

**NEW STATE VOTING LAWS II: PROTECTING THE
RIGHT TO VOTE IN THE SUNSHINE STATE**

HEARING

BEFORE THE

SUBCOMMITTEE ON CONSTITUTION,
CIVIL RIGHTS AND HUMAN RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

—————
JANUARY 27, 2012
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TAMPA, FLORIDA

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Serial No. J-112-58
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Printed for the use of the Committee on the Judiciary



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**NEW STATE VOTING LAWS II: PROTECTING
THE RIGHT TO VOTE IN THE SUNSHINE
STATE**

FRIDAY, JANUARY 27, 2012

U.S. SENATE,
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND
HUMAN RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 1:02 p.m.,
*Hillsborough County Courthouse, 800 E. Twiggs Street, Tampa,
Florida*, Hon. Richard J. Durbin, Chairman of the Subcommittee,
presiding.

Present: Senator Durbin.
Also Present: Senator Nelson.

**OPENING STATEMENT OF HON. RICHARD J. DURBIN, A U.S.
SENATOR FROM THE STATE OF ILLINOIS**

Chairman DURBIN. Good afternoon, everyone. It is an honor to be here in Tampa with my colleague Senator Bill Nelson at the Hillsborough County Court facility. This is a hearing of the U.S. Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights, and it will come to order.

Today's hearing is entitled "New State Voting Laws: Protecting the Right to Vote in the Sunshine State." The hearing will examine the impact of State law H.B. 1355, Florida's new voting law.

My name is Dick Durbin. I am the U.S. Senator from Illinois, and I chair the Senate Subcommittee on the Constitution, Civil Rights, and Human Rights, which is part of the Senate Judiciary Committee. For those who are attending their first Congressional hearing, let me explain a few items of procedure.

I will deliver a brief opening statement and then recognize my colleague Senator Nelson to do it as well. Then we will turn to our witnesses for their opening statements, and Senator Nelson and I will then pose questions to the witnesses.

We have two panels. We are very pleased that we have such a great turnout here, a large, enthusiastic, and interested audience for the hearing. It demonstrates the importance of this issue.

At the outset I want to note, though, that the rules of the Senate when it comes to these hearings are rather strict. They prohibit outbursts or demonstrations of any kind at a public hearing. As Chairman, it is my responsibility to enforce the rules. If there are disruptions, I will warn those responsible, and if they continue to

interrupt, I will have no choice but to ask for the removal of those persons from this hearing room.

Let me say at the outset that, 4 days from now, hundreds of thousands of people across the State of Florida will go to their polling places to cast a ballot for the person they believe is best prepared to represent their political party in the next year's Presidential election. This time-honored tradition of public debate, intense campaigns, and the orderly selection of party nominees is the hallmark of our democracy and every democracy. Of course, the core element of that democracy is the constitutionally protected right of every citizen of legal age to cast a vote for the candidate of his or her choice.

It is important that we recall that until the early 20th century, most American adults could not legally vote. And even after the franchise right to vote was legally expanded, a violent racist campaign prevented many African-Americans from voting. Sadly, the Jim Crow laws of that era were a reality in this State, and it was not until 1969 that Florida became one of the last States to ratify the 19th Amendment, which expanded the right of women to vote.

Six constitutional amendments and numerous laws, regulations, and court decisions have helped make the promise of one person/one vote a reality in Florida and all across America. But we must be constantly vigilant against threats to these hard-fought victories.

The Supreme Court *Citizens United* decision, which was issued 2 years ago this week, opened a floodgate of special interest money into campaigns. I do not have to tell people living in Florida about that. At the same time, over the course of last year, the right to vote has come under question, if not attack, nationwide. In more than 35 States, legislation has been introduced that threatens to roll back the progress our country has made over several generations, expanding and protecting the right to vote. More than a dozen States have already enacted laws that eliminate same-day registration, require voters to present restricted forms of identification before voting, reduce the number of early voting days, and make it harder for first-time voters to register. These new voting laws appear to be part of a coordinated and well-funded effort to reduce turnout among specific groups of people, namely, minority, young, low-income, and rural voters.

In response to this disturbing trend, our Subcommittee on the Constitution, Civil Rights, and Human Rights held the first Congressional hearing in Washington to examine these new State voting rights laws in September of last year. At that hearing we learned that these new State voting laws threaten to keep as many as 5 million Americans from voting this year. As the testimony at today's hearing will demonstrate, many of these voters who may find their path to the ballot box blocked or filled with obstacles live right here in the State of Florida.

Now, Senator Bill Nelson approached me and asked me to hold this field hearing because of his concern that the constitutionally protected rights to vote are under attack. Today's hearing is the first ever field hearing of this Subcommittee. For the record, the Republican members of the Committee were invited to attend. As well, they were given an opportunity to present witnesses. They

have suggested a witness who will be on the first panel considered by the Subcommittee hearing. I want to thank Senator Nelson for his concern and advocacy on this issue, which I share, and I am happy that he is with me today.

We will hear from today's witnesses about H.B. 1355 that made a number of changes in Florida's voting laws: first, cutting the number of early voting days almost in half, from 14 to 8; second, eliminating early voting on Sunday before the election; third, requiring third-party organizations that register voters to register with their State and meet an array of onerous administrative requirements or face hefty fines of hundreds or even thousands of dollars; requiring Florida residents who have moved within the State and are updating their addresses at their polling site to vote a provisional ballot. For the record, more than 40 percent of the provisional ballots were not counted in our last election.

Governor Rick Scott signed H.B. 1355 into law last year in Florida. In September of last year, I sent the Governor a letter asking whether he planned to take any action to ensure that H.B. 1355's new restrictions would not disenfranchise legally able voters in Florida. To date, the Governor has not responded to my letter.

I also invited Governor Scott to attend this hearing today, hoping he would come personally to explain his support for H.B. 1355 and answer the questions raised about the law. I am disappointed that he will not be able to join us. Had Governor Scott or a designated representative of his administration accepted our invitation, they would have had an opportunity to answer some pretty important questions.

Was the provision of H.B. 1355 that eliminates early voting on the Sunday before an election specifically targeted to reduce the turnout of African-American and Latino voters who make up an overwhelming number of voters who show up on the Sunday before the election?

Did the Florida Legislature anticipate that H.B. 1355's new administrative requirements for third-party voter registration groups and the threat of fines imposed would force groups like the League of Women Voters, Rock the Vote, and the Boy Scouts, as well as other respected organizations to suspend their nonpartisan voter registration drives?

Why does H.B. 1355 require Floridians who attempt to update their addresses on election day to cast provisional ballots, a large percentage of which are not counted in the final result?

I am pleased, though, that the Governor, if he could not attend, that we do still have a distinguished panel—two panels of witnesses who will provide insight. Before recognizing Senator Nelson for an opening statement, I am going to ask consent for the record for him to participate in today's hearing and make it clear that it has been my practice in Washington to invite Senators, even if they are not members of the Committee or Subcommittee, but have an intense personal interest or a local interest in the issue to participate. So this is not a new approach, but for the record, I am asking consent for the participation of Senator Nelson, and without objection, he is recognized.

Senator Nelson.

**STATEMENT OF HON. BILL NELSON, A U.S. SENATOR FROM
THE STATE OF FLORIDA**

Senator NELSON. Thank you, Mr. Chairman, and thank you for holding this historic, first time your Subcommittee in a State where we have a serious question of the civil rights of people being denied.

All of us agree that the right to vote is a precious right, and it sets apart the United States from a lot of the countries of the world. In our own country, so many times young men and women have put on the uniform of this country to defend it, and one of those things they are defending is the right to vote. And we have seen in our history when this right has been constricted that painfully the country has come through the experiences realizing that the right to vote and to be able to cast that ballot without obstruction is the way that our Constitution envisions that America should be operated.

And as you have eloquently pointed out, Mr. Chairman, that right is paramount among all constitutional rights. We, the people, emanate and give adherence to the right to govern us, but we select those who govern. When that right is impeded, then the very Government itself is threatened.

Now, of all places, Florida, what we went through in the year 2000 in a Presidential election, seeing the inability of voters to cast a ballot and to cast it to be counted as they intended, to the credit of the State of Florida, after that experience they made the laws of Florida such that it was easier to vote. Thus, we had early voting, and thus, the old absentee ballot where you actually had to swear that you were going to be absent on the day of voting, that was changed to vote by mail. And, of course, organizations such as the League continued to register voters, and for decades that law was such that once they registered a vote, they had 10 days in which to turn those names in. And, of course, what we have seen is the constricting of those rights in this law that is now the law of the State of Florida.

Ultimately, this is going to be decided by a judicial panel that is convened where the very law itself, the Voting Rights Act of 1965, is being challenged. And for a redress of these grievances, since apparently there is not going to be a changing of the law in the State legislature with the cooperation of the Governor, apparently it is going to have to be changed by the courts looking at this and determining if people are constricted in their right to cast their ballot.

I think the witnesses that we are going to hear today will give ample testimony that that is the case, for when specific groups of people are targeted, when you find that voting on Sundays has been particularly popular with Hispanics and African-Americans, and you take away one of those Sundays in the law, when you find that, as we have already mentioned, the League of Women Voters cannot take the chance that one of their members, in doing a civic good, is going to be fined up to \$1,000, when you see the enormous participation because young people for a change started getting excited about Government and politics, as we were in my generation, and then along came a lot of changes, and the unpopularity of the Vietnam war and the souring of young people on what was going on in politics and Government, and yet they got energized once

again. And that college student wants to go down and register, and they register. And then if that college student, under the existing law, then happens to go down on election day to try to vote, show me your identification, they pull out their driver's license; their driver's license shows the address in another county where they grew up with their parents, and they are not going to get a ballot. They are going to get a provisional ballot. And the facts are facts. Look how many provisional ballots were not counted in the last Presidential election.

And so, Mr. Chairman, I cannot thank you enough for convening this hearing. I am looking forward to this testimony. Thank you very much.

Chairman DURBIN. Thank you very much, Senator Nelson.

The first panel I invite to the witness table: Ann McFall, Michael Ertel, and Hon. Bruce Smathers. If you would remain standing for just a moment, it is the custom of the Committee to swear in the witnesses. Please raise your right hand. Do you affirm the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ERTEL. I do.

Ms. MCFALL. I do.

Mr. SMATHERS. I do.

Chairman DURBIN. Thank you. Let the record reflect that the three witnesses have answered in the affirmative. I will recognize each one for an opening statement, and then Senator Nelson and I will ask some questions.

Ann McFall is the supervisor of elections in Volusia County. Did I pronounce that correctly?

Ms. MCFALL. Yes.

Chairman DURBIN. I am a stranger to this area, and I do not want to mispronounce it.

Previously, she was owner of McFall and Associates, an accounting and tax service. She served for 8 years on the Volusia County School Board and 6 years as Volusia County Council member, including a stint as chair of both the School Board and the County Council. Supervisor McFall has served on the Board of Directors for the Florida State Association of Supervisors of Elections. She graduated from Stetson University with a bachelor's degree in business administration, majoring in accounting.

At this point, Supervisor McFall, the floor is yours. We will give you 5 minutes, and there will be some flexibility if you need a little extra, so please proceed.

**STATEMENT OF ANN McFALL, SUPERVISOR OF ELECTIONS,
VOLUSIA COUNTY, DE LAND, FLORIDA**

Ms. MCFALL. Thank you, Senator, and Senator Nelson as well. Welcome to Florida.

Thank you for giving me the opportunity to bring to light some changes in the 2011 voting laws in Florida. Let me take a moment to explain that I have been an elected official in Volusia County, Florida, for 22 years. I am retiring as of December 31, 2012, and will not be running for any other office. There is no reason for me to go out on a limb against some of the law changes other than to use this as a forum to bring awareness.

There are four areas of concern that stand out, in my opinion. Those are changes to early voting, changes to third-party voter registration, address changes at the polls, and selection of the date of the primary in August of 2012.

Early voting shall begin on the 10th day, changed from the 15th day, before an election that contains State or Federal races and end on the third instead of the second day. Effects of these changes are significant. The legislature seemed to believe that it will save local Departments of Elections money in having early voting for fewer days. In reality it will cost my department more money. My data base of competent, well-trained workers for early voting includes only so many workers. If 12-hour days is the hours decided, some workers will have to arrive at my office 1½ hours from the opening of the early voting site, stay until the last voter has voted, and come back to my office after closing and balancing, therefore causing 15-hour days for 10 days. With a regular 40-hour work week as the norm, some of the workers will put in 100 to 150 hours in the work cycle for each election, causing more overtime than actual regular time.

In my personal opinion, a change to Florida Statute 101.657 that should have been made and was not was flexibility should have been given to the supervisor of elections to choose early voting sites from a broader choice. Currently, early voting can be held only at the Department of Elections main office, a satellite office that has been open at least 1 year, a public library, or a city hall. What is missing are community centers, college campuses, county buildings, parks, YMCAs, storefronts, malls, churches. You get the idea. I can count in Volusia County alone there are probably 30 to 35 of those places that it could use if given permission.

Third-party voter registration, and this is why I have come out so publicly in arguing against 1355. Changes in the voting registration process are considered by many to be frustrating and unenforceable. This became apparent to me when my office received an envelope with approximately 50 completed applications from a New Smyrna Beach High School teacher who oversaw a voter registration drive of high school seniors at the beginning of the year. She waited a couple of weeks—unknowingly breaking the law—in order to make sure all applications had been completed and given back to her. Because of this, I was forced to submit her name as being out of compliance with the new law. Two months later, I was forced to report a well-known community activist in the Daytona area as being out of compliance due to handing in four applications late. She was at a church function on a Friday evening, assisted four people in filling out the applications, and delivered them to my office on the Tuesday immediately following the function. She assumed that the 48-hour restriction began on the Monday that my office actually opened back up when, in fact, it began Friday evening as soon as she received the applications.

Address changes at the polls. Previous to 2011, address changes from one county to another were permitted to be completed at any early voting site or at the correct precinct on election day. Changes to Florida Statute 101.045 now state: "Except for an active uniformed services voter or a member of his or her family, an elector whose change of address is from outside the county may not change

the address and vote a regular ballot.” As you mentioned, they have to vote provisional.

But, yet, in another area of the election law, Florida Statute 97.072, the law has changed to allow an out-of-county address change to be made over the phone. Specifically, the law now states: “If the address change is within the State and notice is provided to the supervisor . . . where the elector has moved, the elector may do so by contacting the supervisor of elections via telephone or electronic means.”

In summary, that means if I go to an early voting site and I used to live in Mr. Ertel’s county and I move to Volusia, I could call up on the outside of the early voting site, change my address, and go in and vote a regular ballot. If I go right into the polling place or the early voting site and change my address, I vote provisional. It just does not make sense.

Volusia County has five colleges and universities located in the county: Stetson, Bethune Cookman, Embry Riddle, Daytona State College, and a UCF satellite campus. A majority of address changes in previous elections were actually from students who live somewhere else in the State but attend postsecondary schools in Volusia County and choose to vote in Volusia County. That is who it is going to impact.

And, finally, the primary election date. Florida Statute 100.061 has changed the primary election date to be held 12 weeks prior to the general election as opposed to 10 weeks. The August 14, 2012, election is a week before most universities open. In addition, in a year of apportionment there is a good possibility that reapportionment will not be complete before candidate qualifying begins on June 4, 2012.

Again, thank you for the opportunity of appearing before you today. I will be glad to answer any questions you may have.

[The prepared statement of Ms. McFall appears as a submission for the record.]

Chairman DURBIN. Thank you, Supervisor McFall.

Next is Michael Ertel. He is the supervisor of elections for Seminole County. Previously, he was in the public affairs field, including serving as Seminole County Government’s first public information professional as the director of public relations for a 185-location bank and conducting post-disaster public relations for the State of Florida’s tourism market agency Visit Florida. Prior to this, Supervisor Ertel served in the United States Army for 8 years, and we thank you for that service. He graduated from the University of Maryland University College, and at this time he will have an opportunity to make a 5-minute statement, but as I said to Supervisor McFall, there will be some flexibility if you need a little extra time. So please proceed.

STATEMENT OF MICHAEL ERTEL, SUPERVISOR OF ELECTIONS, SEMINOLE COUNTY, SANFORD, FLORIDA

Mr. ERTEL. Great. Thank you very much, Senator Durbin and—

Chairman DURBIN. Is your microphone on? You want to check and see.

Mr. ERTEL. Is it here?

Chairman DURBIN. OK. Good.

Mr. ERTEL. Thank you very much, first of all, for holding the hearing, and this is such a perfect location to hold the hearing. Florida is the largest swing State in the country. The I-4 corridor traveling from here in Hillsborough County through Polk, Osceola, Orange, Seminole, and ending over in Volusia County, that is the largest swing area in the State. So these counties without a doubt are going to be the counties that could end up choosing the next leader of the free world. So this is a perfect location and perfect timing for the hearing. Thank you very much, Senator.

But also because of that, I know that our elections are going to be scrutinized, and scrutiny is good. You know, folks taking a good, honest look at the process is fantastic and I like. Our elections law that Supervisor McFall mentioned is—overall, Florida election laws, if I had a red pen, I would certainly make some changes to those laws. But, you know, I think what we have here is the most fair, transparent, and open system in the entire history of the world, is right here in the United States of America.

Again, like I said, scrutiny and debate are fine, and, you know, it is the irony of Senator Durbin being here, it is—we have all heard jokes about Florida elections. We have all heard jokes about Illinois elections. And, really, the joke teller is you can tell their political affiliation based on who the victim of the joke is. So it is fun to be here with you.

Today I want to rationally discuss three issues that seem to be at the heart of these hearings: voter registration, early voting, and eligibility verification.

First of all, in voter registration, Supervisor McFall mentioned the school teachers and being unable to register voters at their site. You know, one thing we did in Seminole County to work around that was I deputized every single high school principal in Seminole County. What that did was that allowed them—they are chief deputy supervisors of elections with the very limited authority of registering the students that are in their schools to vote. That way the kids that go there 5 days a week—hopefully they are there 5 days a week—are able to register to vote in a place that they are comfortable with. And we, of course, in the office also go there.

You also mentioned the League of Women Voters and other organizations like that, canceling their registration drives. When they put out their—the Florida League put out the press release saying that they were going to be canceling their drives, I sent them an e-mail and said, “Please do not. Please do not cancel the drives. We will go to your drive with you, and we will allow you to do the voter registration, and we will just take the forms.” That way a voter would not have to wait 10 days for their form to get turned in. They would not have to wait 48 hours for their form to get turned in. With our cooperation with the league, their form would be turned in immediately. I never received a response to that e-mail. Our local league, however, we are working in concert, and we are going to have an event in April.

Early voting is something else that has been discussed. Florida, of course, according to the National Conference of State Legislatures data, is one of only 12 States in the entire country that has early voting on the weekends. We have early voting on the Satur-

day before the election day. Again, we are one of only 12 States with statewide early voting on the weekend.

You mentioned the Sunday early voting period. I did a little research on this current election, the only statewide election that has taken place since 1355 has been passed, early voting on Sunday, and the communities you had mentioned were the black community and the Hispanic community, early voting on Sundays is actually the day that they were least likely to go to the polls. The first 5 days of early voting in this very election that is taking place right now, the day that they would least likely go to the polls is Sunday.

Now, I think what we are going to find, again, in this first year of the implementation of this new law, I think what we are going to find is that most early voting will now take place on the Saturday before election day, and why is that? Because it is the final day of early voting, and people are realizing that this is my last chance to cast that early voting ballot. So I think that we are going to find that tomorrow is the busiest day of early voting throughout the State of Florida.

Eligibility verification. You also discussed the students and moving from one place to another. As Supervisor McFall mentioned, there are ways to ensure that your address is updated as quickly as possible. But if a student wants to wait until the last day, until the very last day, to tell us where they live, I believe that it is fair to ask a government agency to allow us 2 days to ensure that they have not already previously cast a ballot. I think that is a fair number of days to ask. And contrary to what may have been heard before, you do not have to go to the Elections Office for your ballot to count. If you fill out an eligibility verification ballot or provisional ballot, you do not have to come back and send us a copy of your driver's license. We just say if you have not voted previously in another county, your provisional ballot will count. The number of provisional ballots that did not count last year, everybody mentions, you know, 40 percent, 40 percent. By "last year," I mean 2010. Forty percent, 40 percent. Why? Why did those ballots not count? Nobody ever says why they did not count. It is because the voter was not qualified to cast a ballot at that precinct on that day. It is the idea they did not change—they were not registered to vote, which is most of them would be folks that are not registered to vote. So I think that eligibility verification is something good to do, and I think that it is something that is vital to do.

I saw the press conference outside. It was very exciting. But I am not naive enough to believe that simply stating facts about the voting process will cause people who profit either personally, professionally, or politically from election chaos from amputating fear-mongering from their body of rhetoric.

If you are a voter and you are watching this, your local elections officials want you to register to vote. We want you to cast a ballot, and we want that ballot to count. We are in the business of opportunity, so please allow us that opportunity.

And if I can close with a short anecdote, thank you very much, Senator. My second election I held when I was supervisor of elections in Seminole County was a run-off election for mayor, and there were two candidates on the ballot. Only one race on the ballot, two candidates. We had a sailor who had previously requested

an absentee ballot for all elections up to a certain point. We had to get him his ballot, but he was on a submarine, and the U.S. Postal Service does not have submarine service. So we tried to find a way to get him his ballot, so we said, OK, we will try to fax it to him. They would not allow us to fax it to him. We said we will try to e-mail it to him, and they said, "No, no, we cannot accept attachments on an e-mail."

So I called Washington, D.C., I called his voting assistance officer in his unit, I called—we spent tons of time trying to get this one sailor his one ballot for his election so he could vote for his candidate of choice for mayor in the run-off election.

Finally, through enough persistence, hours and hours of persistence with our office and the navy voting assistance office and help from Washington, D.C., we were able to get them to open up the fax lines long enough so we could fax this sailor his ballot. We had a special public meeting of the canvassing board late at night our time to do this, and we were pretty excited about that, and we slapped palms and stuff like that. We finally got him his ballot.

He did not vote.

About 3 weeks later, he calls me, a couple weeks later, he calls me and he is, like, "You guys went through hoops to get me my ballot." I said, "Well, that is our job. We are in the opportunity business." And he is, like, "But I did not vote because I did not know any of the candidates. And I am not going to throw my vote away simply because I have the opportunity to do it." And he understands the responsibility, and it is the whole moral of this entire hearing, I believe, is that we in the elections administration business are in the opportunity business. And as voters, we have the responsibility to ensure that we exercise this most precious gift from our Constitution in a responsible manner.

Thank you, Senators.

