rights legislation in our nation's history. Shelby County, Alabama, Kinston, North Carolina, and the states of Arizona, Florida, and Georgia are currently engaged in litigation asking that a key provision of the Voting Rights Act be found unconstitutional.

Recommendations for Congressional Action

Congressional attention to the recent wave of laws restricting voting rights has helped, and can continue to help, to make a difference in thwarting efforts to restrict voting rights. We applaud Members for hosting this forum, which will raise public awareness about the new wave of state voting laws, and build a public record for federal legislation that can address real problems in our voting system and improve elections.

We also believe Congress should support and protect the Election Assistance Commission, which is the only federal agency devoted to improving our elections by developing registration and voting guidelines, ensuring that voting machines are secure and accessible, and providing critical information to state and local governments and voters to help better the electoral process. Congress should act to prevent the elimination of this critical agency.

Finally, Congress should work to pass new legislation to protect against voter suppression and improve our election system to make it more secure and accessible to all eligible voters. Among the kinds of legislation that would be most helpful to pass, the Brennan Center points to the following:

- Legislation to modernize voter registration, which would automate the registration process at places like departments of motor vehicles and social service agencies and would ensure that voter records are accurate and up to date. This could expand the franchise to over 65 million Americans who are not currently registered, while reducing any risk of fraud.

- The Democracy Restoration Act. Introduced in the House by Representative Conyers as H.R. 2212 and soon to be introduced in the Senate by Senator Cardin, this would restore voting rights in federal elections to 4 million previously incarcerated American citizens.

- Caging prevention legislation, possibly modeled on the Caging Prevention Act of 2009.[59] Voter caging occurs when state officials send mailings to targeted lists of registered

[57] Jonathan Brater, *A Win for Voters is Gessler's Second Loss*, HUFFINGTON POST, Oct. 10, 2011, http://www.huffingtonpost.com/jonathan-brater/a-win-for-voters-is-gessl_b_1003759.html.
[58] Lee Rowland, *Ballot Box Bullies*, BRENNAN CENTER BLOG, Oct. 18, 2011, *available at* http://www.brennancenter.org/blog/archives/ballot_box_bullies/.

voters and then purge from the voter rolls those for whom mail is returned as undeliverable.[60] Caging prevention legislation would prohibit removing voters from qualified voter lists based on the results of such mailings or error-prone list matching.

- Legislation to prohibit deceptive practices and voter intimidation. Representative Conyers has proposed legislation in the past,[61] and this remains a critical voter protection issue. Such legislation would prohibit sending misleading information about the time, place, and manner of elections to voters.

All of these measures are worthy of serious consideration by Congress and could go a long way to creating more secure and accessible elections for all American voters, while also creating baseline rules to prevent manipulation of state practices in the future.

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[59] For more information, see the Brennan Center's summary, *available at* http://www.brennancenter.org/content/resource/democracy_restoration_act_of_2011/.

[60] *See* BRENNAN CENTER FOR JUSTICE, CHALLENGES, CAGING, AND VOTE SUPPRESSION, http://www.brennancenter.org/content/section/category/challenges.

[61] For more information on past Deceptive Practices Legislation, see the Brennan Center's summary, *available at* http://www.brennancenter.org/content/pages/deceptive_practices_legislation_in_the_111th_congress.