[The prepared statement of Mr. Ertel appears as a submission for the record.]

Chairman DURBIN. Thank you very much, Supervisor Ertel.

Bruce Smathers, a name well known in Florida and in Washington, was a member of the Florida State Senate and was elected Secretary of State of Florida from 1975 to 1978. After his political career, he practiced law, ran family orange and automobile businesses, and served on numerous private charitable boards. Mr. Smathers, of course, is the son of George Smathers, former Congressman and U.S. Senator from Florida. He earned his undergraduate degree in economics from Yale and a law degree from the University of Florida. He served in the navy and is a decorated Vietnam War veteran.

Mr. Smathers, thanks for joining us. The floor is yours.

**STATEMENT OF HON. BRUCE SMATHERS, FORMER
SECRETARY OF STATE OF FLORIDA, JACKSONVILLE, FLORIDA**

Mr. SMATHERS. Thank you, Mr. Chairman, Honorable Senator, and guests. My name is Bruce Smathers. It is my privilege to appear before your Subcommittee.

I want to explain why a retired public servant who served as a State Senator and then as Florida's Secretary of State is speaking out on these new election laws. The simple answer is that I am of-

fended by what is happening, and I cannot sit idly by as the constitutional and civic rights of qualified Americans are eroded by this type of partisan legislation. That it is occurring in my native State makes it doubly offensive.

With a family history of public service that goes back at least four generations, I feel the effort of the Florida Legislature and the Governor to tilt the elections for pure partisan purposes by suppressing the registration and voting opportunities of groups likely to vote Democratic is to me not only deplorable but disgraceful. The right to vote for all qualified Americans is a basic constitutional and civic right. It is the strength of our democratic system. Without it, all of our other treasured rights, whether it is the freedom of religion, freedom of speech, or freedom of association, will eventually evaporate. Our enjoyment of private property rights, freedom from undue government interference, and our rights to the due process of the law all ultimately exist because of the fundamental right of every qualified American citizen to vote.

As a Vietnam veteran, I am acutely aware that during the last century over a hundred thousand Americans have died overseas to not only protect our democratic right to vote, but to provide that opportunity to millions of people around the world. We have just finished a war in Iraq in which thousands of our best and brightest died, tens of thousands more have been wounded, and between \$1 and \$2 trillion of our National treasure has been expended in an effort to provide the right to vote to the people of Iraq.

Yet, after all that sacrifice, our brave men and women who return home find that, at least in Florida, their State leaders have engaged in an effort to erode that basic right of voting to thousands and probably tens of thousands of qualified Florida citizens. Many of those who bravely served in American forces overseas were Americans of African-American or Hispanic descent. They return to Florida to find their State government actively attempting to suppress the registration as well as restricting voting opportunities of members of their own heritage. I am not only offended, but as a former State Senator and Secretary of State, I am ultimately ashamed of these actions.

During my tenure as Secretary of State, we passed reform of Florida's election laws, I am proud to say with bipartisan support of both Republicans and Democrats in both legislative chambers. The vast majority of House Bill 1355 has a positive or at least defensible ministerial impact on elections and has already been approved by the U.S. Department of Justice. However, it is my opinion there are specific provisions in this legislation that represent the greatest attack on registration and voting opportunity and thus voting rights of qualified Florida citizens in recent memory. As such, I believe the legislation should be referred to, tongue in cheek, as the "Registration and Voting Suppression Act of 2011."

I do not make this comment lightly, however. It is made after reviewing the legislation, how it originated, and the circumstances of its passage. I talked to legislators and citizens who participated in the debate surrounding its passage and its signing. I have talked to the supervisors of elections and attorneys, read outside reports, as well as newspaper accounts of this bill.

If the justification of House Bill 1355 to enhance the integrity of the electoral process or fight fraud were true, this bill would have attracted bipartisan support from both Republicans and Democrats in both chambers, the full support of the supervisors of elections and their association, widespread support among community organizations, as well as support from statewide media. All of these groups as well as all Floridians want to enhance the integrity of our elections, want to prevent fraud and electoral abuse.

Contrarily, this bill was and is seen as a highly partisan attempt by the Republican majority to tilt the electoral process in favor of the Republican Party. This judgment was affirmed by widespread criticisms of the bill in the State's major newspapers as well as a well-known effect on nonpartisan volunteer groups such as the League of Women Voters, teachers, the NAACP, La Raza, and others.

It is my hope that this Committee will come to the conclusion that House Bill 1355 is designed to suppress voter registration and voter participation of groups such as African-Americans and Hispanics, the elderly, the poor, students, and others who need assistance in registering and voting. I hope that you will find that this bill also violates Federal laws protecting these basic American rights because we have no hope in Tallahassee.

Thank you very much.

[The prepared statement of Mr. Smathers appears as a submission for the record.]

Chairman DURBIN. Thank you, Mr. Smathers.

Senator Nelson and I will now ask some questions, and let me start with a general question to the three of you. Flying into Florida, hearing this debate, I would draw one of two conclusions:

Either, as Mr. Smathers just said, there is a political agenda here. Somebody is trying to keep certain people from voting or make it harder for them to vote.

Or another conclusion: There is terrible voter fraud in Florida. Something had to be done to the laws.

So, Supervisor McFall, what has been your experience when it comes to voter fraud in your jurisdiction or others and whether it has addressed anything that you have seen with this new law?

Ms. MCFALL. Well, Senator, it is not because of voter fraud because voter fraud is not out there. After the 2000 election—and I served on the canvassing board, the Bush-Gore recount, in Volusia County as a commissioner. After that election, the State of Florida implemented the Florida Voter Registration System. That is catching a whole lot of duplicates. For instance, moving from Seminole to Volusia, I fill out a new application. That will automatically catch it. That application also has a four-digit—the last four digits of your Social on there or your driver's license number. That has to be matched before that voter is activated as an eligible voter. There is not fraud in the voter registration process, and personally I do not care who hands in applications. If the applications are valid, it will show. If it is not valid, then they will be caught as well. And we have a great relationship with our State's attorney, so it is not fraud.

Chairman DURBIN. Do either of the other two witnesses disagree?

[No response.]

Chairman DURBIN. Well, then let me ask this question of you, Supervisor Ertel. You have said, and I quote you, "We are in the opportunity business." Reducing the number of days for early voting, does that increase opportunity or decrease opportunity?

Mr. ERTEL. It depends on how you look at it.

[Laughter.]

Chairman DURBIN. Please.

Mr. ERTEL. Pause for laughter. It depends on how you look at it, because, you know, the new early voting laws—the old voting laws, by the way, had 96 hours of early voting. The new early voting laws allow each supervisor the discretion of having up to 96 hours of early voting. So, you know, we—which, by the way, if we do—I first registered to vote in 1987 for the 1988 election, so that makes me 42 if anyone is doing their math. You know, when I first voted, there was no early voting. In 1992, when President Clinton was elected, there was no early voting. In 1996, when he was re-elected, there was no early voting. And, you know, we go down the entire process there. So, I mean, early voting is a new phenomenon.

Absentee voting, the increase in absentee voting, is also something that is new over the past several decades where folks have excuse-free absentee voting. So, you know, back when I first registered to vote and years and years before that, and as you mentioned, you used to have to have an excuse to vote absentee. You had to promise, "I am going to be at the doctor's office."

Chairman DURBIN. So is it your conclusion then that these changes in absentee voting and early voting have created more opportunity until this new law?

Mr. ERTEL. Yeah, those—they created a longer time frame in which people can cast their ballot. So, for instance, if you take a look back years and years and years ago, there was 12 hours to vote—12 hours to vote. Now we have 96 plus 12 hours to vote. People used to always complain about why is voting only on Tuesdays. Well, voting is not only on Tuesdays. Voting is on Saturday, Sunday, Monday, Tuesday, Wednesday, Thursday, Friday, Saturday, a couple days off, and again on Tuesday.

Chairman DURBIN. But not Sunday. Let me ask you this question—

Mr. ERTEL. Well, actually, Senator, I do not believe that—I do not know if—in fact, I did some research. Of all of the Senators on the Committee, and I say this with full respect, I do not believe that any of the States of any of the Senators on this Committee have Sunday early voting the day before the election.

Chairman DURBIN. We have early voting in Illinois. We have not restricted it. We have expanded it, and I am behind expanding it even more. I think we should give people as much opportunity as possible.

Mr. ERTEL. I do not think it is on Sunday, though, Senator.

Chairman DURBIN. Let me ask you this question: In terms of Seminole County, you have some discretion under this new law about how long you will be open during that early voting period. What are you going to do?

Mr. ERTEL. In November?

Chairman DURBIN. Sir, will you commit to opening early voting locations at the maximum number of locations in Seminole County and keeping them open and available to voters for the maximum number of days, 8 days, 96 hours, as allowed under the new law?

Mr. ERTEL. Absolutely. In the November election we are going to. Chairman DURBIN. Good.

Mr. ERTEL. In this election we do not have those 12 full hours of early voting. We have from 10 to 6. In the November election we absolutely will. And if I can add one more thing about early voting.

Chairman DURBIN. Go ahead. Sure.

Mr. ERTEL. Thank you, sir. In years past, we were one of the only counties in the State that had early voting on the Sunday before the election. We saw a higher turnout—again, not because it was on Sunday but because it was the final day of early voting. As people are realizing, as the campaigns are coming to a conclusion, folks are realizing, “This is my last chance to go to the polls early.”

Chairman DURBIN. Let me ask you about the overture which you made to the League of Women Voters when they said they were going to cancel registration. That was a noble gesture on your part, and did you make the same overture to other organizations that had historically been engaged in voter registration, nonpartisan voter registration?

Mr. ERTEL. Not only did I make it personally, I put out a news release and said, “Do not cancel your registration drive. We will go there”—and we have done it for the past year in places, and folks have called us on the offer and said, “Absolutely, we would love for you to do that and come and do the voter registration drive for us.”

Chairman DURBIN. That was not required by law, though, was it?

Mr. ERTEL. I wish that all supervisors in the State would do that, and I think they will. I really do, because, I mean, I know every single supervisor of elections in the State of Florida, and I know that they are all very dedicated to the process.

Chairman DURBIN. Was that required by law? That was my question.

Mr. ERTEL. No. I mean, it is also not required by law for a supervisor of elections to show up to work every single day, but we do because we are dedicated and we love the process.

Chairman DURBIN. So the point I am trying to get to is when we are talking about protecting people’s rights and we want some guarantee of consistency and uniformity, your overture to the League of Women Voters, as noble as it was, is not required of every supervisor of elections. Is that true?

Mr. ERTEL. To me, writing the League of Women Voters and offering that was not because of Florida law. It is because of my—

Chairman DURBIN. That is the point.

Mr. ERTEL [continuing]. Dedication to the process.

Chairman DURBIN. That is my point. I thank you for that very much.

Let me turn over the questioning to my colleague Senator Nelson.

Senator NELSON. Thank you, Mr. Chairman.

Ms. McFall, you noted that there was no consultation between the Florida Legislature and the supervisors of elections on the

changes to the voting laws, and I am quoting from your testimony, "It was almost as if the deal was done." This has been reiterated in the press by other supervisors of elections and has been reiterated in other statements submitted for the record.

So no one reached out to you in getting your opinion when this legislation was being considered?

Ms. MCFALL. No one. Not even the Volusia delegation, which I have a great relationship with. That is one of the first times I have not heard from anyone.

Senator NELSON. It is my understanding that on early voting, which, as I noted in my earlier comments, because of the horrible experience that we had in 2000, in order to make it easier to vote early voting was enacted and made it easier for seniors, for single moms, you go down the list, for people who are renters, for people who have to work long hours, sometimes two jobs to make ends meet, and they could then have a day where they could find it convenient to go and vote. And it is my understanding that allowed 96 hours of early voting.

Am I correct that this new law under the discretion of the individual supervisors of elections can cut that down to 48 hours, one-half?

Ms. MCFALL. Yes. Yes, the minimum allowed is 6 hours per day.

Senator NELSON. You talked in your statement about the impact of the law on the actual administration of elections. How much do you expect to spend beyond what you normally spend in order to comply with this new law?

Ms. MCFALL. I am either going to have to pretty much double my early voting staff or, again, as I mentioned earlier, pay the overtime. Right now I have five sites, one in each county commission district. Each site costs about \$15,000 to keep open—to open, keep open, and close. At my office it is a little less, so I am guessing that is going to probably get up to about the \$25,000 range per site per election.

Senator NELSON. You had written a guest column for one of the newspapers last year when this thing started happening in the press about the Volusia County High School teacher, and you said you saw the new law as so egregious that you felt you had to bring it to the attention of interested citizens. And that is not easy for you. You are going against your particular preference of a political party. What aspects did you find the most egregious?

Ms. MCFALL. Well, the most egregious I found was it was done in the name of voter fraud, but I found that I was turning down Republican club presidents, I could not give them applications; Democratic club presidents. I was turning down the NAACP. I was turning—coming in to get applications. They had to be registered as a third party in order to receive these applications.

Then if they went and registered as a third party, came back, then I had to spend 2 days, my staff, putting their number on the back of the application. I mean, this is somewhat demeaning to people I have known for 30 years, that we had to resort to sitting in a little room putting numbers on the back of the applications. It had to be their number. And then they had to come back in and see me or my registration division when they had their applications to make sure they got them in within the 48 hours. And then the

coup de grace is I have to turn them in because they did not comply. That is what is so heartfelt about this. You know these people. They are your constituents. They are good people. And you had to turn them in.

Senator NELSON. And on the previous question, if my mathematics is correct, you are talking about per election it is at least going to cost you \$50,000 more.

Ms. MCFALL. I would say easy.

Senator NELSON. In your testimony, you also suggest that the Division of Elections is going to receive double the amount of provisional ballots because of this new law. Based on your experience, what are the key factors that lead you to believe that the number will be so high?

Ms. MCFALL. Well, I mentioned earlier that Volusia County has the five universities in the county. The most active campus is Bethune Cookman. They literally have a march, a festival on campus on a certain day during early voting, and they march the 2½ miles to early voting in a block. Two to three thousand young people are marching to go vote. Seventy percent of those kids have something wrong with their voter registration. Maybe they moved from one dorm to the next, something like that.

So you could see where it is going to be even worse because if it is an out-of-state—if someone moves from Broward to Volusia, that is now going to be a provisional ballot. We are planning on doubling our provisionals because of this.

Senator NELSON. You testified that fraud is not a legitimate reason for changing the law, and I am curious. It seems like that Florida was very progressive in having a Florida voter registration database that is available to the public. Tell us about this database and how that helps you as a supervisor avoid fraud.

Ms. MCFALL. On election day or early voting, anywhere else I can pull up FVRS, Florida Voter Registration System, as can Mr. Ertel, and see who is registered anywhere in the State. Anywhere in the State. So if someone moved from Miami-Dade to Volusia, we could call Miami-Dade instantly and tell them this person now lives in Volusia. And that is what is done. That is the process.

Not only that, as part of the database creation, we have a closer relationship with DMV, we have a closer relationship with Vital Statistics, if a person passes away. It is a much, much closer—we are talking to each other, the governmental agencies, and that is a good thing.

Senator NELSON. And that database was paid for by Florida taxpayer dollars.

Ms. MCFALL. Actually, most of it was HAVA dollars, Help America Vote Act, the Federal program.

Senator NELSON. And it is to your credit that you interrelate all of that.

Mr. Chairman, I do not want to overstate my time, so I will—

Chairman DURBIN. Take the time that you need, Senator Nelson. I will ask a question or two if you would like to come back.

Senator NELSON. Please.

Chairman DURBIN. Supervisor McFall, I am really struck by this teacher who clearly was trying to do the right thing. You say she

was a woman who waited a couple weeks after the voter registrations to turn them in.

Ms. MCFALL. Right.

Chairman DURBIN. Which I assume under the old law would have been perfectly fine.

Ms. MCFALL. She would have had 14 days under the old law.

Chairman DURBIN. And because she waited, she was out of compliance with the new law, and you were forced to submit her name. To whom did you submit her name?

Ms. MCFALL. The Secretary of State.

Chairman DURBIN. Do you know what happened after that?

Ms. MCFALL. Because of the publicity, I am afraid, he sent her a warning letter, and the letter was very patronizing, because they sent me a copy of it. And it was a slap on the wrist, but do not ever do it again, is exactly what he said in that letter.

Chairman DURBIN. What happened to those registration forms?

Ms. MCFALL. We enter them. By law, we are required to enter the forms. And I will tell you, Senator, if that person, if Jill, the teacher, were not so honest and came in and just put them on the counter, we would not have known who handed those in. Not only that, she mailed them in with her return address on the envelope. If she wanted to commit fraud, she did not have to put a return address on it. Plus, she called my office to check to see if we got them. So, I mean, there was no intent whatsoever.

Chairman DURBIN. It seemed like a good-faith effort on her part—

Ms. MCFALL. I truly believe that.

Chairman DURBIN.—to do something which most of us would applaud.

Ms. MCFALL. Right.

Chairman DURBIN. Supervisor Ertel says the problem in Volusia County is you should be deputizing school principals.

Ms. MCFALL. Well, I am glad you brought that up. My principals do not necessarily want that responsibility. Their superintendent and their school board said, "We do not want to take that liability," because there is that \$1,000 fine. So a typical high school might have 100 teachers, 150 employees. If they are out doing voter registration, that principal is now responsible.

Chairman DURBIN. Do you think that people who register should have a genuine concern about the penalties under the new law if they register improperly?

Ms. MCFALL. Oh, I would think so, yes.

Chairman DURBIN. Would you consider that perhaps not just a concern but perhaps a fear?

Ms. MCFALL. Certainly, especially for teachers who are working paycheck to paycheck.

Chairman DURBIN. Supervisor Ertel, is Supervisor McFall guilty of fear-mongering?

Mr. ERTEL. I think Supervisor McFall is doing everything in her county the way that she can do it. What she is not doing is trying to scare people into believing that their vote is not going to count.

I want to make one small correction. Our principals are not under the third-party voter registration rule. They are actually

deputy supervisors of elections, so they do not have the onus of any sort of fine or anything like that.

So, no, I do not believe she is fear-mongering. What I do hear, though, throughout the country and the cold facts are, in every single election at least half of the candidates lose, and not all of them want to blame their own campaign. So what they do is they look at the process. And I am not talking one side or another. I am talking every election, all sides. So they want to take a look at the process. So I think that as election supervisors and election administrators, it is our role to make sure that the process is as transparent and as opportunity-based as possible.

Ms. MCFALL. Senator, if I may?

Chairman DURBIN. Certainly.

Ms. MCFALL. We have to ask ourselves the question: Why do we have to deputize principals? This is a bad law. So why do we have to circumvent ourselves and try and make a bad law a good law? It is a bad law.

Mr. ERTEL. And if I might add, Senator?

Chairman DURBIN. Of course.

Mr. ERTEL. I agree that that portion of the law—if they do a rewrite of the law, I hope that they exempt the teachers and the principals from that because that is—you know, our high school juniors and seniors go there 5 days a week. They should be able to register to vote there.

Chairman DURBIN. How about the League of Women Voters? Would you exempt them, too?

Mr. ERTEL. We work hand in hand with our League of Women Voters.

Chairman DURBIN. I am asking if you would exempt them in the law.

[Laughter.]

Chairman DURBIN. Mr. Smathers, there have been charges here of fear-mongering and misstating the impact of this law. You have been around long enough—and we are about the same age group here—to recall some of the early days in our lives when voting was truly suspect and under restrictions and people faced obstacles that American citizens should not have to face. Is it fear-mongering to be mindful of that and to suggest that any new law should be viewed in that same context?

Mr. SMATHERS. Sir, I think that our past is well known, and I would not agree in part with the statement that there is fear-mongering.

First of all, I would like to congratulate the supervisor for what he has done in Orange County and also the supervisor for what she has done in Volusia County. In my contact with the supervisors of elections—

Chairman DURBIN. Seminole, I believe.

Mr. SMATHERS. Excuse me. I apologize. I was thinking of Bill Cowles.

Chairman DURBIN. Here I am correcting him, and I am from Illinois. What do I know?

Mr. SMATHERS. But I also talked with Bill Cowles, but several points.

First of all—and I said it in my statement, and I think everybody—at the local level, the supervisors of elections, the vast majority, are leaders in the efforts to expand voter registration opportunities as well as ensure that every ballot is counted. And that is not the question, I think, before the Committee. The question before the Committee is the State law, and as Ann said, you know, the problem is that the State law is bad and the supervisors of elections are having to trip all over each other so that they will not fall into the problems.

I was speaking to a Republican of a very large county, and as I was talking to him, he said, “Just yesterday a black church wanted to have a voter registration drive, and I went out there personally to ensure that it could be done and they would not have to fall under the law.”

So what is happening, because they are eliminating the efforts of private volunteer registration organizations, the burden is not falling on the supervisor of elections, which is contrary to what we want to see. And the question would be, while that supervisor in that large county can help one church, what happens right before the general election when there are 20 or 50 churches and other organizations who want to go out and register voters? They cannot send their overpressed people who are trying to prepare for the election out to help these volunteer organizations. They just do not have the manpower. And it is expensive in these times when local governments are so strapped for money.

So while we do have a great law, this is a regression, and the issue, I think, is how we are regressing. I am sorry. I went too far.

Chairman DURBIN. No, you did not. I am glad you gave a complete answer on that.

Here is what I draw from the first panel. No one is acknowledging any evidence of voter fraud that led to these changes, No. 1.

No. 2, it will impose an additional hardship on supervisors, in your case, Supervisor McFall, up to \$50,000 a year that your office will have to absorb, taxpayers will have to absorb.

It also creates at least some hardship on voters and potential voters, restricting the opportunity for early voting—as we say, the “opportunity business”—restricting the opportunity to 8 days, a situation where you have limited locations. There are many locations Supervisor McFall noted, which all sounded reasonable to me, good places to register people to vote, which you cannot do under the current situation. And this third-party registration issue where it takes an extra effort by the supervisor of elections to find a way, as Mr. Smathers just said, around the law’s provision to allow people to in good faith register those who are 100 percent legal and eligible to vote. That is what it boils down to.

So a new, unreasonable hardship, from my point of view, is being created on voters in the State of Florida. I do not see why we would do that in this day and age. There are people literally fighting and dying as we sit here for the right to vote in countries like Syria, and we are finding ways to restrict the right to vote? That to me is not consistent with where we ought to be going.

[Applause.]

Chairman DURBIN. Senator Nelson.

Senator NELSON. Mr. Chairman, I know you need to get on to the second panel. I would just like, if I could, just one line of questioning.

Mr. Ertel, on page 2 of your testimony, under discussing early voting, you say, "Based on my data from this very election. . ." What is the source of that data?

Mr. ERTEL. The data of who has cast a ballot.

Senator NELSON. And you are talking about this Presidential Republican primary election?

Mr. ERTEL. Yes, Senator.

Senator NELSON. So how many days of early voting is your databased on?

Mr. ERTEL. It is based on the first 5 days. I had to turn this in by yesterday, so it is based on the first 5 days of early voting.

Senator NELSON. OK. I have been able to read some of the testimony of the second panel, and I think what you are going to see painted is a picture showing that certain groups, in fact, are being excluded by constricting the days, what is 96 hours down to half, 48 hours, as well as constricting certain days to vote, as well as the out-of-county-residence requirement of identification, is going to exclude certain people. So if Supervisor Ertel is basing his testimony on 5 days of present voting in a Republican primary where there is a limited turnout, then I think the record should reflect that.

Mr. ERTEL. And, Senator, if I may? Thank you, sir. I just did the query based on what we saw on the turnout among the African-American community and the Hispanic community. To me it does not matter what the party affiliation is. So the facts are about the African-American and the Hispanic community, immaterial of party affiliation.

Chairman DURBIN. I, too, have reviewed the testimony in the next panel, and I think you will find that there is a disproportionate turnout on the last Sunday from African-Americans and Hispanics, and, clearly, you could not have calculated the last Sunday because you are only 5 days into this. So we will wait and bring in all the testimony, but let me at this point bring this panel to a close and give special thanks to all three of you, Supervisor McFall, Supervisor Ertel, and Mr. Smathers, for joining us, and we will now ask the second panel to come forward. Thank you.

[Applause.]

Chairman DURBIN. Please do not get comfortable. If you would not mind raising your right hand, please. Do you affirm the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. PARKS. I do.

Ms. PEMBERTON. I do.

Mr. SMITH. I do.

Mr. WILKES. I do.

Chairman DURBIN. Thank you. The record should reflect that all four witnesses answered in the affirmative.

Our first witness is Daniel Smith. He is a professor of political science at the University of Florida. Dr. Smith has published more than 40 scholarly articles, several books on subjects like direct democracy, campaign financing, and voting rights. He received his

Ph.D. in political science from the University of Wisconsin-Madison—go, Badgers—and his B.A. from Penn State University.

Dr. Smith, the floor is yours.

STATEMENT OF DANIEL A. SMITH, PH.D., PROFESSOR OF POLITICAL SCIENCE, UNIVERSITY OF FLORIDA, GAINESVILLE, FLORIDA

Mr. SMITH. Chairman Durbin, Senator Nelson, distinguished guests, and the rest of the audience, thank you for inviting me to testify today. My name is Daniel Smith. I am professor of political science at the University of Florida. My collaborator on this project, Professor Michael Herron at Dartmouth College, could not be here today.

I come here today as a scholar, not as a partisan or a citizen activist. In my opinion, House Bill 1355 will likely hinder voter participation in Florida.

First, with respect to early voting, the law reduces the number of days, as we have heard, from 14 to 8 and eliminates the final Sunday voting immediately preceding election day. The law also allows elections supervisors to reduce from a required 96 hours to as few as 48 hours of early voting. That is how many hours they must be open—48 hours.

The effects are real. In this current election, Presidential preference primary, there are 6 fewer days of early voting under the 8-day period as opposed to the 14-day period during the Presidential primary in 2008. That is a drop in net of early voting hours of about 30 percent across the 67 counties.

Early voting is incredibly popular in Florida. In the 2008 general election, more than half of the 8.3 million Floridians who voted did so prior to election day, including some 2.6 million voters who cast early in-person ballots. Based on our analysis of early voting patterns from the 2008 general election, H.B. 1355 is likely to have a differential effect on various demographic groups. This first slide shows the percentage of racial and ethnic groups that did not and that did vote early in 2008. What you can see and what is notable is not only the large share of early voters who are African-American, about a fourth of all early voters were African-American, but that more blacks cast early ballots in 2008 than actually did on election day in the 2008 general election: 575,724 as opposed to 520,031.

The next figure plots the composition of the early voting electorate by day by race and ethnicity over time from October 20 through November 2, 2008. It is clear when you look across the lines that the fraction of whites drops on the first Sunday and the second Sunday as a proportion of the early voting electorate, and that the percentage of African-Americans and Latinos, represented by the triangle and the dot, spike up on those two Sundays. African-Americans accounted for 30 percent of early voters on the final Sunday, even though they comprise only 13 percent of the statewide electorate. Hispanic voters, who comprise just 11 percent of the statewide electorate in 2008, accounted for 20 percent of early voters on that final Sunday.

The next slide shows clear age differences with respect to who voted early in 2008. Older voters tended to vote earlier during the

period of the first 5 days which have been now lopped off. Many of our seniors like to get their voting done early in those first 5 days. But what you see is the incredible spike up on the Friday and Saturday and Sunday relative to their population of younger voters, those under 22, and they disproportionately voted on that final Sunday. If you look at the squares, those who are under 22 made up a much higher proportion of those who voted on that final day relative to their small numbers compared to the seniors and those between 23 and 65.

The next slide shows that voters who registered in 2008—we had a massive registration increase in 2008 and 2007, but this just looks at 2008—they were more likely to vote in the final week, including the final Sunday, than those who registered before 2008. In short, the law has reduced the number of early voting days, has cut in half the required number of voting hours, and has eliminated early voting on the final Sunday before election day.

Second, the law potentially dampens the ability of Floridians to register to vote, as we have already heard, and places burdens on these third-party entities, individuals and groups such as the League of Women Voters. And if you actually compare the Secretary of State's data from 2007 and 2011—I would do it for every month, but they do not have the data from November 2007—just look at December 2007 registration rates compared to December 2011 registration rates. It is almost a 50-percent drop of the number of valid registrations that were put in. The statistic on there, the 90.8 percent versus the 89.6 percent, indicates that actually under House Bill 1355 there were less valid registrations submitted even though the League of Women Voters and other third-party entities are not involved. They are clearly not the reason why 10 percent, roughly, of all submitted forms are not valid.

The last slide—and this goes directly to Supervisor Ertel's comments—looks at provisional ballots. The dirty little secret in Florida is that most provisional ballots do not count. In the 2008 general election, less than half of all provisional ballots cast were actually deemed to be valid: 35,635 provisional ballots were cast, local canvassing boards after the election only validated 17,312 ballots.

There is tremendous variation across the counties. Some, like Hillsborough County here, have a fairly high percentage of provisional ballots cast, around 60 percent. Others, however, reject disproportionately the number of provisional ballots cast. For example, only 6.3 percent of provisional ballots cast in Broward County in the 2008 general election were deemed to be valid by the canvassing board. Thousands of votes were not counted. And only 227 of the 740 provisional ballots cast in Mr. Ertel's Seminole County, 30.7 percent were actually deemed to be valid by his canvassing board. There are huge variations. Some of our counties, mostly small, have 100-percent validation rates of provisional ballots. As the other supervisor of elections, Ms. McFall, said, we are going to probably see a rise in provisional ballots.

To conclude, in our opinion the new law will likely have a negative differential effect on early voting across many demographic groups in Florida, including racial and ethnic minorities, as well as youth. The law appears to be hindering third-party registration efforts and does not help to reduce the percentage of invalid registra-

tion forms that are submitted. And it may cause the number of provisional ballots, most of which currently go uncounted, to increase. Overall, then, a case can be made for Congressional oversight on H.B. 1355 as it places considerable burdens on the right of citizens to vote in the Sunshine State.

We thank you again for the opportunity to testify, and I look forward to answering any questions that you may have.

[The prepared statement of Mr. Smith appears as a submission for the record.]

Chairman DURBIN. Thanks, Professor Smith.

Mr. Daryl Parks is here to testify. He is co-founder and managing partner of the law firm of Parks & Crump in Tallahassee, currently serving as president of the National Bar Association. He has held leadership positions, served on boards of a number of organizations. He received a bachelor's degree in political science and economics from Florida A&M University where he was student body president and founded the National Coalition of Black College Student Governments, received his law degree from Florida State University.

Mr. Parks, please proceed.

STATEMENT OF DARYL D. PARKS, PRESIDENT, NATIONAL BAR ASSOCIATION, TALLAHASSEE, FLORIDA

Mr. PARKS. Thank you very much. My name is Daryl Parks. I am the president of the National Bar Association, which is the largest association dedicated toward the advancement of black attorneys and judges in the Nation, enjoying a very strong history of civil rights and voter empowerment advocacy. I want to thank Senators Durbin and Nelson and the entire Senate Judiciary Subcommittee for convening this important forum to examine the alarming consequences of Florida's law, H.B. 1355, which restricts early voting and overly burdens third-party groups in their efforts to help register people to vote.

In light of the many years of working in Florida and my work with the NBA, I greatly appreciate this opportunity to comment upon the negative effect H.B. 1355 will have upon the right to vote and, in particular, the disparate impact it will have upon the voting rights of members of the African-American community.

The proliferation of oppressive voting laws sweeping this Nation by many accounts is just as insidious as the Jim Crow laws of the 1950's, if not worse. Nearly 50 years after Bloody Sunday in 1965 when Alabama Governor George Wallace sicced State troopers on civil rights archers attempting to cross the Edmund Pettus Bridge, we are once again fighting attacks against our fundamental right to vote.

The statistics have been well cited. According to the recent study released by the Brennan Center, over 5 million voters could be kept from polls due to new voting laws. Florida's laws are particularly troubling because, as we will hear more from my other colleagues on this panel, these new restrictions are clearly targeted against certain communities. These communities include mainly African-Americans and Latinos, but also students, people with disabilities, the elderly, and other minority populations. Today I will focus primarily on the impact upon the African-American community.

The significant and projected impact of this legislation cannot be emphasized enough. These restrictions will drastically change the electoral landscape. Black and Latino voters today make up 20 percent of the vote nationwide and are projected to rise to 45 percent by 2050. This is a critical swing vote in many States, and it is through this lens that we must consider the utility and impact of H.B. 1355 in a Presidential swing State like Florida.

H.B. 1355's impact on African-American community. Restrictions burdening third-party groups helping people register to vote. Statistics. The improvements in voter registration seen in the African-American community were in large part a result of focused efforts by third-party voter registration groups to register new and under-represented classes of voters.

In Florida, the U.S. Census Bureau data from the 2004 to 2008 election cycle show that African-Americans relied on third-party registration drives more than white voters and that minority reliance on such drives is greater in Florida than elsewhere in the country. In fact, African-American citizens in Florida are more than twice as likely as white voters to register to vote through private drives.

Some of the data is startling. In 2004, while 6.6 percent of non-Hispanic whites in Florida indicated they registered through private drives, 17.4 percent of African-Americans and 18.9 percent of Hispanic voters in Florida registered in this manner. In 2008, while 6.3 percent of non-Hispanic white registered voters in Florida were registered through drives, 12.7 percent of black voters and 12.1 percent of Hispanic registered voters and 6.3 percent of white voters were registered through drives.

Restrictions limiting early voting. Restricting early voting opportunities will also have a significant negative effect on the African-American community voting. In the 2008 general election, not only did African-Americans cast more early in-person ballots than they cast on election day, but African-Americans accounted for a much greater proportion of the early voting electorate than they did on election day.

This is why H.B. 1355 is particularly alarming. As my colleague Daniel Smith has just stated, African-Americans only make up 13 percent of the population, but they made up 22 percent of the actual voting electorate, with a high percentage voting during the early voting period. This is because of programs like Souls to Polls where our efforts in the African-American community is to encourage participation. H.B. 1355's restriction preventing voting on the Sunday before the election is a direct effort to undermine such programs.

Historically, places of worship within the African-American community allowed their members to travel to voting sites from church. In an effort to encourage voting within their community, church leadership would organize different initiatives called "Souls to Polls" within their church that would emphasize the importance of exercising the right to vote in sermons, register youth membership to vote, and encourage them to participate in the electoral process, invite local leaders to speak to their membership about the importance of voting, and more importantly, these efforts would culminate on the Sunday before the election that would organize

bus trips and/or car pools to the polls on the Sunday before the election. In addition, when resources were available, churches would provide transportation for non-members to voting polls as well.

Statistical evidence shows that African-Americans participated in voting drives of this nature in proportions far greater than whites. In fact, 33.2 percent of those who voted early on the Sunday before election day during Florida's 2008 general election were black, whereas blacks only constituted 13.4 percent of all early voters for all voting days.

In 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 persists. Restrictions on early voting and voter registration do little to secure our electoral system, yet a lot to create more barriers and problems for elderly voters. The National Bar Association 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 State lawmakers to focus on passing legislation that addresses real problems such as deceptive practices or compromises the voter registration system instead of disregarding or undermining the very right that so many have fought and died for.

Thank you.

[The prepared statement of Mr. Parks appears as a submission for the record.]

Chairman DURBIN. Thank you, Mr. Parks.

Brent Wilkes is the national executive director for the League of United Latin American Citizens. He has worked in various capacities for LULAC since 1988 and assumed the newly created position of national executive director in 1997. He currently serves as Chair of the Civil Rights Committee of the National Hispanic Leadership Agenda, graduated from Dartmouth with a major in government and philosophy.

The floor is yours.

STATEMENT OF BRENT A. WILKES, NATIONAL EXECUTIVE DIRECTOR, LEAGUE OF UNITED LATIN AMERICAN CITIZENS, WASHINGTON, DC

Mr. WILKES. Thank you, Chairman Durbin, Senator Nelson, and members of the Judiciary Committee for bringing this important issue to our attention and allowing us to testify today.

My name is Brent Wilkes, and I am the national executive director of the League of United Latin American Citizens. We were founded in 1929, and we are known as the largest and oldest Hispanic membership organization in the United States. LULAC is organized into more than 900 councils, local grassroots councils. We have a presence in Hispanic communities all across the country, including 15 longstanding LULAC councils here in Florida.

The mission of LULAC is to advance the economic condition, educational attainment, political influence, health, and civil rights of the Hispanic population of the United States.

Our volunteer members have been active in Florida for over 50 years, and many can trace their roots in this State back to when it was still a Spanish possession. Matilda Garcia, who is our former

State director, is right here, and she has been with us, first joined LULAC in the 1950's, but her family can trace its roots back to the 1880's when they were one of just 17 families that settled here in Tampa.

Many Americans think that most Latinos just arrived in the last decade or two, but the truth is that many of our members have never crossed the border. The border crossed them.

These members have for decades worked with a broad coalition of grassroots organizations to improve the quality of life for Latinos, African-Americans, Native Americans, Asian Americans, women, seniors, and youth to ensure that the communities that we represent can fully participate in the democratic process and live the American dream.

LULAC in Florida has worked with the NAACP, the ACLU, the League of Women Voters, Rainbow/PUSH, Rock the Vote, Mi Familia Vota, State Voices of Florida, Democracia, NCLR, the Florida Public Interest Group Education Fund, and many, many other groups to help register and bring to the polls American citizens that have traditionally been underrepresented and in many cases deliberately excluded from Florida's democratic process. Together these organizations work to register tens of thousands of voters across the State that the State of Florida has failed to register or in many cases has actually purged from the voter registration rolls without explanation.

Unfortunately, Florida's H.B. 1355 is really a transparent attempt to discourage Latino, African-American, senior, youth, and other vulnerable populations in Florida from registering to vote and to suppress those populations from participating in Florida's democratic process.

In the words of Reverend Charles Mckenzie of Rainbow/PUSH and a resident of Tampa, the law is a "conspicuous and egregious assault on the right of all Floridians to vote."

Denise Velazquez Marrero, who is the executive director of State Voices of Florida, calls it "legislative voter suppression."

And Howard Simon of the ACLU states that with the passage of H.B. 1355 and bills like it, Florida has now become the capital of voter suppression and voter disenfranchisement in the United States.

The provisions of this law are unnecessary, restrictive, and punitive. None of them address the few instances of voter irregularities that have taken place in Florida. In our opinion, they will actually make it much more likely that inadvertent mistakes will be made because of the unrealistic and unnecessary deadlines the bill requires for filing voter cards. In fact, the law's only effect would be to narrow the civic engagement of Latinos, African-Americans, youth, seniors, and vulnerable populations.

By requiring third-party voter registration organizations to submit voter registration applications within 48 hours of receipt instead of the 10 days provided in the previous law and imposing a fine of \$50 for each failure to comply that could lead to fines as high as \$1,000, the authors of H.B. 1355 without a doubt have sought to punish the broad coalition of organizations engaged in voter registration in Florida.

The authors of H.B. 1355 had to be aware of the fact that more than one-third of voters that were registered through third-party drives in 2008 were racial minorities, and they knew that this provision in H.B. 1355 would greatly discourage our volunteers and staff from registering voters in the State. Just as alarming, the new deadline actually makes it much more likely that mistakes will be made on voter forms because we will not have the time to do our due diligence and ensure that the forms are completed completely and accurately.

When LULAC registers voters, we have them checked by supervisors and entered into a database designed to catch the mistakes on the forms. This process takes time, which we no longer have thanks to H.B. 1355.

There is also great confusion on how the 48 hours are to be calculated. Do applications filed after hours, on weekends, and Federal holidays count? I just learned this morning that Florida counted the Martin Luther King Jr Holiday as part of the 48 hours to submit the voter forms. What an incredible, shameful act to take the holiday in honor of a man that did more than any other American to champion the cause of minorities and disenfranchised and use it as a weapon to attack those of us who are attempting to follow in his footsteps and realize his mission.

We believe without question that this provision is a retrogressive policy in violation of the Voting Rights Act and creates a significant barrier for racial and language minority voters in Florida who are protected under the Voting Rights Act.

Second, the reduction of the number of days for early voting from 18 days to 8 days is a transparent strategy to impact minority voting. I know one of your previous panelists mentioned that he did not think this would impact minority voting, but the loss of Sunday voting in particular was clearly done to end the tradition of Latino and African-American voters from going to the polls after church. As Ben Jealous, the president of the NAACP has said, "Latino and African-American pastors in Florida have encouraged their congregations to discharge their civic duty after they took care of their spiritual responsibility." H.B. 1355 makes that impossible.

Third, Florida families, especially minority families, have been hit hard by the foreclosure crisis, and many families losing their homes have had to move across county boundaries. H.B. 1355 adds insult to injury by preventing and making it very likely that these families will not be allowed to vote because they are going to go to the polls—they are used to being able to change their address right there at the polls—and they are going to have to file a provisional ballot, which we just heard probably will not be counted.

The Latino and African-American communities in Florida are diverse and growing in number every election cycle, yet our voter registration rates do not reflect this growth. Out of the 2.1 million Latinos eligible to vote in Florida, only 1 million are registered to vote. This law will hurt the mission of civic organizations like LULAC and many others that are part of our broad coalition, where part of our mission is to engage Hispanics and African-Americans in the democratic process. The restrictions of the law place an unnecessary burden, unreasonable burden on voter registration initiatives to register folks who are non-English proficient

and whose information must still be verified before submitting the voter registration information to the State.

To the political operatives who helped craft this bill, they are just looking at the numbers, and they are just trying to see how they can help their political allies, the folks that helped pass the bill, get elected. But the fact is for those of us who represent minority communities and the disenfranchised, we have fought for many years for these rights. We have bled. Early this morning there was a press conference in which we talked about how people have lost their lives fighting to preserve these rights. To us it is not just numbers; it is not just partisan politics trying to get people elected. It is realizing the American dream and making sure we preserve the promise of America, and we implore you to try to do all that you can to protect that right.

Thank you.

[The prepared statement of Mr. Wilkes appears as a submission for the record.]

Chairman DURBIN. Thank you, Mr. Wilkes.

Sarah Pemberton is a senior majoring in paralegal studies at St. Petersburg College in St. Petersburg, Florida. After graduating, she plans to attend law school and pursue a career in intellectual property law. She currently serves as the State president of the Florida College System Student Government Association. For more than 50 years, this association has represented Florida's 1.3 million community and junior college students at 28 campuses throughout the State.

Ms. Pemberton, please proceed.

STATEMENT OF SARAH PEMBERTON, PRESIDENT, FLORIDA COLLEGE SYSTEM STUDENT GOVERNMENT ASSOCIATION, CLEARWATER, FLORIDA

Ms. PEMBERTON. Thank you, Chairman Durbin, Senator Nelson, other members of the Subcommittee who could not be here today, and guests. I am honored to have the opportunity to speak on behalf of the students of the State of Florida.

A top priority of the Florida College System Student Government Association is to ensure that our students are actively engaged in their civic duties. One of the hallmarks of this engagement is voting. The task for FCSSGA is not easy, as it is no secret that students are among the most underrepresented classes of people at the polls. H.B. 1355 contains four provisions that present obstacles to voter access among this class. They include provisions on early voting, provisional ballots, third-party voter registration, and State and local primaries. I will address each of these provisions and obstacles they present to students. In the remaining time, I will address Senate Bill 516 from this legislative session that poses a solution to the inherent problems with House Bill 1355.

First, to address early voting. H.B. 1355 includes a provision that cuts early voter days from 14 to 8, discontinues Sunday voting. Much of this we have already heard today. These new provisions will hit the students hard because the lives of these students are hectic and busy. In the Florida College System, we can characterize our students by CCC, or a card-to-class-to-car experience.

One example of the type of student who will be impacted by this law is Jane. Jane is a 28-year-old female student in my program. She works a full-time job and is also a full-time student. Her day begins by going to work at 9:00, she leaves at 5:00, and in the 2 hours before class, she is prepping and commuting to go to school. From there she is in the classroom 7:00 to 9:40. She will be directly impacted by the cut of early voter days because she has no time in the regular days to ensure that she can vote. Saturday and Sunday voting is essential to students like Jane.

Next to address provisional ballots, House Bill 1355 provides that a voter may no longer change their address at a polling place by filling out an affirmation agreement. The State of Florida has a unique provision in place that allows students who attend State or community college to seamlessly transfer to a university in the State of Florida with a full transfer of all credits. This agreement between State colleges and universities is an incentive for our students to attend community college first where they will get the tools to be successful in university.

One of the side effects of this agreement is that students will often change their county of residence after completing their degree at a State college to attend a university in this State. The 2008 U.S. Elections Assistance Commission survey cited 51 percent of provisional ballots were not counted. Students who were participating in the democratic process are less likely to participate knowing that their vote has a 51-percent chance of not counting.

The next provision I would like to add is third-party voter registration. One of the numerous provisions H.B. 1355 requires that third-party voter registration organizations are required to be registered and submit required information. In the event that this provision is not met, many, many heavy fines will be levied against them.

Many of the groups that used to participate in voter drives are no longer able to do this because they are not able to risk the fines. This is especially true for student organizations like mine. College campuses' Student Government Associations are known for having voter registration drives on their campuses, and we are no longer able to do those things because we as students cannot risk those fines. As a result of this, many students who would normally discover the political process through their time in college will not be engaged in the same way that they have been in years past. We will see a decline in the number of students who are registered to vote, who will as a result not fulfill not only their civic right but their civic duty.

The last provision I would like to address is State and local primaries. The new provision requires it to be 12 weeks before the general election. This is a seemingly harmless change; however, many of our college students are not going to be back in their universities until the week after the primary will be held this year. This effectively eliminates an entire class of people from voting in the primary election.

We understand that problem spotting is easy, so we looked to find a solution to the inherent problems of House Bill 1355. That solution came to us in the form of Senate Bill 516. Under this new piece of legislation, there would be more available places for early

voting, including college campuses. The disenfranchised would have a new opportunity to get involved right here on their campuses. Additionally, the number of early voting days and hours would be extended by this legislation. This small but vital step in counteracting the harm of H.B. 1355 is imperative.

The students of the State of Florida believe that the right to vote is fundamental to our style of government. We strongly urge the Committee when evaluating claims that this law makes it harder for tens of thousands of elderly, disabled, minority, young, rural, and low-income Floridians to register and exercise their right to vote to err on the side of American values.

[The prepared statement of Ms. Pemberton appears as a submission for the record.]

Chairman DURBIN. Thank you, Ms. Pemberton. Let me ask a few questions—

[Applause.]

Chairman DURBIN. Professor Smith, we are talking about voting on a day other than election day, and there are actually at least two approaches that come to mind. One we have talked about at great length—early voting. And there is another approach, of course, which involves absentee voting. What have you found relative to those who use each opportunity: those more likely to engage in early voting as opposed to those more likely to engage in absentee voting?

Mr. SMITH. Thank you, Mr. Chairman. This is a not-well-kept secret by politicians in Florida about which political party tends to vote early versus have their supporters vote absentee. The Republican Party of Florida has been very successful, and is quite admirable in terms of their efforts, to reach out to their supporters, having them request absentee ballots, and having them sent in. The Democratic Party, for whatever its reason, has chosen not to use that strategy. There is clearly a difference in terms of the half of the population that was registered to vote in 2008 in the general election that voted early as opposed to absentee. And it is almost opposite in terms of Democrats disproportionately voting early, Republicans disproportionately voting absentee.

What I should note is that H.B. 1355 does nothing to affect anything with respect to voting early through an absentee ballot, and, in fact, if you want to talk fraud—and the supervisors I am sure can attest to this—in the State of Florida, when there is voter fraud, it is through absentee ballots. It is not done on election day. It is not done early.

[Applause.]

Mr. SMITH. It is not done through early voting. It is not done with Mickey Mouse registering and then voting. It is done through absentee ballots. The percentage is very small, but it exists. We just had a Florida Department of Law Enforcement investigation of absentee ballot fraud going on in Madison County—the “Madison Nine” I think they are known as—in which in a local school board election, several individuals in support of a candidate solicited absentee ballot forms for other people, either filled them out or were there when the voter filled them out and advised them on how to fill them out, and then brought them back into the supervisor of election. Nothing in H.B. 1355 touches this type of fraud. In fact,

it makes it easier for individuals who are not the person who is going to be voting on the absentee ballot to request an absentee ballot and have it sent not even to that person's address that is on the books.

So if the State legislature really wanted to crack down on fraud, certainly they probably should have considered at least some of these problems with the absentee balloting that goes on.

Chairman DURBIN. Mr. Parks, you said at one point in your testimony that the census data indicates that African-Americans and Hispanic citizens in Florida are more than twice as likely as whites to register to vote through private voter registration drives. In 2004, that translated to 17.4 percent of African-Americans and 18.9 percent of Hispanics registering through voter registration drives compared to 6.6 percent non-Hispanic whites.

In light of these figures and the testimony we have already received, sworn testimony about the negative impact this has had on third-party nonpartisan organizations involved in voter registration, I think the conclusion is fairly obvious, but I would like you to state it.

Mr. PARKS. Well, without question when you put that type of burden on third party—especially students. My background is as a student leader. And on the campuses when you have students who want to have voter registration drives and voter registration drives in the broader black community, folks are not going to do it given the burden that has been placed on them by this House bill. So without question it is very clear that by putting this extra burden on it, those numbers are going to go down given the heavy burden they now have to face.

Chairman DURBIN. Mr. Wilkes, is that the way you see it?

Mr. WILKES. Absolutely. I think when you consider the fact that Latinos and African-Americans are more likely to have moved and changed address so they need to re-register, or Latinos are more likely to be new citizens and need to register, they are getting missed by the traditional registration strategies that exist in any State but here in Florida as well. And because of that, the third-party voter registration efforts are absolutely key to make sure that those voters get registered, and this is a chilling effect on those efforts. They are trying to frighten us into not doing our job, and it is unfortunate because we are really helping the State. We are helping them preserve the democracy here in the State, and yet the feeling amongst all of us is that when you go to a volunteer, like Matilda—she has worked for 50 years for this organization trying to help people register to vote. I am going to tell her that she could get fined \$1,000 because she is trying to do something that she has done all this time? That is going to scare our volunteers. It is going to scare our staff. It is going to scare your organizations. And a lot of members of this broad coalition have already said they are not going to register voters anymore in the State.

Chairman DURBIN. Ms. Pemberton, the earlier panel talked about students marching from Bethune Cookman—is that correct? Is that a historically black college?

Mr. PARKS. Yes.

Chairman DURBIN. A historically black college, coming in to register, and Supervisor McFall noted that if the students had

changed dorm addresses, they would be given provisional ballots. Not reflecting on her county specifically but, rather, the statistics from Professor Smith, I was shocked by the wide disparity of what happens to provisional ballots. Under the best of circumstances, from your report, 60 percent are counted in the end. Under the worst, 6—I should not say that. You had a few counties that had 100 percent.

Mr. SMITH. There were some at 100 percent. Very small.

Chairman DURBIN. There were half a dozen counties that 100 percent, but in the ones you reported, 60 percent as against 6.3 percent, which goes to your point. If students do not think their ballots are going to be counted because they have changed dorms between elections, they are discouraged from participating. Is that not the case? I mean, you said as much, and as I listened to these provisional ballot statistics, it really reinforces it.

Ms. PEMBERTON. It is. We have to bear in mind that college is an opportunity for students to really learn about the political process and begin their endeavors in civic engagement. It is hard enough to get them to the polls, and now as they are discovering, the ones that are becoming involved, that it is a common practice in university that when you come back, you may not be in the same dorm that you were in when you got there, and now when you go to the poll and you have taken this time to do these things and get informed about the candidates and take the time to vote, that your ballot has, at best, a 60-percent chance of being counted, that is not an incentive for a disenfranchised group of people to vote.

Chairman DURBIN. Let me just—

[Applause.]

Chairman DURBIN. I am going to close, if you do not mind, Bill, Senator Nelson, by referring to the testimony of Superintendent Ertel because he made this point several times, and I told him I was going to bring this up when Professor Smith was here, and I am going to read his testimony verbatim based on his own sampling and conclusions. And he said: “While we do not have real statistics on the voting habits of hard-working single mothers, I pulled the real data for the black and Hispanic community from the only statewide election conducted under the new law—the current election. Based on my data,” Superintendent Ertel said in testimony, “from this very election, Sunday is actually the least likely day that a black voter will cast their ballot and the second least likely day that a Hispanic voter will cast their ballot. Of all the black voters who have cast an early voting ballot in the first 5 days of this election, only 7 percent did so on Sunday. Of the Hispanic voters who cast an early voting ballot in the first 5 days of this election, only 16.95 percent did so on Sunday.”

Could you react to Superintendent Ertel’s observations?

Mr. SMITH. I would not deny that his statistics are correct, but let us look at the context of the Presidential primary election that is going on right now. Last I checked, President Barack Obama does not have an opponent in Florida. In fact, Democrats are not given a Presidential ballot to vote on. They may have some local races if you are a registered Democrat or if you are registered no-party-affiliate. Republicans are the ones that are turning out, and

we know the proportion of both Hispanic as well as African-American Republicans in the State. It is a fraction of what a general electorate in a general election is going to look like.

I would encourage Mr. Ertel to go back and look at his statistics from Seminole County in 2008 when it was, admirably, one of just a handful—10 counties—that actually allowed Sunday voting, and to look at the proportion of African-Americans and Hispanics and whites that voted on that final Sunday in his particular county. I can assure you that it is going to look very much like this figure, which disproportionately shows African-Americans and Hispanics came out to vote on that final Sunday relative to the white voters who voted the rest of the week at a much higher proportion.

Chairman DURBIN. Thank you.

Senator Nelson.

Senator NELSON. Thank you, Mr. Chairman.

Mr. Wilkes, from your testimony, if someone is unfortunate enough to have their home foreclosed and they have to move into rental housing, you mentioned in your testimony that the law fails to take that into account, the new law. Can you elaborate?

Mr. WILKES. Absolutely. If they have to move across county lines, in the past they could go in, they could vote—not a provisional ballot but an actual vote—and at the same time update their address. In the new law, without explanation, they have now said it is a provisional ballot that you vote. You can still update your address, but now you are voting with a provisional ballot, which we have just learned rarely gets counted.

So these are folks who have already been devastated. They lost their homes. They lost their income. And they are trying to participate still in our democratic process and hope to elect someone who can see their plight and take action to help those individuals. And then they go to the ballot box, and they are told they cannot vote an actual vote that is going to be sure to count. I think that that is despicable, honestly. I mean, I cannot imagine why the State of Florida—why would they do that to these poor folks? We know it is a huge problem in the State. Why aren't they helping them? Why are they trying to make life more difficult for them?

Senator NELSON. So a demographic that is more likely to rent because of income level and a demographic that would more frequently change addresses as renting one place and then moving to another, if it crossed a county line, they are going to be caught in this Catch-22. Is that your testimony?

Mr. WILKES. That is absolutely correct, with the addition of, unfortunately, once again, those folks tend to be disproportionately African-American, Latino, you know, seniors, folks who are most likely to be disenfranchised in the first place, and now there is yet another additional burden being imposed by this bill.

Senator NELSON. Mr. Parks, would you elaborate on why the houses of worship are a place to encourage voter participation in your experience?

Mr. PARKS. Well, I think certainly without question, Senator Nelson, historically one of the challenges in the African-American community has been getting the voter involvement, and so that has continued to be a huge battle in the African-American community. Then we get to the point where because we tend to socialize tradi-

tionally in the churches, as probably the number one place in the African-American community, it became the place that African-Americans could use as a place to encourage each other to vote.

I think you have to also think about the work dynamics here. I think most African-Americans tend to have to work if not one job, sometimes a second job to survive in certain situations. The one time that you do get a chance to socialize in our community is at church, and that is why probably more so than ever it is so important that the churches be allowed to have that Sunday participation which we are being denied.

I think without question, though, from a legal standpoint here, we realize that this particular law has a disparate impact on African-Americans, and I think that becomes, I think, as Senators one of the points that we want you all to consider in your discussions as you consider this House bill.

Senator NELSON. Professor, you have written about the fact that Florida in this Presidential primary is operating under two different laws. The five counties, including this one, Hillsborough, that are under the watch under the Voting Rights Act of 1965 are under a set of one laws, which is the old law, and the remaining 62 counties are operating under the new law that is the subject of this hearing. Do you want to comment on that?

Mr. SMITH. Yes. It kind of makes a mockery of *Bush v. Gore* in terms of having some uniform standard in which everyone in the State needs to be voting under. We have had early voting going on for almost 2 weeks in those five Section 5 Voting Rights Act counties which are still under the jurisdiction of the Federal Justice Department, and they have not yet granted preclearance because of concerns about how truncating that Sunday voting as well as eliminating the first 5 days of early voting may affect disparately different demographic and racial minorities.

You know, I find it terribly ironic that here in Hillsborough early voting has been going on since Martin Luther King Day, that Monday. Next door, just going across the causeway, over in Pinellas County it did not start until that following Saturday. And, of course, in Hillsborough, according to information posted on the Secretary of State's website, you will be able to vote early on that final Sunday as opposed to in other counties surrounding it.

Senator NELSON. So if you live in Hillsborough—this is Friday—you can vote this Sunday.

Mr. SMITH. That is correct, according to information posted on the Secretary of State's website.

Senator NELSON. But if you live in Pinellas or Pasco, you are not going to be able to vote in the Republican primary this coming Sunday.

Mr. SMITH. That is correct, according to the Florida Secretary of State.

Senator NELSON. Mr. Chairman, I have no further questions. I would like to make a concluding comment at the appropriate time.

Chairman DURBIN. Thank you, Senator Nelson, and thank you very much to the panel.

I suppose the first and obvious question is: Why is this Subcommittee meeting in Tampa today? Why have we decided to come down here and address a State law, 1355, changing the voting

process in the State of Florida? Some people might say, "Well, everybody watches Florida elections, at least since 2000."

[Laughter.]

Chairman DURBIN. And that is true. More eyes have been focused on this State since the year 2000 than many other States.

Second, people would say, "Well, Florida is in a special category when it comes to the Voting Rights Act." This is a 50-year-plus legacy of some very bitter experiences where the Federal Government continues to supervise and preclear laws on voting to make sure that there is no discrimination. That is certainly true.

The third point goes to some testimony given by the current Chief Justice of the Supreme Court before our Senate Judiciary Committee when he was asked about voting, and he said of voting, "the right that is preservative of all other rights." "The right that is preservative of all other rights."

We value our rights in this country. All across this political spectrum we value them. But most fundamentally we value our right to vote because that determines whether we will maintain this democracy, whether we will maintain the confidence of the voters in this democracy, and whether we will continue to set an example for the world, an example which they—

[Applause.]

Chairman DURBIN. An example which they frequently cite when they take to the streets and the polling places in their countries and determine what their future will be: "We want to be like America."

We came here today, and we heard testimony, and I thank both panels. I thought all of them did an extraordinary job in laying out what this issue really comes down to. The decision by the Florida Legislature and the Governor to change the law is going to work a real disadvantage to some people. It is going to limit the opportunity for early voting. It is going to limit the opportunity for non-partisan groups to register people to vote. It is going to limit the places where people can vote. And, unfortunately, it is difficult to escape the political reality. It is going to have a greater impact on minorities, on blacks and Hispanics, on the young and the poor and the elderly than on other groups. That is not consistent with the values that we should bring to this conversation.

I thank Senator Nelson for this invitation for the first field hearing of this Committee. I think it was appropriate that we were in Tampa, Florida, today discussing the right that is preservative of all other rights.

Senator Nelson.

Senator NELSON. Mr. Chairman, I want to thank you for making this a historic field visit at a very important time. On the basis of your comments and the comments of all of the excellent panelists—and we do appreciate everyone—I was reminded that it was in the 1800s that Susan B. Anthony, who was trying everything that she could for the rights of women, made a very similar statement to what you just quoted the Chief Justice as making. She said, "All the other rights are going to be protected only if women have the right to vote." And so, too, we have seen that struggle in our country's history, the contrast, as the Chairman has mentioned, with other countries. Look what is going on in Syria right now.

Now, this country is unique in the Constitution and its legal system and the rule of law. That is what sets us apart from the rest of the world. That is something that we must preserve. And so, Mr. Chairman, I want to thank you for coming down here because I think that that rule of law has been assaulted here in this State by this election law under the pretense of cutting down on election fraud. And for you to come here with this Committee to underscore how high the stakes are right now, can you believe that America in the year 2012 is facing this challenge?

Thank you, Mr. Chairman.

[Applause.]

Chairman DURBIN. Thank you.

As a measure of the interest in this hearing, we not only have a packed courtroom, but there are more than 200 people in the overflow rooms watching this hearing as well. In addition, dozens of organizations have submitted statements for the record, including the ACLU, NAACP, the Brennan Center, A. Philip Randolph Institute of Central Florida, Disability Rights Florida, Florida Consumer Action Network; Ion Sancho—I hope I pronounced that correctly—Leon County Supervisor of Elections; the Lawyers Committee for Civil Rights Under the Law, Mi Familia Vota, the Leadership Conference on Civil Rights, Rainbow/PUSH of Florida, and the New Covenant Baptist Church of Orlando, and without objection their statements will be placed in the record.

[The statements appears as submissions for the record.]

Chairman DURBIN. I want to thank those organizations, particularly thank our panels, the witnesses who testified.

We will keep the hearing record open for a week to receive additional statements, and written questions for the witnesses may be submitted from members of the Committee, and I hope they can respond in a timely way.

And if there are no further comments from our panel or colleagues, thanks to the witnesses, thanks to Senator Nelson, and this hearing stands adjourned.

[Applause.]

[Whereupon, at 2:55 p.m., the Subcommittee was adjourned.]

[Submissions for the record follow.]

SUBMISSIONS FOR THE RECORD

BRENNAN
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The Brennan Center for Justice at New York University School of Law thanks Chairman Leahy and the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights for providing this opportunity to submit written testimony in advance of the important field hearing, “New State Voting Laws II: Protecting the Right to Vote in the Sunshine State.”

The Brennan Center is a nonpartisan think tank 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. We submit this testimony today in our capacity as national advocates of voting rights committed to (1) preventing efforts, such as Florida’s H.B. 1355 (alternatively “the Law”), to constrict voter registration and participation and (2) promoting improvements that will make our election system secure and accessible to all eligible Americans.

The harm caused by HB 1355 to Florida voters and community-based voter registration groups is so severe that several organizations and individuals have been forced to turn to the courts for relief. In *Florida v. United States*, the Brennan Center is co-counsel¹ to the League of Women Voters of Florida (“LWVF”) and the National Council of La Raza (“NCLR”), who oppose HB 1355 because of the harm it will cause to minority voters.² The Brennan Center also represents³ LWVF, Rock the Vote (“RTV”), and Florida Public Interest Research Group’s Education Fund (“FL PIRG”) in *LWVF v. Browning*, a broad challenge to the Law on the basis that its provisions violate the U.S. Constitution, the National Voter Registration Act, and the Voting Rights Act.

¹ Our co-counsel in *Florida v. United States* are the Lawyers’ Committee for Civil Rights Under Law and the law firm Bryan Cave, LLP.

² Under the federal Voting Rights Act, changes to Florida’s election laws must be “precleared” by the United States Department of Justice or through a lawsuit in the D.C. federal court. Florida is currently seeking preclearance by a D.C. federal court in the case *Florida v. United States*.

³ Our co-counsel in *LWVF v. Browning* are law firm Paul, Weiss, Rifkind, Wharton & Garrison LLP, the ACLU of Florida, and law firm Coffey Burlington.

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In this statement, the Brennan Center will detail why the discriminatory provisions of HB 1355 should be struck down. We will also suggest long-term improvements to Florida's antiquated paper-based registration system that would save the State significant money and time processing paper registration forms, while also increasing the inclusiveness and accuracy of the voter rolls.

Background

HB 1355 is the third and most heavy-handed set of rules and penalties enacted by the State of Florida in the past six years to regulate the community-based voter registration activities of individuals and organizations who advocate for greater voter participation and who help their fellow citizens register to vote. HB 1355's newly enhanced and tightened restrictions on those constitutionally protected efforts were adopted with barely the pretense of justification, other than to erect additional and unwarranted barriers to registration and voting.

Despite the devastating impact HB 1355 would have on voter participation, this latest step in Florida's serial effort to repress the voter registration activities of community-based groups sped through the legislative process in 2011. The Florida Legislature considered no evidence demonstrating that such grave restrictions were necessary to prevent voter registration fraud or preserve the integrity of the election process. Nor did HB 1355's proponents offer any basis at all to conclude that the existing legal regime, including the voter registration law passed just three years ago, has been inadequate to address whatever dangers may exist.

Restrictions on voter registration are particularly troublesome in light of Florida's declining voter registration rates. In 2004, before Florida began restricting community-based voter registration drives, Florida ranked 33rd in the nation in voter registration rates, with 71.7% of voting age citizens registered. In 2010, Florida dropped to 38th in the nation in voter registration rates, with only 63% of voting age citizens registered.⁴ Similarly, the overall number of registration forms received in Florida has steadily declined. From 2000 to 2004, Florida received over 8.6 million voter registration forms. From 2006 to 2010, after restrictions on community-based registration efforts were implemented, the total number of voter registration forms received dropped to just under 3 million.

HB 1355 can only exacerbate these downward trends. And unfortunately, the impacts of this law will fall most heavily on the shoulders of Florida's voters of color.

In general, community-based voter registration drives register significant numbers of citizens to vote in Florida. According to the U.S. Census Bureau's Current Population Survey, as of the November 2010 election, 7.3% of all registered voters, which would translate to 585,004 Florida citizens, had

⁴ Data obtained by creating custom tables with the Current Population Survey (CPS) Table Creator for 2004 and 2010, respectively. U.S. Census Bureau, Current Population Surveys (Nov. 2004; Nov. 2010). The rate of new voter registrations in Florida from 2006 to 2010 similarly mirrors the overall decline in registered voters. From January through October 2006, there were 479,611 new and valid voter registrations in Florida, compared to 363,545 in the same period in 2010, a 24.2% decline. See Florida Division of Elections, Voter Registration Statistics, <http://election.dos.state.fl.us/NVRA/reports.shtml>; Voter Registration Year To Date Report, October 2006: <http://election.dos.state.fl.us/voter-registration/archives/2006/October/YTDTotal.pdf>; Voter Registration Year To Date Report, October 2010: <http://election.dos.state.fl.us/voter-registration/archives/2010/October/YTDTotal.pdf>.

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been registered to vote through such third-party drives in Florida. Those numbers are significantly higher for communities of color.

As of 2010 in Florida, 16.2% of African-American registered voters and 15.5% of Hispanic registered voters in Florida were registered through drives, compared to only 8.6% of non-Hispanic white registered voters.⁵ Similarly, African Americans and Latinos registered to vote through voter registration drives at approximately twice the rate as white voters in 2004 and 2008. The large emphasis on voter registration drives in Florida is one major reason why racial disparities in voter registration are lower in Florida than most states. But, due to HB 1355, many organizations and individuals, including those that specifically reach out to minority communities, have been forced to suspend or severely curtail their voter registration efforts.

Unsurprisingly, during its consideration by the legislature, HB 1355 was strongly opposed by minority leaders in Florida. And, because of HB 1355's disparate impact, numerous civil rights organizations and individuals have intervened in *Florida v. United States* to illustrate how the law harms minority voters.⁶

The Law Severely Burdens Community Voter Registration Efforts

The experiences of the League of Women Voters of Florida (LWVF), Rock the Vote (RTV) and Florida Public Interest Research Group Education Fund (FL PIRG)—three volunteer-driven, non-profit organizations with long histories of helping to register voters in Florida—illustrate the myriad burdens imposed by HB 1355.

- The LWVF is the Florida affiliate of the national League of Women Voters. Central to the group's mission is encouraging the informed, active participation of citizens in government, including voter registration. LWVF has approximately 2,800 current dues-paying members, and a list of about 9,000 members, supporters, and volunteers who receive regular communications. LWVF conducts voter registration drives via 29 local chapters throughout Florida. These local voter registration efforts are wholly volunteer-run and are central to LWVF's ability to engage with its membership and volunteers. Voter registration goes hand-in-hand with virtually all of LWVF's public education efforts, as well as many of their advocacy activities.

Many of LWVF's outreach activities are directed at traditionally underrepresented communities. For instance, the Orange County League spearheaded the "Vamos A Votar Coalition," a nonpartisan campaign to increase Hispanic voter participation in Central Florida and statewide. And, the Miami/Dade County League reaches out to historically underrepresented communities in their county by publishing registration information in English, Spanish, and Creole. Similarly, some local Leagues, including the Jacksonville/First Coast League, regularly attend naturalization ceremonies in their communities. There, they

⁵ U.S. Census Bureau, Current Population Survey (Nov. 2010).

⁶ Attached as Exhibit A is a letter by the Brennan Center and the Lawyers' Committee for Civil Rights Under Law further detailing these racial impacts, which was submitted to the Justice Department in opposition to the preclearance of the Law, on behalf of the National Council of La Raza and the League of Women Voters of Florida.

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introduce new U.S. citizens to one of the most important opportunities and responsibilities of citizenship by assisting them in registering to vote.

- RTV is a national organization whose fundamental mission is to build political power for young people by increasing their registration and voter turnout rates. Critical to that mission are the organization's efforts to register young people to vote and to encourage them to vote on election days. RTV has approximately 1.5 million members in its national database, including approximately 82,000 members in Florida. RTV makes voter registration forms and instructions available on its website and conducts in-person registration drives staffed by volunteers at college campuses and in other locations.

RTV also offers a "Democracy Class" curriculum for local educators that teaches students about the importance of voting and offers registration opportunities. RTV provides a "toolkit" of materials that teachers can use to supplement their class instruction about civic engagement and the right to vote. It includes a video about the right of 18-year-olds to vote, lesson plans for staging a mock election in class, and a set of voter registration materials for the students.

- FL PIRG is an affiliate of the national Public Interest Research Group and strives to ensure equal access to the political process by, among other things, registering voters. FL PIRG focuses its voter registration efforts on student populations within Florida, and since the 2004 election cycle, it has registered approximately 23,000 Floridians. FL PIRG hires and trains campus organizers, often recent college graduates, to plan and organize voter registration drives at college campuses around the country. FL PIRG also conducts door-to-door registration drives.

FL PIRG's voter registration efforts have been particularly successful in engaging minority citizens. For example, in 2008, 42% of the citizens FL PIRG registered self-identified as members of a racial or ethnic minority group.

Voter registration is clearly a central part of each of these groups' missions. HB 1355 creates a laundry list of restrictions that severely impede such community-based voter registration efforts, and transforms the act of assisting others to register to vote into an exceedingly complex and highly risky activity. For example, HB 1355 imposes, under threat of severe financial penalties and potential criminal prosecution, a requirement on any person (not just on organizations) to pre-register with the State in order to "solicit" or "collect" voter registration applications, and requires such persons or organizations to track and report on every single voter registration application that they handle, including applications that are never completed or collected.⁷ HB 1355 also requires that every completed voter registration application be delivered to the State within an arbitrarily narrow and unnecessarily prohibitive 48-hour window, under the penalty of strict monetary fines.⁸ Moreover, HB 1355 sets forth vague but ominous penalties for even a minor, unintentional act of noncompliance with any provisions of the Law.⁹

⁷ Fla. Stat. §§ 97.021(37), 97.0575; Fla. Admin. Code Ann. R. 1S-2.042.

⁸ Fla. Stat. § 97.0575(3)(a).

⁹ *Id.* §§ 97.0575(4), 104.41.

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As detailed in their sworn affidavits submitted in support of a motion seeking a federal court order to enjoin the Law,¹⁰ because of its burdensome restrictions, LWVF, RTV, and FL PIRG have all ceased, or dramatically cut back, their voter registration efforts in Florida.

- Ms. Macnab, President of the League of Women Voters of Florida, explains: “As a result of the new Law, LWVF has ordered a statewide cessation of voter registration until the Law is enjoined or limited in such a way as to substantially reduce the organizational and financial risk to the League, its members, and volunteers... The local Leagues operate on a decentralized model with an all-volunteer force, which has successfully registered tens of thousands of Floridians to vote over the last 72 years without incident. The 48-hour requirement would require LWVF and its local Leagues to dramatically revise their procedures in a manner that would require volunteers to become detailed timekeepers and create strict schedules to ensure that forms were handed in before the clock strikes 48 hours—and do all this under the ticking time bomb of civil penalties and fines.” Moreover, “[m]any LWVF volunteers are elderly and depend on others for transport. They may have a particularly hard time meeting the 48-hour deadline.” Ms. Macnab goes on to explain how voter registration activity is crucial to the LWVF’s ability to recruit new volunteers and retain active members: “Helping other Floridians to register to vote is one of the most popular and effective volunteer opportunities with LWVF, and it has consistently been one of the best ways to get new volunteers invested in our work... I have come to believe that individuals who begin volunteering even a few hours helping to register their fellow citizens to vote find the activity extremely rewarding and feel a sense of purpose and connection to their democracy. Many, if not most, of our seasoned volunteers, stalwart supporters, and State Board members began volunteering their time at a LWVF voter registration drive table. My own very first hour spent volunteering with LWVF was behind such a table.”

See Exhibit B for Ms. Macnab’s full affidavit detailing HB 1355’s impacts on the LWVF’s voter registration activity.

- Rock the Vote’s community-based voter registration activity in Florida has also ceased in the face of HB 1355’s extreme requirements. In the words of President Heather Smith, “RTV is extremely concerned that the Law will make it exceedingly difficult to encourage student volunteerism with us. The Law now requires each ‘registration agent’ to sign a sworn form detailing severe felony penalties that result from false registration. While we train our volunteers to ensure no one falls afoul of these laws, introducing a student to civic participation and volunteerism via a list of felony penalties, in turn signed under felony penalty of perjury, is intimidating and scary for many students. The nature of the required form will lead to fewer students who are willing to participate in and volunteer in RTV’s voter registration activity, particularly on a spontaneous basis.” Likewise, Ms. Smith affirms that “[T]here is no question that we will have to drastically cut back, or perhaps discontinue, our registration efforts in Florida. We have already suspended our Democracy Class program and our in-person voter registration work in the state of Florida since the Law’s passage.” The cessation of RTV’s Democracy Class in Florida is particularly significant because RTV has “had to turn down requests from individuals and teachers in Florida to

¹⁰ Each of these affidavits, which are quoted in part in this statement, are appended in their entirety as exhibits B-F.

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collaborate on voter registration activity due to the Law's burdensome new requirements." This is because HB 1355 will prevent RTV from incorporating voter registration into Democracy Class. "Without the voter registration component," Ms. Smith explains, "Democracy Class will be significantly less effective in advancing RTV's mission of getting young people involved in the political process."

See Exhibit E for Ms. Smith's full affidavit detailing HB 1355's impacts on RTV's voter registration activity.

- Brad Ashwell, Advocate for Florida PIRG, explains how HB 1355 similarly impacts his organization's ability to engage in voter registration: "FL PIRG will have to require every person assisting with voter registration to sign sworn statements threatening criminal prosecution for false registrations before they can engage in registration activities. From my experience working with students and other young people, I believe the intimidating registration agent form will significantly burden FL PIRG's ability to recruit volunteers. Some students will hesitate to join our volunteer efforts, particularly those drawn in spontaneously, if they must first sign a form listing multiple felony penalties. Moreover, certain school administrators will not want their students to participate in voter registration drives for fear of fines or reputational damage to the school." Furthermore, Mr. Ashwell explains, "The Law's requirement that forms be submitted within 48 hours of collection will be extremely difficult to comply with in many circumstances. The 48-hour turnaround time is particularly troubling as it relates to FL PIRG's frequent voter registration work during the evening. Nighttime events are extremely effective on campus, after classes are over and when students have more time to complete voter registration applications. But under the law, conducting voter registration efforts after 5:00 p.m. becomes more complicated because of the 48-hour requirement."

See Exhibit F for Mr. Ashwell's full affidavit detailing HB 1355's impacts on the FL PIRG's voter registration activity.

Though it has been in effect for only a short time, the onerous burdens of HB 1355 are already clear. Multiple groups, whose charitable missions revolve around protecting and expanding the franchise, have ceased or significantly curtailed their registration activities throughout the State out of fear that they will be unable to comply with HB 1355's requirements and thus be subject to fines, crippling civil and criminal penalties, and devastating reputational harm. HB 1355's severe restrictions effectively preclude these groups from advancing a shared belief in the importance of participatory democracy and widespread voter registration.

Policy Recommendations

Rather than making it more difficult for Floridians to vote, the State should be working to encourage widespread participation and increase voter registration rates. Responsibility for voter registration must be transferred from the citizens to the government, and Florida must upgrade its registration process. Florida's antiquated, paper-based registration system is expensive, inefficient and prone to errors which can disenfranchise voters.

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Current voter registration requirements place the onus of registering on the voter, and block the proper functioning of an inclusive democratic system. Our country's traditional voter registration system was not designed for a mobile society where one in six Americans moves every year. Of the 57 million citizens who were not registered to vote in 2000, one in three was a former voter who had moved but failed to register. Unsurprisingly, registration problems alone kept up to 3 million eligible Americans from voting in 2008.

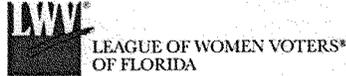
Four key components are necessary for Florida to modernize its voter registration system: automatic registration, permanent registration, online registration, and Election Day registration.

- *Automatic Registration:* Florida should automatically register eligible citizens to vote using available databases maintained by motor vehicle authorities and other state agencies, as well as federal databases such as the Selective Service.
- *Permanent Registration:* When voters move within a state, they should stay on the voter rolls. HB 1355 has taken Florida a step backwards in time: it eliminated Florida's longstanding and successful practice of permitting movers to make any in-state address change at the polls. Voters should remain permanently registered unless they move from the state.
- *Online Registration:* Florida should make this convenient form of registration available. Studies show that online registration is more secure and cost-effective than paper. While Florida offers its voter registration form online to complete and print, it should take the next step and develop a system that permits voters to submit and update their voter registration online.
- *Election Day Correction:* Florida should allow eligible citizens to register and correct their registration on Election Day. This has already been implemented in many states, and technological advances ensure that it can be done securely. It serves as a fail-safe measure to prevent voters from being disenfranchised by registration errors.

There is simply no reason to make people navigate a cumbersome, 19th-century model of voter registration when there are more efficient, cost-effective, and reliable methods available. In a modernized voter registration system, information contained in existing databases—such as those held by state departments of motor vehicles, public assistance agencies, state tax authorities or, for example, the federal Selective Service list—would be sorted and sent to election officials. After checks to verify citizenship and avoid duplicate registration, these citizens would be automatically registered to vote. Alternatively, citizens could register through a secure online system. On Election Day, any eligible voter whose name did not appear on the voter rolls or whose name appeared with inaccurate information could correct her registration and vote a regular ballot, rather than being turned away or forced to vote provisionally. States that have implemented these reforms have enjoyed increased registration rates, cost savings, and fewer registration errors. Florida has already adopted reforms in the wake of the federal “motor voter” law, and therefore already has many of the tools needed to fully implement these reforms. Voter registration modernization would help remove a needless obstacle that prevents millions from voting. Florida's leaders should follow this approach instead of making registration even more difficult.

By implementing common-sense reforms, Florida can ensure that more citizens are registered to vote while reducing burdens on election officials. These steps would not only boost Florida's dismal voter registration rates, they would save the State money in the long run. Florida should overturn the Law's unreasonable restrictions on community-based voter registration and instead adopt common-sense reforms to modernize voter registration.

Exhibit A



LEAGUE OF WOMEN VOTERS*
OF FLORIDA



**BRENNAN CENTER
FOR JUSTICE**

at New York University School of Law



LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
UNDER LAW

July 15, 2011

Chris Herren
Chief, Voting Section
Civil Rights Division
Room 7254 – NWB
U.S. Department of Justice
1800 G St., N.W.
Washington, DC 20006

RE: Comment Under Section 5, Submission No. 2011-2187

Dear Mr. Herren:

I. Introduction and Summary

The League of Women Voters of Florida, Democracia USA, the Brennan Center for Justice, and the Lawyers' Committee for Civil Rights Under Law hereby submit this letter opposing preclearance of three sets of provisions of a new Florida law, H.B. 1355 (2011), which dramatically impact the State's voter registration and voting processes. All four organizations are non-partisan, non-profit entities that work to expand and protect voting rights in Florida and across the United States.

The voting changes which we address in this letter are the following: 1) a panoply of burdensome and wholly unnecessary restrictions on the opportunity and ability of individual citizens and grassroots organizations to conduct voter registration drives; 2) a reduction in the number of days during which early voting will be conducted, and a possible concomitant reduction in the number of early voting hours; and 3) a limitation on registered voters' existing opportunity to vote when they move between Florida counties and do not re-register to vote in their new county.

The available data indicate that these changes will disproportionately and negatively impact the voting rights of minority citizens in the covered counties. Despite this, and despite the fact that H.B. 1355 was strongly opposed by minority leaders during its consideration by the Florida Legislature, the State has failed to include any data or other evidence in its preclearance

submission to demonstrate that the changes will not have an impermissible retrogressive effect and were not impermissibly motivated by a discriminatory purpose.

Accordingly, the Department of Justice, should not grant Section 5 preclearance to these voting changes. In particular, the evidence with regard to the third-party voter registration changes, discussed herein, is so overwhelming in demonstrating their retrogressive effect that the Justice Department should interpose an objection to these changes now, without sending the State a written request for additional information pursuant to 28 C.F.R. § 51.37. With regard to the other changes addressed in this comment letter, while the State has not met its burden under Section 5, it would be appropriate to send a “more information” request, which would be in accord with the Department’s frequent practice when controversial changes are submitted for preclearance and the submitting authority fails to provide adequate information regarding the purpose and effect of the changes.¹

II. Overview of the Covered Counties

Five of Florida’s 67 counties are covered by Section 5: Collier, Hardee, Hendry, Hillsborough, and Monroe. Hillsborough is by far the largest of the counties in population, constituting 73 percent of the citizen voting age population (“CVAP”) of the combined counties according to the 2010 Census.²

The CVAP of the five counties combined (2010 Census) is 12.0 percent black (non-Hispanic, “black alone”) and 15.2 percent Hispanic. The CVAP data for the individual counties are as follows:

County	Total CVAP	White Alone	Black Alone	Hispanic
All Covered Counties, Combined	1,091,365	69.9%	12.0%	15.2%
Collier	205,090	85.1%	3.1%	10.4%
Hardee	16,765	64.8%	10.3%	22.6%
Hendry	19,570	58.0%	16.6%	23.1%
Hillsborough	794,060	65.6%	14.8%	16.2%
Monroe	55,880	81.3%	3.8%	13.2%

¹ We also note that Florida has not requested expedited consideration of its preclearance request.

² The CVAP data used herein are from the special 2010 Census tabulation prepared by the Census Bureau on behalf of the Justice Department.

III. Florida Seeks to Severely Restrict the Ability of Individual Citizens and Citizen Groups to Conduct Voter Registration Outreach and Voter Registration Drives

Section 4 of H.B. 1355 enacts highly intrusive, burdensome, and unnecessary restrictions on the ability of individual citizens and citizen groups to conduct voter registration outreach and voter registration drives in Florida, including in the five covered counties. The new requirements are unique, both in terms of how Florida law addresses other similar grassroots election activities and how other covered and partially covered states address citizen voter registration efforts. Florida only recently adopted less restrictive provisions which provide more than adequate assurance that citizen registration efforts are properly conducted, and yet the State now is seeking to impose new and more extreme burdens on citizen voter registration efforts without any evidence to suggest that the existing provisions are inadequate in any way. Minority voters disproportionately rely on third-party registration drives, and the new restrictions will significantly reduce this activity. Finally, the State has not provided any data to support preclearance, has not provided any specific justifications for the new requirements, and has adopted emergency regulations and forms to further define and implement the new statutory provisions but has not submitted these related changes for preclearance.

For all these reasons, Florida has not met its burden of showing the absence of retrogressive effect and discriminatory purpose. The evidence relating to the submitted changes is so compelling that the Justice Department should immediately interpose a Section 5 objection. Alternatively, the Department may request additional information, or consider whether it would be appropriate to issue a “no determination” letter based on the lack of submission of the changes encompassed in the emergency regulations and forms (28 C.F.R. § 51.22(a)(2)).³

A. Proposed Changes

The changes enacted by Section 4 are numerous and onerous. Given the breadth of the enacted changes, it is important to begin by identifying their full scope. Also, as discussed below, the State’s submission misidentifies several of the voter registration changes in its section-by-section analysis of the submitted legislation contained in Exhibit E to the submission.

The enacted changes are as follows:

1. The new law mandates that every “third-party voter registration organization” register with the state before “engaging in any voter registration activities.”⁴ This mandate applies

³ It is important to note, in this regard, that Florida is in the process of issuing permanent regulations and forms which will supersede the emergency regulations and forms. The State released a proposed final rule (which includes the proposed permanent forms) for comment on July 5, 2011. As discussed below, the proposed permanent regulations and forms are nearly identical to the emergency versions. If the Justice Department decides to send a written request for additional information, it seems likely that the permanent regulations and forms will have been finalized shortly thereafter. Thus, if the Department does not interpose an objection now, it may be appropriate to combine a “more information” letter with a “please submit” request for the regulations and forms in effect at the time of the State’s response (rather than sending a “no determination/please submit” letter now).

⁴ The pre-registration must include the names of the organization’s officers, and the name and address of a registered agent in the State.

broadly to a wide variety of efforts by individuals to ask or help another individual register to vote, whether the voter registration effort is being undertaken by a single citizen acting alone to help one other person, an *ad hoc* volunteer citizens group (e.g., a student group that sets up a registration table on campus), a more established citizens group, or a political party. This is because, under current law, a “third-party voter registration organization” includes “*any person, entity, or organization*” and applies to any person or organization that is “*soliciting or collecting* voter registration applications.” Fla. Stat. § 97.021(37) (emphasis added).⁵

Contrary to what the State advises in Exhibit E to its submission, no such state pre-registration mandate currently exists. As Exhibit E notes, the current statute does include a pre-registration provision. However, Exhibit E fails to note that the current statute also *expressly* specifies that there are no penalties for noncompliance; instead, the statute merely encourages pre-registration by reducing the fines that can be assessed against those who pre-register.⁶ The bottom line, therefore, is that compliance currently is optional. The new statute deletes this “no penalty” provision, and creates, for the first time, an onerous and mandatory pre-registration process for all individuals and organizations engaged in voter registration activity.⁷

2. The new law mandates that, before conducting any voter registration activities, each “third-party voter registration organization” must inform the State of the name of each and every individual who will conduct voter registration on its behalf or in association with it (referred to as “registration agents”), and must provide the temporary and permanent addresses for each such individual. No such requirement exists currently.

⁵ The definition of a “third-party voter registration organization includes a limited “family members” exception which excludes the situation where “[a] person . . . seeks only to register to vote or collect voter registration applications from that person’s spouse, child, or parent.” Florida law also provides that the term does apply to state or county employees or agents. The proposed final regulations, if adopted, also may limit, to some extent, the application of the law to mere solicitations to register, since they would specify that a “third-party voter registration organization” is “engaging in . . . voter registration activities” as to solicitations to register only when it is “soliciting [voter registration applications] for collection.” On the other hand, the proposed final regulation does not alter the definition of a “third-party voter registration organization” which, as noted, seems to provide that any solicitation concerning voter registration triggers the restrictions set forth in state law, subject only to the “family members” exception.

⁶ Specifically, current Fla. Stat. § 97.0575 states that: “The failure to submit the information required by subsection (1) [– which includes the pre-registration provision –] does not subject the third-party voter registration organization to any civil or criminal penalties for such failure, and the failure to submit such information is not a basis for denying such third-party voter registration organization with copies of voter registration application forms.” In recognition of the fact that pre-registration is not mandatory, the current statute seeks to encourage pre-registration by providing that certain fines which may be assessed for violating the existing third-party registration requirements will be reduced if the organization has complied with the pre-registration provision. The new statute deletes this inducement since registration now is to be mandatory.

⁷ Should the Justice Department decide to make a written request for additional information, we suggest that the Department request a list of all “third-party registration organizations” that registered under current law, and a list of those that have subsequently withdrawn as registered third-party voter registration organizations.

3. The new law mandates that, before conducting voter registration, each “third-party voter registration organization” must submit a sworn statement from each “registration agent” in which the individual declares that he or she “will obey all state laws and rules regarding the registration of voters.” This statement must be made on a form provided by the State that also lists the “penalties for false registration.” No such requirement exists currently.

4. The new law provides that “registration agents” include both persons who are employed by a “third-party voter registration organization” and persons who simply volunteer with such an “organization.”

5. The new law mandates that the Florida Division of Elections adopt rules requiring that each “third-party voter registration organization” “account [to the State] for all state and federal registration forms used by their registration agents.”

Contrary to what the State advises in Exhibit E to its submission, no mandatory reporting requirement exists currently. Exhibit E correctly notes that the current statute nominally provides for quarterly reporting by “third-party voter registration organizations” regarding voter registration drives conducted during the previous quarter. However, what Exhibit E fails to note is that, as is the case with the existing pre-registration provision, such reporting is optional; there is no penalty for non-compliance.

6. Each “third-party voter registration organization” must deliver to election officials each and every completed voter registration application that it collects “within 48 hours after the applicant completes it or the next business day if the appropriate office is closed for that 48-hour period.” The only exception is if the “organization” can show that noncompliance occurred because of “force majeure or impossibility of performance.”

Currently, completed registration applications simply must be delivered “promptly,” and fines may be assessed for applications turned in more than ten days after receipt. While the current law requires the Secretary of State to waive any applicable fines after a showing of force majeure or impossibility of performance, H.B. 1355 only provides that the Secretary “may” waive fines after such a showing.

7. The new law requires Florida election officials to assign a registration number to each “third-party voter registration organization,” include that number on every blank registration form provided to such “organizations,” and establish a data base to track “the voter registration forms assigned to [each] third-party voter registration organization.”

8. The Florida Attorney General is granted new authority to sue to enforce the registration restrictions or to enjoin any voter registration activity not in conformance with H.B. 1355, and the Florida Division of Elections must further “adopt rules to ensure the integrity of the registration process” (current law provides that the Division may “adopt rules to administer this [statutory] section”).⁸

⁸ If a “third-party voter registration organization” does not timely submit a completed voter registration application, the current practice is that this would not affect the validity of the application, although this rule is not specified either by statute or regulation. The proposed permanent regulations explicitly provide that this is the rule.

B. The Emergency Regulations and Forms

In order to implement the new statute, the Florida Secretary of State, on May 20, 2011, issued emergency regulations that amend existing regulations concerning “third-party voter registration organizations” (see Attachment A to this letter). The amendments further define the nature and scope of the statutory changes, and also adopt regulatory forms to be used by these “organizations” and their registration agents. The additional provisions and forms have not been submitted for preclearance, although they clearly are directly related to the submitted changes. These provisions further exacerbate the intrusive, burdensome, and unnecessary provisions of the submitted statute. The Secretary of State has recently issued proposed regulations that will supersede the emergency regulations, if adopted (see Attachment B to this letter).⁹

The additional requirements set forth in the emergency regulations include, but are not limited to, the following:

1. Each “third-party voter registration organization” (or its agents) must print, on each completed voter registration form that it collects, the date and precise time at which the individual completed the registration application.¹⁰ Election officials also must record the date and precise time at which each completed application is received from an “organization.” This strongly suggests that Florida intends to strictly enforce the 48-hour turnaround requirement, down to the exact minute. Among other things, that interpretation would effectively prohibit “third-party voter registration organizations” from submitting completed voter registration applications by mail.

2. Each “third-party voter registration organization” must ensure that its identification number is listed on each completed registration application that it turns in to election officials. Federal registration forms used by the “organization” are not excluded.¹¹

3. Each “third-party voter registration organization” must submit to the Secretary of State an “accounting” of registration applications once every month (on one of the new forms promulgated by the Secretary). The regulations specify that each “organization” must “report . . . the number of state and federal voter registration application forms provided to and received from each of its registration agents for the preceding month.” This applies to all registration application forms used by the “third party voter registration organization,” including publicly-

⁹ As previously noted, the proposed permanent regulations and forms are nearly identical to the emergency regulations and forms. Two differences are referenced above (see fns. 5 and 8 *supra*). Another difference is that the proposed permanent regulations state that if a “third-party voter registration organization” registers with the State and then an “affiliate organization” of that entity wishes to engage in “any voter registration activities,” the “affiliate organization” must separately register with the State. Other small differences in the two sets of regulations are noted below.

¹⁰ The regulations also specify the precise form in which this information must be written out.

¹¹ Each “third-party voter registration organization” will need to print its assigned number on every completed federal form that it turns in; generally, the “organization” is supposed to receive state registration forms from the county supervisors of elections or the Secretary of State with the organization’s number already entered on the forms.

available state and federal registration forms, and forms that are simply distributed to citizens but not collected by the “organization.” Moreover, the new reporting form promulgated by the Secretary of State specifies that each “organization” not only must report the number of completed registration applications received from its registration agents during the prior month, but also must report the number of application forms that the “organization” provided to its registration agents which were not completed by citizens during the prior month. County election officials must, daily, provide the state Division of Elections with reports that “record the number of voter registration applications they provide to, and receive from, each organization.”¹²

4. The requirements that apply to “registration agents” apply to persons who only “solicit” registration applications as well as to persons who collect completed applications.¹³

5. The Secretary of State has promulgated the form that each registration agent must complete and which the “third-party voter registration organization” must electronically submit to the State (see Attachment C to this letter). The form must be sworn to or affirmed in front of a notary public. The form recounts that “penalties for false registration may include a term of imprisonment up to 5 years and a fine up to 5,000 [sic] . . . Subsequent convictions may result in greater penalties. False registration offenses include, but are not limited to, offenses constituting a felony of the third degree . . .” Each registration agent must sign and submit the notarized form before engaging in any voter registration activity.¹⁴

6. If, after pre-registering with the State, a “third-party voter registration organization” engages additional individuals to conduct voter registration, the emergency regulations require that sworn statements from these individuals be submitted to the State before the agents may begin registering voters.¹⁵

7. Each “third-party voter registration organization must report to the Division of Elections “any change in information previously submitted.” Thus, for example, if an existing

¹² The proposed final regulations grant a partial reprieve to county election officials by specifying that a daily report need not be filed if no registration applications were provided to, or received from, an “organization” on the preceding business day. The proposed regulations do not take the same approach with the “organizations”; rather, they add that even if an “organization” had no registration activity during the previous month, it still must file a monthly report with the Secretary of State.

¹³ As noted above, the proposed permanent regulations would amend “solicits” to “solicits for collection.”

¹⁴ The proposed permanent regulations specify that if an individual should happen to work on behalf of more than one “third-party voter registration organization,” then each organization must separately submit the requisite sworn statement from that individual “registration agent.” For example, if an individual were to solicit and gather voter registration applications on behalf of his church, which registered as a “third-party voter registration organization” and submitted the requisite statement from that individual, the individual nonetheless would be in violation of Florida law if he were to then separately collect a registration application from his next-door neighbor if he did not himself register as a “third-party voter registration organization” and submit a second, identical sworn statement.

¹⁵ The proposed new regulations alter this slightly to provide that such new registration agents must complete and sign a sworn statement before registering voters, and the “organization” then must ensure that the statement is submitted to the Division of Elections within ten days thereafter.

“registration agent” should change his or her temporary or permanent address from the addresses listed on the sworn statement submitted to the Secretary of State, the organization must report the new address to the Secretary. Also, when an individual ends his or her participation in soliciting or collecting registration applications for a “third-party voter registration organization,” the “organization” must inform the Secretary of State of that change.¹⁶

8. When an individual stops working or volunteering as a registration agent, the “organization” must obtain from that individual all of the state and federal registration applications that the agent has in his or her possession.

C. The Submitted Changes Are Unprecedented in Nature and Scope

The restrictions that Florida seeks to impose on voter registration efforts by individual citizens and citizen groups are unprecedented in their nature and scope, both in terms of Florida’s regulation of other similar grassroots election activity and the extent to which other Section 5 states seek to regulate citizen registration efforts.

1. Florida law.

Florida does not regulate the activities of individuals who gather citizen signatures on other documents that have legal significance in the election process. Specifically, Florida does not regulate the process by which citizens collect candidate qualification signatures, Fla. Stat. § 99.095, or the process by which citizens collect initiative petition signatures, Fla. Stat. § 100.371. Likewise, Florida does not, in any other context, regulate the simple act of Florida citizens soliciting other citizens to participate in the State’s democratic processes.

2. Other covered and partially covered States.

No other State covered by Section 5 of the Voting Rights Act has enacted restrictions on citizen registration efforts that approximate what Florida is seeking to implement. Most do not regulate such activity at all. A few provide a deadline for turning in voter registration applications after receipt, but even these States (with the arguable exception of Texas) do not seek to impose any comprehensive regulation on third-party registration efforts.

The provisions in place in other covered jurisdictions are as follows:¹⁷

- Alabama: The Secretary of State must make voter registration forms available for use in registration drives, and there are no specific restrictions that apply to third-party voter registration efforts.¹⁸

¹⁶ The emergency regulation provides that updates must be submitted within five days of the occurrence of the change, while the proposed permanent regulations would require submission within ten days of the change.

¹⁷ This list does not include Michigan, New Hampshire, or South Dakota.

¹⁸ Ala. Admin. Code 820-2-2 (11)(3).

- Alaska: Citizen voter registration efforts are not regulated. (Alaska separately has a system whereby an individual may become a registration official, who then is able to officially accept and register persons to vote, rather than only transmitting completed forms to officials who make the registration determination.)
- Arizona: County registrars “may provide voter registration forms in quantity to groups and individuals that request forms for conducting voter registration drives.”¹⁹ There are no restrictions on third-party voter registration activity.
- California: Persons collecting voter registration applications must complete a registration receipt with their address and telephone number and give it to the voter.²⁰ Voter registration applications must be turned in or mailed within three days of receipt, excluding all weekends and holidays.²¹ Any person paid to collect voter registrations must list their name, telephone number, and address, and the name and telephone number of their employer, and affix their signature, on each registration card they collect.²² Individuals or organizations that compensate others to collect voter registration applications are required to retain for three years, and provide on demand: the name, address, and telephone number of each of their employees and a signed acknowledgement of each employee’s receipt of a statement describing their duties under the law.²³
- Georgia: Third parties engaged in voter registration must inform applicants about basic voter registration information and deadlines.²⁴ Completed voter registration forms must be sealed before a third party collects them, unless an applicant gives written consent to the third party to view and copy the information on the form.²⁵ Voter registration applications must be turned in within 10 days of the date of signature, or within three days during the last two weeks of the registration period.²⁶
- Louisiana: Failure of a third party to submit to the parish registrar of voters a completed registration application collected through a registration drive within thirty days of receipt

¹⁹ ARIZ. REV. STAT. ANN. § 16-131(E).

²⁰ CAL. ELEC. CODE § 2158(b)(1).

²¹ CAL. ELEC. CODE § 2138.

²² *Id.* § 2159(a).

²³ *Id.* § 2159.5(a).

²⁴ GA. COMP. R. & REGS. 183-1-6-.02 (6).

²⁵ GA. COMP. R. & REGS. 183-1-6-.02 (7) (f).

²⁶ GA. COMP. R. & REGS. 183-1-6-.02 (8)(a).

of the completed application is a violation of Louisiana election laws.²⁷ There are no other restrictions that apply to third-party voter registration.

- Mississippi: The Secretary of State is required to send bulk quantities of mail-in voter registration applications to any person or organization who requests them and charge the requesting entity the actual cost incurred in providing bulk quantities.²⁸ There are no other provisions in the Mississippi Election Code restricting or otherwise regulating third-party registration.
- New York: New York has no restrictions specific to third-party voter registration.
- North Carolina: The State Board of Elections must make voter registration forms available for distribution through governmental and private entities, with particular emphasis on making them available for organized voter registration drives.²⁹ No restrictions are placed on third-party registration drives.
- South Carolina: South Carolina does not have any statutory provisions or guidelines restricting third-party registration.
- Texas: While Texas does not seek to regulate the simple solicitation of voter registration applications, it does provide that, in order to accept and submit another's voter registration application, an individual must be a "deputy registrar."³⁰ Eligible voters may request appointment as deputy registrars, and that request shall not be denied if an individual is eligible. The appointment is made after the individual executes an oath, and per a recently-passed law that goes into effect in September of 2011, undergoes training.³¹ A volunteer deputy registrar may distribute voter registration application forms throughout the county and receive registration applications submitted to the deputy in person. All voter registration forms must be turned in to county registrars within 5 days of receiving them from the voter, and a deputy registrar must provide each voter with a signed receipt indicating the date that the deputy registrar accepted the voter's registration form.

²⁷ La. Rev. Stat. Ann. §18:1461 (7)(A)(1).

²⁸ Miss. Code § 23-15-47(4)(c).

²⁹ N.C. GEN. STAT. ANN. § 163-82.5.

³⁰ Source Tex. Elec. Code § 13.031 et seq.

³¹ Source Tex. Elec. Code § 13.031 as amended by 2011 Tex. Sess. Law Serv. Ch. 507 (H.B. 1570) : "(e) A regular deputy registrar may not assist in the registration of voters until the deputy registrar has completed training developed under Section 13.047. At the time of appointment, the voter registrar shall provide information about the times and places at which training is offered."

- Virginia: The only restriction is that a voter registration application must generally be turned in within 15 days of its date of signature.³²

D. Recent History of Third-Party Voter Registration Enactments by Florida

The 2011 restrictions on citizen voter registration efforts are the most recent iteration of Florida's ongoing effort to significantly curtail the ability and opportunity of individual citizens and citizen groups to conduct voter registration activities. In 2005, the Florida Legislature passed a law that imposed heavy fines on "third-party voter registration organizations" for turning in completed voter registration applications more than 10 days after receiving them, or after an election's book closing. In 2006, the Brennan Center commenced litigation against the law on behalf of the League of Women Voters and other organizations, resulting in the law being enjoined by a federal district court for violating third-party voter registration organizations' First Amendment rights of free speech and free association.³³ The court noted that the heavy fines would have a chilling effect on the willingness of such organizations to register new voters.³⁴

The Florida Legislature subsequently passed a revised version of the law that became effective in 2008, and which is the law that is in effect currently. The revised law was upheld in federal court.³⁵ It maintained the 10-day turnaround deadline but imposed significantly lower fines on third-party voter registration organizations than the prior law, added an annual cap of \$1,000 on the amount of fines that can be levied on an organization or any of its affiliates, removes an exception for political parties that was contained in the original law, and provides that fines "shall" be waived if an organization can show that timely delivery of the forms was impossible.

These restrictions appear to be accompanied by a dramatic decline in third-party voter registration activity. Florida's voter registration rates have dropped by approximately 25 percent between 2006 and 2010.³⁶

E. Minority Voters' Reliance on Third-Party Voter Registration Drives

It is generally recognized that minority voters disproportionately rely on third-party registration drives. Those without access to the Internet and those who do not own a car (and

³² Virginia Stat. § 24.2-1002.01.

³³ *League of Women Voters of Florida v. Cobb*, 447 F.Supp.2d 1314, 1316 (S.D. Fla. 2006).

³⁴ *Id.* at 1332-33.

³⁵ *League of Women Voters of Florida v. Browning*, 575 F.Supp.2d 1298 (S.D. Fla. 2008).

³⁶ From January through October 2006, there were 479,611 new and valid voter registrations in Florida, compared to 363,545 in the same period in 2010, a 24.2% decline. See Florida Division of Elections, Voter Registration Statistics, <http://election.dos.state.fl.us/NVRA/reports.shtml>; Voter Registration Year To Date Report, October 2006: <http://election.dos.state.fl.us/voter-registration/archives/2006/October/YTDTotal.pdf>; Voter Registration Year To Date Report, October 2010: <http://election.dos.state.fl.us/voter-registration/archives/2010/October/YTDTotal.pdf>.

thus do not use the Department of Motor Vehicles to register to vote) are less able to register through means other than voter registration drives. Absent the third-party voter registration efforts, many of these voters will either not register or will complete their registration applications improperly.

In Florida, U.S. Census Bureau data from the 2004 and 2008 election cycles show that both African-Americans and Hispanics rely more than white voters on third-party registration drives, and that, indeed, minority reliance on such drives is greater in Florida than elsewhere in the country. Specifically, African-American and Hispanic citizens in Florida are more than twice as likely to register to vote through private drives as white voters. In 2004, while 6.6 percent of non-Hispanic whites in Florida indicated they registered through private drives, 17.4 percent of African-Americans and 18.9 percent of Hispanic voters in Florida registered in this manner.³⁷ Similarly, in 2008, 6.3 percent of non-Hispanic white registered voters in Florida were registered through drives versus 12.7 percent of black voters and 12.1 percent of Hispanic registered voters.³⁸ Among those who said they voted in Florida in 2008, 6.3 percent of white voters were registered through drives, versus 11.5 percent of black voters and 11.5 percent of Hispanic voters.³⁹

These data appear to be the best data available regarding the extent to which minority citizens in the five covered counties disproportionately rely on third-party voter registration efforts. The Census does not report such data by county, and it is our understanding that the five covered counties do not maintain such data. Given the pronounced statewide pattern that exists in Florida, and the fact that the pattern both tracks and exceeds the national pattern, there would seem to be little doubt that this also is what is occurring in the five covered counties. Certainly, Florida has not provided any evidence to the contrary.

Current registration rates confirm that Hispanic voters are underrepresented in terms of voter registration in the covered counties, while black voters have begun to achieve equity in voter registration rates. As noted above, the CVAP of the five counties combined (2010 Census) is 12.0 percent black (non-Hispanic, "black alone") and 15.2 percent Hispanic. Voter registration in the five counties combined, as of the 2010 general election, is 12.2 percent black

³⁷ U.S. Census Bureau, Current Population Survey, November 2004. The national figures in 2004 were: 7.8% of non-Hispanic whites; 12.7% of blacks; and 12.9% of Hispanics. See Table 14, <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2004/tables.html>.

³⁸ U.S. Census Bureau, Current Population Survey 2008, available at <http://www.census.gov/apsd/techdoc/cps/cpsnov08.pdf>. All data from the CPS on methods of voter registration is self-reported by survey respondents. The corresponding national figures in 2008 were: 5.4% of non-Hispanic whites registered at private drives; 11.1% of African-Americans; and 9.6% of Hispanics. See Table 14, <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2008/tables.html>.

³⁹ U.S. Census Bureau, Current Population Survey 2008, available at <http://www.census.gov/apsd/techdoc/cps/cpsnov08.pdf>.

and 12.0 percent Hispanic, based on Florida residents' self-identifications on their voter registration forms.⁴⁰

County	White VR	Black VR	Hispanic VR
All Combined	72.7%	12.2%	12.0%
Collier	86.5%	3.1%	8.1%
Hardee	74.4%	6.5%	15.9%
Hendry	61.8%	14.9%	18.8%
Hillsborough	68.1%	15.5%	13.1%
Monroe	86.8%	3.5%	8.4%

There is no doubt that Hispanic voters remain underrepresented on the voter rolls (15.2% of the 2010 CVAP, but only 12% of registered voters). The underrepresentation is particularly stark in Monroe County, where Hispanics make up 13.2% of the CVAP, but only 8.4% of registered voters, and Hardee County, where they are 22.6% of the CVAP, but only 15.9% of voters. Black voters are underrepresented in three of the covered counties: Hardee (10.3% of CVAP vs. 6.5% of registered voters); Hendry (16.6% of CVAP vs. 14.9% of registered voters); and Monroe (3.8% of CVAP vs. 3.5% of registered voters).

However, even in the counties where minority voter registration has achieved some parity with population figures, these numbers are undoubtedly a result, in part, of focused efforts by third-party voter registration groups to bring new and minority voters onto the rolls. H.B. 1355's dramatic impact on third-party voter registration efforts risks eliminating a key mechanism for achieving racial equity on the voter rolls.

F. Effect of the Changes on Third-Party Registration Efforts

It appears highly likely that the restrictions on third-party voter registration activities put into place by H.B. 1355, along with the restrictions further imposed by the Secretary of State's regulations and standard forms, will dramatically curtail, or even put a halt to, third-party voter registration efforts in Florida.

For individuals or groups that are not specifically organized to engage in voter registration drives, and want to undertake an *ad hoc* or a time-limited voter registration effort (e.g., efforts by a religious organization, a neighborhood group, or a student group), it clearly will be difficult and time-consuming to attempt to comply with the array of requirements imposed by the State and the level of minutia that is required. The need to pre-register with the State, have volunteers sign sworn statements which indicate that they may be subject to felony prosecution, implement the organizational control needed to satisfy the 48-hour turnaround requirement, update the state registration if any new volunteers are brought on after the initial state pre-registration, track any changes in the information previously provided to the State (even

⁴⁰ The voter registration percentages were calculated from data from data provided by the Florida Division of Elections. <http://election.dos.state.fl.us/voter-registration/index.shtml>. The calculations exclude the small number of persons who did not self-identify their race on their voter registration forms (in the five counties combined, 2.8 percent of all registered voters are listed as "unknown" race as of the 2010 general election).

concerning volunteers' residence addresses) and submit updates, track the number of registration forms given to each volunteer and returned by each volunteer, and obtain unused forms back from any volunteer who ceases his or her participation in the effort will likely cause many groups to conclude that conducting a legal voter registration drive is simply not possible. And, those groups that do seek to comply clearly will need to devote substantial resources to following the multitude of requirements, which in turn will necessarily limit the amount of resources they can devote to actually conducting registration drives.

The new restrictions will not be any less problematic for groups whose mission is to conduct voter registration drives. While these groups may have more organizational resources and voter registration experience than the types of groups noted above, their resources still are limited and the larger size of their voter registration efforts will make it more difficult to comply with the restrictions.

Democracia USA, a project of the National Council of La Raza, is a national, non-partisan civic engagement organization that seeks to increase the prominence and participation of Latinos in the American democratic process. Since 2004, Democracia USA has registered over 200,000 individuals in Florida alone.⁴¹ It runs a highly structured and closely supervised voter registration effort that mostly relies on paid staff. It conducts voter registration drives door-to-door in Latino neighborhoods, at specific selected locations, and at special events (such as community festivals). Among the covered counties, it has registered a significant number of voters in Hillsborough County, including approximately 4,600 individuals in 2008 and 7,000 in 2010.

Democracia USA has conducted an extensive review of the new third-party voter registration restrictions and, based on that review, has at least temporarily suspended its voter registration efforts statewide. Democracia USA wants to be able to continue its voter registration efforts, as these efforts are a part of its core organizational mission. However, it is uncertain how it will be able to operationalize the new requirements, given their nature and breadth. Implementing the new requirements will require significantly more staff time, significantly increasing the cost to the organization of conducting voter registration drives. Thus, it appears that the restrictions, at a minimum, will have the long term effect of substantially reducing the length and number of registration drives it is able to conduct.

For example, ensuring that each of the thousands of registration applications Democracia USA historically has collected includes the date, hour, and minute at which it was signed likely will require substantial staff time, considering the fact that, historically, one office may produce up to one thousand registration applications on just one day. Democracia USA also currently subjects every registration drive to an extensive quality control process which occurs after the voter registration applications are collected. This allows the organization to flag and address incomplete registration forms, among other things. The organization is uncertain how or whether this process may be maintained in light of the 48-hour turnaround requirement, since the current process takes several days. Democracia USA also does not track the precise number of blank registration forms given to each person collecting registration forms, or the number of

⁴¹ The information regarding Democracia USA's voter registration program is from an interview with Rudi Navarra, the organization's National Program Coordinator, on July 6, 2011.

blank forms that each does not use in a given period of time, and so complying with these requirements will necessitate additional staff time as well. Finally, while the new form required of "registration agents" may not intimidate Democracia USA's experienced staff, it will make it more difficult to hire new staff, who may well be deterred by the statements about possible felony prosecution.

The League of Women Voters of Florida (LWVF) is an all-volunteer, non-partisan organization that has been dedicated to registering Floridians to vote and engaging them in the political process for over 70 years.⁴² LWVF has a statewide office in Tallahassee, and 29 local leagues throughout the state, including League affiliates in Collier County (established in 1975) and Hillsborough County (established in 1949). Both are active county Leagues with numerous public events at which volunteers offer voter registration opportunities. As Marilyn Wills, Second Vice President of the LWVF, noted:

The League has been registering voters in Florida since 1939. We register voters all year long and automatically tie voter registration to every non-lobbying activity. Approximately 99% of voter registration is a secondary activity to our other educational endeavors. Whether it's a hot topic lunch, a high school event, a debate, or any other election related activity, members always have voter registration forms on hand to register voters.

Due to the passage of H.B. 1355, the LWVF's board of directors has voted to cease all voter registration efforts by the League and its affiliates in all Florida counties, including the covered jurisdictions. On May 26, 2011, the state board issued a moratorium to all LWVF members and affiliates directing them to cease voter registration activity. As the Collier County League indicates on its website, the new law "imposes an undue burden on groups such as ours that work to register voters."⁴³

H.B. 1355 creates particular burdens on the LWVF affiliates' all-volunteer operations. Because the law permits the state to levy a fine or institute a civil proceeding against individual registration agents in addition to the organizations they volunteer with, LWVF leaders believe these individual risks will chill their members' participation in volunteer voter registration. Therefore, even if the LWVF's state board were to lift the voter registration moratorium, officials with the LWVF believe that the new law will make it difficult, if not impossible, to secure volunteers for voter registration drives. According to Pam Goodman, First Vice President of LWVF, volunteers will likely be unwilling to risk the individual summons or fines permitted by H.B. 1355. "Because of the risk, they won't register voters under this new law." Quoting the state LWVF, the Collier County League notes that it has shut down voter registration in part to protect the LWVF's volunteers, stating "we cannot and will not place thousands of volunteers at

⁴² The information regarding the League of Women Voters of Florida's voter registration activity is from an interview with Marilyn Wills, Second Vice-President; Pam Goodman, First Vice President; and Jessica Lowe-Minor, Executive Director, of the League of Women Voters of Florida (June 22, 2011).

⁴³ Website of the League of Women Voters of Collier County, available at <http://www.lwvcolliercounty.org/> (last checked July 6, 2011).

risk, subjecting them to a process in which one late form could result in their facing financial and civil penalties.”⁴⁴ In addition, the law’s requirements that a barrage of forms be submitted and updated electronically places massive stress on all-volunteer LWVF affiliates, which lack office space, electronic equipment, or the staff to manage the multiple electronic submissions required by H.B. 1355.

Rock the Vote is another organization that works to register new Florida voters. Rock the Vote works closely with college volunteers, and is a non-partisan, non-profit organization that focuses on registering new and young voters via both in-person voter registration activity in Florida and via its national website. “The personal delivery requirement would make it very challenging to meet the 48 hour deadline — not all volunteers have cars and not all college campuses are close to county seats,” states Thomas Bates, Vice President for Civic Engagement. He also indicates that H.B. 1355 places “a significant burden” on Rock the Vote’s ability to register and engage voters in Florida.

G. Florida Has Provided No Non-Discriminatory Justification for H.B. 1355

The legislative history of H.B. 1355 provides scant evidence of any justification for the far-reaching and onerous new requirements set forth in the law. During the legislative debates, the bill’s sponsors and supporters made numerous references to the sanctity of the voter registration process, but were unable to point to any actual evidence that the current Florida law is inadequate or that there is any record of voter registration abuses.⁴⁵

For example, Representative Baxley, the sponsor of the bill, claimed that the reason to change from the current ten-day requirement for submitting completed registration applications to 48 hours is that voter registration forms are

valued document[s] and the longer you have these documents floating around, the more likely it is for mischief and mishap. There is a responsibility that when you’ve taken someone’s registration for them to go ahead and deliver it immediately. And we have made a provision that if it’s a weekend or whatever, fine.⁴⁶

But when asked how many forms filled out with the assistance of third party voter registration organizations are “floating around,” Baxley was unable to offer any evidence of any problem, instead replying with his own speculative question: “Who knows how many slip through the system?”⁴⁷

⁴⁴ Website of the League of Women Voters of Collier County, available at <http://www.lwvcolliercounty.org/> (last checked July 6, 2011).

⁴⁵ To prepare this comment, we have watched video of all Florida House and Senate testimony and debate regarding H.B. 1355. As official transcripts are not available, the quotes set forth herein are from an in-house transcription.

⁴⁶ FLA. HOUSE DEB.: 2nd Reading, Rep. Kriseman (April 20, 2011, 12:30).

⁴⁷ FLA. HOUSE DEB.: 2nd Reading, Rep. Kriseman (April 20, 2011, 32:04).

Another supporter of the bill, Senator Bennett suggested that the bill does impose burdens on voters, but these burdens are justifiable. Senator Bennett was emphatic 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? Take the polling booth with us? This is a hard fought privilege. This is something people died for. And you want to make it convenient? To the guy who died to give you that right, it was not 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'd like them to actually know where they're supposed to go vote. Is that too much to ask? 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 would want them to really want to be informed. I would want them to really want to vote as badly as I want to vote. 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.⁴⁸

Opponents of the bill, on the other hand, pointed out the very real racial impacts that H.B. 1355 is likely to have. Nothing in the legislative record of H.B. 1355 or the State of Florida's submission to the Department of Justice contains evidence contradicting or addressing these impacts. For example, Senator Rich highlighted how she believes that the bill will limit voter access and what the true intent of HB 1355 is, stating:

Under the guise of ensuring the integrity of the election process we have another bill that puts up barriers to participating in the democratic process. Make no mistake, the supporters of this bill can cite no examples of voter fraud or provide any proof that the integrity of our election process has been compromised. . . . I have to wonder if the only problem that can be found with our electoral process is that some people didn't like the outcome of our last presidential election or the outcome of some of our ballot initiatives...but this is no excuse to enact legislation that primarily affects the ability of people to vote who don't tend to support the majority party.⁴⁹

Speaking about the discriminatory impact in the context of Florida's history of discrimination, Representative Thompson said the following during the House debate:

Florida is a covered jurisdiction under VRA of 1965 and those states or parts of states that are covered jurisdictions are placed in the VRA because they have a

⁴⁸ FLA. SENATE DEB.: Final Passage, Senator Bennett (May 5, 2011, 35:40-38:24).

⁴⁹ FLA. SENATE DEB.: Final Passage, Senator Rich (May 5, 2011, 47:50).

history of discriminatory voting practices they have a history of voter suppression they have a history of voter intimidation. I had hoped that in my lifetime I would see Florida not among those covered jurisdictions. . . . And when I look at this bill that would impose a financial penalty on groups and organizations, third parties, that are working to get people registered. I have to ask the question, are we there yet? . . . It does limit access to voting and having your vote count. . . . Florida is still covered by the VRA of 1965 because of its history so why are we making it more difficult to vote? . . . What are we going to do with regard to getting these proposed changes cleared by the DOJ? With this bill we're putting up more roadblocks and hampering the opportunity of people who just want the right of every American and that is the right to vote. I don't think this is the direction that we should be taking in 2011.⁵⁰

Finally, Representative Stafford outlined why she believes the bill has a discriminatory impact, speaking from the perspective of her own family's recent history:

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. . . . It is the provision in the bill that eliminates long standing rules that allow voters to change their information at their polling place and forces voters attempting to vote in a different county to use provisional ballots which often go uncounted. . . . It's the provision in the bill that reduces from ten days to two days the time that third party groups have to submit voter registration forms to election officers or face a fifty dollar fine for each late submission. Are we now criminalizing voter registration efforts? . . . If this bill passes into law, the Floridians most harmed will be those who have been historically disenfranchised in this country—people of color. . . . and youth. Anything that makes it harder for a person to vote or harder for that vote to count is very concerning and alarming.⁵¹

In sum, while the retrogressive impact of H.B. 1355 was clearly noted on the record, neither the legislative history of the bill nor the State's submission to the Department address with any specificity, the degree to which the new law will harm Florida's minority voters.

H. The New Voter Registration Restrictions Must Not Be Precleared

As explained, H.B. 1355 includes a host of burdensome, unprecedented, and unnecessary restrictions on individuals and groups helping others to register to vote. Minority citizens in the covered counties disproportionately rely on third-party registration drives to register to vote, but

⁵⁰ FLA. HOUSE DEB.: 3rd Reading, Rep. Thompson (April 21, 2011, 20:59-24:34).

⁵¹ FLA. HOUSE DEB.: 3rd Reading, Rep. Stafford (April 21, 2011, 37:35-40:09).

the new restrictions will cause existing and planned third-party registration efforts to either be shut down or curtailed. The types of restrictions enacted by Florida are not found in other covered States, and Florida law regulates no other election-related citizen activity in this manner. The State has provided no record of voter registration abuses that could justify the far-reaching and onerous new requirements set forth in the new law. Indeed, the ink on Florida's latest round of restrictions on voter registration was barely dry when H.B. 1355 was enacted, even as state registration rates continued to plummet. Opponents of the bill pointed out not only that the restrictions were unjustified, but that they also risked harming Florida's minority voters.

For these reasons, the Justice Department should object to this direct attack on the voter registration process. Alternatively, the Department should send a written request for additional information to Florida.

III. Restrictions on Early Voting

A. Submitted Changes

Section 39 of H.B. 1355 restricts the time period during which early voting is conducted for federal and state elections, and potentially restricts the number of early voting hours. The new law also provides that, with regard to county elections not held in conjunction with a federal or state election, early voting will become optional.

Currently, early voting runs for a full two-week period. It begins on the 15th day before an election and ends on the second day before the election. That means that early voting begins on a Monday two weeks before election day, continues from that Monday through the following Sunday, and then continues through the following week, ending on the Sunday two days before the election. Early voting is conducted for eight hours on each weekday, and for eight hours in the aggregate during each of the two covered weekends (each county decides how to allocate the weekend hours between Saturdays and Sundays).

Under the new law, early voting will occur over a more limited, eight-day period, from the tenth day before an election to the third day before an election. This will eliminate the first five days of early voting (Monday through Friday of the second week before the election), and also will eliminate the possibility of having early voting during the Sunday two days before the election. Early voting will begin on a Saturday, a week and a half before an election, and will end on the following Saturday. Moreover, instead of a set number of hours for each weekday and an aggregate number of hours for each weekend, each county elections supervisor will be given the discretion to set the number of early voting hours for each day (weekday or weekend day), between a minimum of six hours and a maximum of 12 hours. The hours also could vary between early voting sites in the same county.

Pursuant to the Procedures for Administration of Section 5, 28 C.F.R. § 51.15, the new law thus is enabling in two respects: first, the law grants discretion to election supervisors to set the number of early voting hours in each election; and, second, the law grants discretion to election supervisors to decide whether to conduct early voting in county elections in which there is no federal or state office on the ballot. It follows, therefore, that if the Justice Department ultimately concludes that the early voting changes should be precleared, the Department would

be obligated to inform the State and the covered counties that these enabled changes must receive preclearance in the future when early voting decisions are made.

B. Minority Voters' Reliance on Early Voting

As shown by election data maintained by the State of Florida, black voters in the five covered counties disproportionately have relied on early voting in casting their ballots in recent elections.⁵²

This was especially true in the 2008 general election, when over half of all black voters in the covered counties who cast a ballot in that election – 52.8 percent – voted using early voting.⁵³ In contrast, only about a quarter of white voters in the covered counties who voted in that election cast early-voting ballots, 27.9 percent. The Hispanic rate was 27.8 percent; which was essentially identical to the white percentage. The percentage for the category of registered voters which Florida denominates as “other” was 31.1 percent.

In the 2010 general election, the difference between black and white voters was less dramatic, but black voters in the covered counties still disproportionately made use of early voting in that election as well. Among black voters, 28.6 percent voted early, whereas 24.7 percent of white voters cast early ballots. The rate among Hispanic voters was 18.9 percent, and the rate among “other” voters was 23.0 percent.

The data also show that, among early voters in the covered counties, black voters have relied disproportionately more on weekend hours than weekday hours.

C. Discriminatory Effect

One of the key questions posed by the proposed early-voting changes is how counties will utilize the discretion newly granted as to the number of hours of early voting that will be conducted on each early-voting day. As noted by the State in its submission, it is theoretically possible that the number of hours of early voting will not be reduced in the covered counties as a result of H.B. 1355. But, for this to occur, each county will need to decide to conduct early voting for the maximum number of hours possible at all early voting sites in each county. Currently, all counties are required to have 96 hours of early voting at all early voting sites (10 weekdays times 8 hours a day, plus two weekends times eight hours on each weekend). Under the new law, each county could continue to conduct 96 hours of early voting, but only if each county conducts early voting for 12 hours a day at every early voting site in the county (8 days times 12 hours a day).

⁵² Data on the number of persons casting early-voting ballots were obtained from a Florida website, <https://doe.dos.state.fl.us/fvrscountyballotreports/FVRSAvailableFiles.aspx>, that identifies all persons who voted early in the 2008 and 2010 general elections, by voter identification number. The race of these early voters was obtained by matching these voter identification numbers with the data on the State's registration file, which includes the self-identified race of each voter. The data on persons who voted absentee and on election day were obtained from Florida's statewide voter history file, a copy of which was obtained by the Brennan Center.

⁵³ In other words, 52.8% equals the number of black persons who cast early votes divided by the sum of all blacks who voted in that election (voted early, voted absentee, and voted on election day)

The State's submission, however, provides no factual information concerning this key issue. For example, the submission does not address how the practical realities relating to election administration (including, but not limited to, budgetary considerations) will affect the covered counties' decisions as to the number of early voting hours that they would decide to institute under the new law. Accordingly, this is one of the issues that the Justice Department should examine in sending the State a "more information" letter.

To attempt to gain some information about this question, we spoke with election officials in the five covered counties. These interviews suggest that the majority of the covered counties are not likely to offer the full 96 hours of early voting permitted under H.B. 1355. The election officials we interviewed in Hardee, Hendry, and Monroe Counties (Jeff Ussery, Lucretia Strickland, and Harry Sawyer, Jr., the counties' elections supervisors) do not expect to increase their hours and expressed doubt that they would be able to afford to do so. In Hillsborough County, the director of operations for voting (Lyle Roberts) said that he hopes that the county will keep early voting open for 96 hours, but also noted that the county would need to hire double the number of workers and institute double shifts to avoid the cost of overtime pay. Lastly, in Collier County, the Chief Deputy Supervisor of Elections (Tim Durham) believes that Collier will stay open for 96 hours at least for general elections, but will need to hire more poll workers to do so.

If, as is suggested by these interviews, the practical reality is that the new law will result in a significant reduction in the number of early voting hours, this weighs in favor of a finding of retrogression as to the early voting changes.

D. Discriminatory Purpose

The State of Florida's submission also provides little or no information that addresses the State's burden of showing the absence of discriminatory purpose. Our review of the legislative debates indicates that the opposition to the early-voting changes was based on the concern that the changes will reduce the opportunity of Florida voters to cast early votes. This concern, combined with the minority voters' reliance on early voting, suggests the possibility that a discriminatory purpose was present. Yet, the submission provides no neutral justification for the changes.

One particular concern is that the changes may have been adopted specifically to eliminate the possibility that early voting is conducted in the future on the last Sunday before the election. Under current law, counties have the discretion to conduct early voting on that day, but the new law requires that early voting end on the Saturday before the election. Several of the large urban counties in the State have conducted early voting on Sundays (although the covered counties did not in the 2008 and 2010 general elections), and the extent to which minority voters have made use of that voting opportunity has been dramatic (apparently many minority voters travel from church to their early voting site on that day). In the 2008 general election, statewide, 33.2 percent of those who voted early on that last Sunday before election day were black and 23.6 percent were Hispanic, whereas blacks constituted 13.4 percent of all early voters statewide (for all early voting days) and Hispanics constituted 11.6 percent. These data support the concern that a specific discriminatory purpose underlying the changes may have been to eliminate early voting on this last Sunday before election day.

This specific concern about the purpose underlying the changes applies to the present submission regardless of the fact that, as noted, the covered counties have not utilized early voting on this last Sunday in recent general elections. The covered counties currently have that option, and a discriminatory purpose aimed at eliminating that option would require the interposing of an objection.

Accordingly, the Justice Department also should obtain further information regarding the issue of discriminatory purpose by making a written request for additional information as to the early voting changes.

E. The State Has Not Met its Burden Under Section 5

For the reasons set forth above, the State has not met its burden under Section 5 with regard to its submission of the early voting changes, and the Justice Department should send a written request for additional information.

IV. Restrictions on Voting by Registered Voters Who Move Between Florida Counties Without Re-Registering at Their New Address

Section 26 of H.B. 1355 enacts new restrictions on the ability of persons who are registered to vote in Florida, and who move between counties without re-registering at their new address, to change their address at their polling place in their new county and cast a ballot that will be counted. This voting change is of concern both because Florida's submission to the Justice Department does not clearly delineate the nature and scope of the change (as required by 28 C.F.R. § 51.27 (c)) and because the available data suggest that the affected voters may be disproportionately minority. Accordingly, we believe that the appropriate course of action is for the Justice Department to send Florida a written request for additional information so as to clarify what Florida is submitting for preclearance, and to enable the Department to properly assess whether the change is discriminatory.

A. Benchmark System

Florida law generally provides that Florida residents may vote only in the "election precinct in which . . . [they are] registered." Fla. Code § 101.045(1).

However, Florida law also includes a significant exception to this rule: registered voters who move after registering to vote, and who do not re-register at their new address, nevertheless are permitted to vote in their new precinct so long as they complete an affirmation specified in Florida law. Fla. Code § 101.045(2)(a).⁵⁴ This exception applies equally to persons who move within the same Florida county and to those who move between Florida counties. This fail-safe provision, which ensures that persons who are properly registered to vote in Florida are not disenfranchised simply because they move without notifying Florida election officials, appears to have been the law in Florida for over two decades.

⁵⁴ The affirmation that a mover must complete is simple and straightforward. The voter need only fill in his or her name, former address (including city and county), former precinct and county where registered, new address (including city and county), and the new precinct and county where the individual is now eligible to vote. The voter affirms this information, affirms that he or she is "otherwise legally registered and entitled to vote," and signs the affirmation. Fla. Code § 101.045(2)(a).

B. Proposed Change

1. New statutory language

Section 26 makes two important changes to the statutory language of the Florida code section in question, Fla. Code § 101.045. First, Section 26 includes new language which, at first blush, could be interpreted as limiting the “movers” exception to those registered voters whose change of residence is intra-county, and eliminating the exception for those whose change of residence is inter-county. In this regard, Fla. Code § 101.045(2)(a), as amended by Sec. 26, specifies that the exception is to apply to electors whose “change of residence is within the same county.” Second, Section 26 adds a new subsection “(b)” to § 101.045, to provide that registered voters who move inter-county “may not change [their] legal residence at the place and vote a regular ballot; however, such elector[s] [are] entitled to vote a provisional ballot.”

2. Will registered voters who are inter-county movers still be able to cast a ballot that will be counted?

The questions presented by the submitted amendments are whether, if Section 26 is precleared, Florida will count provisional ballots cast by inter-county movers who are registered to vote but who have not re-registered at their new address, and if so, what actions will such inter-county movers be required to take in order for their provisional ballots to be counted.

The answer to the threshold question – whether there are any circumstances in which these provisional ballots will be counted – appears to be “yes,” but the State’s submission is not clear on this point. Therefore, the Justice Department should seek a written clarification from the State on this critical issue.

More specifically, Exhibit E to the State’s submission, which provides a section-by-section description of the changes, advises, circularly, that inter-county movers’ provisional ballots will be counted except when the voter “was not entitled to vote.” Exh. E, at 12. Exhibit E then goes on to note the reasons that a voter may not be “entitled to vote.” These reasons do not include being registered in one’s former county but not in one’s new county of residence. Accordingly, this may suggest that such provisional ballots can be counted. On the other hand, Exhibit E also references the state statute regarding the counting of provisional ballots, Fla. Stat. § 101.048, and that statute specifies that provisional ballots are counted only when “the person voting that ballot was entitled to vote at the precinct where the person cast a vote in the election.” Fla. Stat. § 101.048(2)(a). Given the amendment to Fla. Stat. § 101.045(2)(a) noted above, it might be argued that these inter-county movers will no longer be “entitled to vote at the [new residence] precinct.”

This threshold question appears to have been definitively answered by Directive 2011-01, issued by the Secretary of State to the county election supervisors on May 19, 2011 (see Attachment D to this letter). The Directive states that, under the new law, the determination as to whether to count provisional ballots cast by inter-county movers is made using “the same standard that would apply for counting a regular ballot” by intra-county movers, i.e., the ballots should be counted unless the inter-county mover “was not registered or the voter voted in a precinct other than the one that corresponds to his or her new address.” Directive 2011-01, at 2. However, this Directive was not included in the State’s Section 5 submission.

The second question, assuming that inter-county movers' provisional ballots have the potential to be counted, is what inter-county voters will be required to do in order for their provisional ballots, in fact, to be counted. For example, will these voters still complete the same affirmation that they complete under current law and, if so, will this be sufficient or will they need to do more? Will the voters need to present evidence of eligibility to the elections supervisor after election day (in the same way that persons who cast provisional ballots for other reasons are required to do)? The State's submission does not address this question at all, and Directive 2011-01 makes only a glancing reference to this.

Accordingly, the Justice Department should seek clarification from the State, in writing, as to whether there are circumstances in which provisional ballots cast by these inter-county movers may be counted and, if so, what steps must these citizens take in order to cast a provisional ballot that will be counted. Once the Department obtains these answers, the Department also, in its final decision letter, should specifically identify what the State is changing with regard to voting by inter-county movers who are registered to vote but who do not re-register at their new Florida address, so that the precise preclearance issue in this regard is set forth.

C. Potential Discriminatory Nature of the Submitted Change

We also do not believe that the State has made the necessary showing of no discriminatory purpose and no retrogressive effect, and believe that, in order to address these issues, the Justice Department should send a written request for additional information.

First, because the nature and scope of the change has not been properly delineated, it is difficult to gauge the obstacles that Florida may be erecting to voting by these inter-county movers and why these obstacles have been created. For example, if the inter-county movers will be required to complete the same affirmation they are required to complete now, and if their votes then will be counted so long as they properly complete the paperwork associated with provisional ballots – with no need to do anything more – the obvious question is why will these voters be required to jump through the additional “provisional ballot” hoop when this would not seem to serve any substantive purpose? On the other hand, if the inter-county movers will be required to do more, why is their eligibility to vote more suspect than that of intra-county movers, especially given the fact that the State has a computerized statewide system of voter registration? Nothing in the State's submission answers these questions.

Second, the State has not provided any data as to the racial composition of the inter-county movers in question (i.e., registered voters who move into a Florida covered county from another Florida county and who do not re-register at their new address). The data that we have been able to identify suggests, however, that these voters are disproportionately African American. The Census Bureau's 2009 American Community Survey reports data, by race and Hispanic origin, regarding the percentage of persons of each population group (one year and older) within each of the covered counties that had moved from another Florida county within the past year. These data are as follows:

Race ⁵⁵	Collier	Hardee	Hendry	Hillsborough	Monroe
White	1.9	3.4	5.6	2.8	2.3
Black	1.9	15.4	12.2	2.9	3.6
Hispanic	1.8	3.4	3.3	3.0	3.5

D. Summary

For these reasons, the State has not met its burden with regard to this submitted change and the Justice Department should send the State a written request for additional information to request: a) “[a] statement that identifies with specificity” the nature and scope of the change regarding registered voters who move between counties without re-registering in their new county, as required by 28 C.F.R. § 51.27(c); b) a clear delineation of any new burdens being imposed on these inter-county movers to cast a ballot that will be counted, and the reasons for imposing these burdens; and c) any data available to the State that relates to the racial composition of these inter-county movers in the covered counties.

V. Conclusion

For the reasons set forth above, the Justice Department should not grant Section 5 preclearance to three significant sets of voting changes enacted by H.B. 1355 – the changes that would severely restrict citizen voter registration efforts, the changes that would shorten the early voting period, and the changes with regard to voting by persons who are registered to vote and move between counties without re-registering to vote.

Respectfully submitted,

Lee Rowland
Democracy Counsel
Brennan Center for Justice

Mark A. Posner
Senior Counsel
Lawyers’ Committee for Civil Rights Under Law

⁵⁵ The data for whites are for white non-Hispanics. However, the data reported for blacks include black Hispanics as it does not appear that the 2009 ACS reports change-of-residence data for black non-Hispanics.

Exhibit B

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

LEAGUE OF WOMEN VOTERS OF
FLORIDA, FLORIDA PUBLIC INTEREST
RESEARCH GROUP EDUCATION FUND,
and ROCK THE VOTE,

Plaintiffs,

v.

KURT S. BROWNING, in his official capacity
as Secretary of State for the State of Florida,
PAMELA J. BONDI, in her official capacity as
Attorney General for the State of Florida, and
GISELA SALAS, in her official capacity as
Director of the Division of Elections within the
Department of State for the State of Florida,

Defendants.

Civil No. _____

Affidavit of Deirdre Macnab

Submitted in Support of

Plaintiffs' Motion for

Preliminary Injunction

I, Deirdre Macnab, hereby declare as follows:

1. I am a U.S. citizen, a resident of Florida, a registered voter, and I am serving my second term as President of the State Board of Directors of the League of Women Voters of Florida ("LWVF"). I submit this affidavit in support of Plaintiffs' motion for a preliminary injunction to prevent enforcement of the provisions of the newly enacted 2011 Fla. Laws 40 § 40 (codified at Fla. Stat. § 97.0575) ("the Law") that impose onerous new registration, reporting, and submission deadlines on individuals and civic groups engaged in voter registration, and which are preventing LWVF from fully carrying out its mission of fostering civic participation.
2. My experience with LWVF includes four years on the State Board, as well as four years as President of the League of Women Voters of Orange County, one of LWVF's largest local Leagues. My great-great-grandmother was a League of Women Voters member. I believe passionately in the mission of the LWVF, and my role as President is extremely meaningful to

me on a professional and personal level. I also have enjoyed a successful career that has included corporate work, public service, and elected office. I hold an MBA from Columbia University in marketing and finance and a B.A. from New York University in History and Political Science.

3. In my capacity as President of LWVF, I am responsible for leading our State Board of Directors, running State Board meetings, recommending and deliberating about statewide policy positions and strategy, and communicating our policies to our many local chapters, our members, and the public. I am intimately involved in all aspects of our work, including our previously extensive voter registration work, our legislative and policy positions, and the procedures by which we attract, retain, and communicate with our extensive membership. I am the official voice of LWVF in the media and to the public. All of my time is volunteered, and I spend around 60 hours per week performing my duties. Our State Board members volunteer up to 40 hours per week with LWVF, in addition to the hours many of them spend volunteering for local leagues in their home counties.

The League of Women Voters' History, Mission, and Structure

4. The national League of Women Voters was founded by Carrie Chapman Catt in 1920 during the convention of the National American Woman Suffrage Association. The convention was held just six months before the Nineteenth Amendment to the U.S. Constitution was ratified, giving women the right to vote after a 72-year struggle.

5. LWVF was founded in Florida in 1939. LWVF is a nonpartisan, not-for-profit corporation organized under the laws of Florida, and a tax-exempt charity pursuant to sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code. It has approximately 2,800 current dues-

paying members in Florida, and a list of about 9,000 members, supporters, and volunteers, who receive regular communications from LWVF.

6. LWVF has 29 separately incorporated city- and county-based local leagues throughout Florida ("local Leagues").

7. LWVF's mission is to promote political accountability by encouraging the informed and active participation of citizens in government. LWVF also influences public policy through education and advocacy. One of LWVF's primary goals is to promote effective voter participation in government. LWVF accomplishes this goal by: (1) conducting voter registration drives throughout the state; (2) holding educational forums and candidate debates open to the public; (3) publishing a quarterly newsletter and hosting a website; (4) distributing both a non-partisan biannual election guide to candidates for statewide office, and objective information regarding proposed constitutional amendments in Florida; and (5) distributing information on topics including government reform, education, natural resources, social policy, and fiscal policy.

LWVF Organizational Structure and Activities

8. LWVF has one physical office located at 540 Beverly Court, Tallahassee, Florida 32301-2506. Its nonpartisan education, outreach, and voter registration efforts are funded entirely by LWVF's annual 501(c)(3) Education Fund, with a budget of approximately \$99,000.

9. LWVF employs only two staff members: a part-time Executive Director and a part-time Office Manager. We also hire a contract lobbyist for legislative advocacy. The Executive Director, alongside volunteer interns and LWVF members, manages the office, handles correspondence and donations (via phone, mail, and email), services local chapters, supports Board of Directors meetings and member meetings, and prepares reports. She also serves as a

control tower between the LWVF state office and local leagues and volunteers. Our office manager assists with all of these tasks and provides administrative support to the Executive Director and the State Board.

10. LWVF maintains a website at www.thefloridavoter.org and, through its Education Fund, maintains another website at www.bereadytovote.org, which houses our groundbreaking collaboration with Microsoft to use smart phone technology to help voters access and confirm their current voter registration status.

11. LWVF policy is set by consensus among its State Board members, all of whom must be current dues-paying members. The State Board sets statewide policy for local leagues, particularly concerning policy positions and voter registration efforts. The State Board also publishes an annual report, available to members and to the public, detailing LWVF's financials, policy, and accomplishments each year.

12. LWVF has 29 local Leagues, which are community-based and depend entirely on member volunteers; none have paid staff. To the extent that volunteers need storage space or a physical location for meeting and planning, local Leagues operate from the homes of volunteers or in free community meeting spaces. Only the St. Petersburg League has a physical office. Each local League must pay dues to both LWVF and the national League of Women Voters. Individual members join their local League and pay a \$50 annual membership fee. Out of that \$50, the local League will owe \$30 to the national organization, and \$15 to LWVF, leaving the local League with \$5 per new member. Every member of each of the 29 local Leagues is also a member of LWVF.

13. For example, the Tallahassee League, like all local Leagues, has no staff and is composed entirely of volunteers. Its annual income is approximately \$5,000, derived mostly from member

dues. It uses these funds to pay its membership fees to LWVF and the national League of Women Voters, and, with what little is left, to print and mail voter information brochures that describe local, state, and national issues. It also publishes a brochure listing the contact information of school board members, state representatives, senators, members of the judiciary, and other government officials. The Tallahassee League has engaged in voter registration in the past, but has not previously allocated specific money toward that activity. Like the state LWVF, it never needed to, because all voter registration work was entirely volunteer-based and cost the organization no money.

14. Many local Leagues do not have access to computers and other technology. This is due in part to their sparse budgets and in part to the fact many members are not familiar with computer or email technology. For example, the Martin County League does not have a website, and its former president did not have an email address. While LWVF's state office has a scanner and a fax machine, local Leagues generally have no centralized or free access to such equipment.

15. Although LWVF maintains a list of members, it is difficult to tell when individuals consider themselves "active" members. Each member must pay dues every year by the date on which he or she joined LWVF. However, it is very common for members to pay late, for example delaying a renewal payment until the beginning of the calendar year, or forgetting to renew promptly. LWVF does not immediately remove these members from our communications lists or stop offering them opportunities to volunteer. Lapsed members routinely pay their renewal dues and become current again. These individuals likely consider themselves continual members, and LWVF considers them supporters and calls on them as volunteers. I do not believe that the simple lapse in payment of dues on the annual date signals that an individual wishes to terminate his or her association with LWVF, or an unwillingness to volunteer with us.

16. Not all volunteers are dues-paying members. Some volunteers only donate their time once, or on a few occasions. LWVF does not require volunteers to sign contracts or other documents, specify the beginning and ending dates of their volunteerism, or to provide updates to LWVF about "terminating" their volunteerism. Any of these requirements would stigmatize and reduce volunteerism. LWVF strives to facilitate an open, inclusive environment that accepts all comers and does not require a level of formality beyond maintaining contact information and asking the time which each volunteer is willing to give on any given day.

LWVF's Voter Registration Activity

17. Registering new voters is a critical part of LWVF's mission to promote political responsibility through an informed and active citizenry. It is also an important part of accomplishing our goal of increasing political participation by women, youth, and citizens in traditionally underrepresented and disenfranchised communities, particularly residents of low-income, African-American, and Hispanic communities. Indeed, recognizing Florida's diverse population, LWVF publishes statewide candidate guides in both English and Spanish.

18. Voter registration is particularly important and integral to LWVF's mission in presidential election years. The heightened attention to politics makes citizens more interested in government, which gives LWVF an opportunity to engage them in the political process and in the values and issues for which the League of Women Voters stands. With the extent of attention already on the 2012 election, the coming months will provide a crucial opportunity to bring more citizens into the democratic system.

19. LWVF conducts annual voter registration drives through its 29 local Leagues. There is a State Board member dedicated to voter service who communicates to those members coordinating voter registration drives at the local level about broad policy and priorities. Local

Leagues design, plan, and conduct their own voter registration activity without operational assistance from the LWVF, usually led by a local voter service chairperson. These drives occur throughout the year, but they are especially active in the summer and fall months immediately prior to voter registration deadlines for fall primary and general elections.

20. Typically, local Leagues will register new voters by attending community events or talking to citizens at malls, schools, nursing homes, or other institutions or high-traffic areas. At these events, our volunteers often set up tables and encourage passersby to stop and fill out a new voter registration form. Alternatively, volunteers walk around high-traffic areas with forms on clipboards and ask individuals if they would be willing to register to vote.

21. Helping other Floridians to register to vote is one of the most popular and effective volunteer opportunities with LWVF, and it has consistently been one of the best ways to get new volunteers invested in our work. New and busy volunteers love it because the schedule is flexible in terms of both scheduling and time commitment. It is one of the few activities in which a volunteer can participate on an impromptu basis and, within an hour or less, be trained and help voters to register. I have come to believe that individuals who begin volunteering even a few hours helping to register their fellow citizens to vote find the activity extremely rewarding and feel a sense of purpose and connection to their democracy. Many, if not most, of our seasoned volunteers, stalwart supporters, and State Board members began volunteering their time at a LWVF voter registration drive table. My own very first hour spent volunteering with LWVF was behind such a table.

22. While engaging in voter registration activity, LWVF volunteers hand out pamphlets and other materials discussing the importance of registering to vote, providing information about voting, and informing new voters about how they can contact their elected officials. For

example, LWVF volunteers provide new voters with a palm card published by the national League of Women Voters entitled "5 Things to Know," which contains tips for successfully voting, such as taking their voter ID card to their polling place. Local Leagues also frequently release "Know Your Elected Officials" publications to provide their members with a basic overview of and contact information for their local government officials.

23. LWVF has recently launched the interactive "Be Ready to Vote" campaign, which connects Florida citizens to their county Supervisor of Elections office via smart phone technology in order to ensure their voter registration information is current and complete.

24. LWVF registers voters at all of its events throughout the year. Voter registration goes hand-in-hand with virtually all of LWVF's public education efforts, as well as many of our advocacy activities. Registration efforts are automatically tied as a secondary exercise to every non-lobbying activity in which LWVF is involved. Whether the activity is a luncheon, a school event, a debate, or any another election-related activity, members always have voter registration forms on hand. LWVF believes that the best way to succeed at its mission of increasing civic engagement is to register as many citizens to vote as possible, to provide voters with basic nonpartisan information about candidates and issues on the ballot, and to get as many voters as possible out to the polls.

25. Local Leagues are very active in registering voters. For example, the Tallahassee League, which has been registering voters since its founding, registers voters at shopping malls, city Fourth of July celebrations, and the Tallahassee Saturday Downtown Market. The Tallahassee League usually registers voters in conjunction with its other activities. For instance, for several months before the 2004 election, it set up a table every Saturday at the downtown market to distribute a special edition of *State Voter*, an informational brochure published by

LWVF explaining all amendments to the State Constitution. In conjunction with this, the Tallahassee League registered voters, distributed voter registration forms, and gave out information about joining LWVF. The Tallahassee League also registered voters when it was collecting signatures for a state redistricting petition and a petition to change the timing of a city commission election in 2004.

26. Local Leagues also make a point to go to places where people who may not have either the means or the opportunity to register to vote congregate. Accordingly, LWVF members and volunteers register many people who do not have a car to go to the motor vehicle offices or the offices of their local supervisor of elections. Some people who register with the assistance of LWVF are intimidated by the prospect of navigating an official form or visiting a government office. Our targeted voter registration activity has included trips to nursing homes and outreach to social service providers, such as those providers conducting community outreach at the Palm Beach County Health Fair.

27. Many of LWVF's outreach activities are directed at traditionally underrepresented communities. For instance, the Orange County League spearheaded the "Vamos A Votar Coalition," a nonpartisan campaign to increase Hispanic voter participation in Central Florida and statewide. This campaign includes a Spanish language website, www.vamosavotar.org, maintained by the LWVF Education Fund. Similarly, when the Pinellas County League recognized fifteen years ago that there was a growing Hispanic population in that county, it started holding voter registration drives at a newly-opened Hispanic community center and at Hispanic cultural fairs. Some local Leagues, including the Jacksonville/First Coast League, regularly attend naturalization ceremonies in their communities. There, they introduce new U.S. citizens to one of the most important opportunities and responsibilities of citizenship by assisting

them in registering to vote. The Jacksonville/First Coast League also encourages these new citizens to become engaged in the political process by becoming LWVF members and by lobbying elected officials on issues of importance to them and their communities. And, the Miami/Dade County League reaches out to historically underrepresented communities in their county by publishing registration information in English, Spanish, and Creole.

LWVF Voter Registration Procedure

28. Local Leagues conducting voter registration efforts rely on volunteers who may or may not be LWVF members. LWVF's staff, which consists of only two part-time employees, does not have time to register voters or to supervise voter registration at each of the local leagues' events. We do not keep records of each volunteer and the precise time they spend with us. Nor do we ask volunteers to commit to regular volunteering, or ask when they next plan to assist LWVF. Instead, we view our members and supporters as an inclusive, constant source of potential volunteers dedicated to public service, and we are grateful for any time they spend volunteering with us.

29. Voter registration at LWVF events is well organized. The voter registration activity is announced beforehand through a newsletter or some other means, and volunteers are requested to commit in advance to a time to help register voters. While local Leagues sometimes keep proposed rosters of volunteers for each upcoming event, volunteers may get sick, have emergencies, change plans, or find out about the opportunity to volunteer at the last minute. As a result, despite our best efforts, volunteer schedules routinely change up to, and through, the day of a voter registration event.

30. At LWVF events, there are always at least two volunteers. One volunteer is always experienced and can show any new volunteers what to do. Volunteers usually have a sign that

says "League of Women Voters" and a sign that says "register here" in English and Spanish posted at their table.

31. Local League members train voter registration volunteers before they may engage in voter registration activity. Volunteers are instructed not to just hand forms out, but to assist people in filling out the forms and collecting them to make sure they get properly submitted to election officials. Volunteers are instructed to explain to potential new voters that it is important for all eligible citizens to register to vote, and to actually vote, in order to keep government accountable. Volunteers may offer literature or messaging on LWVF's mission, and some local Leagues may also offer registered voters opportunities to sign initiative positions supported by LWVF. We believe it is important that volunteers are conversant on these issues related to civic participation because conversations about the rights and responsibilities of American citizens inevitably arise in the course of conducting voter registration drives. Volunteers are poised to respond to questions presented by the applicants and to clear up any confusion about the registration and voting process. Volunteers prefer not to register more than two or three people at a time to ensure they can properly assist each one.

32. The success of LWVF's voter registration drives depends upon volunteers taking the time to ensure that a prospective voter has correctly and completely filled out a voter registration form. Volunteers are instructed to provide all necessary assistance to ensure that each voter registration form collected is fully completed. After an individual hands a completed voter application to a LWVF volunteer, volunteers check each field on each form to make sure it is correctly filled out. Many LWVF volunteers encourage registrants to put their phone numbers on the form so they can be contacted if additional information is needed.

33. It is the experience of LWVF members that the vast majority of people will not properly complete and submit applications without assistance. LWVF believes that asking people to register in person, and collecting and delivering their voter registration forms for them, results in a vastly increased rate of voter registration as compared to simply handing out blank forms to be completed and submitted a later date. As a volunteer, I have seen proof of this first hand, and I know that many citizens would not be registered to vote but for our assistance in completing and submitting voter registration forms. LWVF volunteers will distribute blank forms if that is the only option, but they make every effort to collect completed forms from registrants and to then ensure that these forms get submitted properly. For example, if a student is not carrying his or her driver's license or other government ID, he or she may not have with them the requisite personal information needed to complete the voter registration form. In those cases, the volunteer will encourage students to come back rather than just give them blank forms.

34. LWVF does not make copies of voter registration forms after completion, and it does not keep track of how many people it registers unless there is a distinct reason, such as evaluating the success of a particular drive. This is in part because LWVF hesitates to place administrative requirements on our volunteers; instead, we seek to engage them in the purely civic acts of community engagement, volunteerism, and voter registration.

35. Members and volunteers participating in voter registration efforts understand the importance of getting completed registration forms to the registrar promptly. The person in charge of the voter registration event gathers all forms to be submitted. The forms are secured by placing them in a closed box or envelope and keeping them in the member's personal possession until they are taken to a Supervisor of Elections. In some cases the forms are mailed, but LWVF prefers to have members submit them in person to ensure proper delivery. LWVF

believes it is very important to have well-trained, trustworthy people in charge to ensure that forms are not lost or submitted late.

36. The average turnaround time between when a completed registration form is collected and submitted varies based on the circumstance. In many instances, it would be very difficult to deliver the forms within 48 hours. Frequently, during multi-day voter registration drives, forms will be collected in a single secure location until the drive is over, and then delivered together to elections officials. This process ensures the security and accountability of the forms. Depending on the length of the drive, this can take 2 to 8 days. In some cases, LWVF volunteers in charge of an event may work full time, or have other pressing demands, and may not be able to take the forms to the LWVF office or an election supervisor immediately after an event. Volunteers may also be elderly or lack a car, and need assistance in submitting forms.

37. LWVF members and volunteers also register voters more informally, helping extended family, friends, co-workers, and acquaintances to register to vote on a smaller scale. LWVF members and volunteers are very enthusiastic about this work because registering people to vote is the first step in getting them involved in the political process. Moreover, registering voters is a hands-on opportunity for volunteers, during which they can meet with prospective voters face-to-face, and help inform citizens how to take part in the political and governmental process.

38. For example, I recently hired a contractor for my home, who goes by "Sonny the Carpenter." Sonny asked me about myself, and I told him I was involved in voting issues. Sonny responded that he was a citizen, thought he was registered to vote, and wanted to check his status. I offered him the opportunity to use our Be Ready to Vote Campaign technology to check his voter registration on his phone. We discovered he was not, in fact, on the voter rolls: I have not pre-registered myself as a "third-party voter registration organization," so I was unable

to offer to have Sonny fill out a registration form and give it to me for submission. I talked through the steps of voter registration with him, but felt strongly that he was unlikely to obtain, complete, and submit a voter registration form. If I could have spontaneously offered that assistance to Sonny, I am sure he would have been registered to vote. But because of the Law, I could not help him register.

39. Volunteers obtain the voter registration forms they distribute and/or collect in diverse ways. Many volunteers print publicly-available Florida state voter registration forms from the Florida Division of Elections website or obtain the national mail voter registration form available at the website of the Election Assistance Commission. In addition, LWVF and local Leagues typically enjoy excellent and close working relationships with the county Supervisors of Elections, who routinely provide blank state voter registration forms to LWVF volunteers.

40. To my knowledge, in its 72 years of engaging in citizen voter registration activity in Florida, LWVF has never been cited, fined, or found in violation of Florida's previous laws governing third-party voter registration, including under the 10-day return deadline for completed voter registration applications added in 2008.

The Law's Impact on LWVF Voter Registration Activities

The 48-Hour Requirement

41. LWVF volunteers take their duty towards voter registration forms very seriously, and endeavor at all times to turn forms in as quickly and securely as possible. Although LWVF has very good procedures for keeping track of and turning in voter registration forms, it would be nearly impossible logistically for LWVF to ensure that each completed form was submitted within 48 hours—to the minute—as the Law requires. The local Leagues operate on a decentralized model with an all-volunteer force, which has successfully registered tens of

thousands of Floridians to vote over the last 72 years without incident. The 48-hour requirement would require LWVF and its local Leagues to dramatically revise their procedures in a manner that would require volunteers to become detailed timekeepers and create strict schedules to ensure that forms were handed in before the clock strikes 48 hours—and do all this under the ticking time bomb of civil penalties and fines.

42. A LWVF volunteer could easily miss the Law's strict deadline through no fault of her or his own, and without jeopardizing the forms in any way. For example, a volunteer who has collected forms all day but is unable to deliver them the next day might leave completed applications secured in his or her home or office for one full day. In this situation, a delay of even a few minutes on the morning of delivery—due to traffic, weather, ill health, or unexpected family emergencies, for example—could lead to automatic fines. My understanding, based on public statements by county Supervisors of Elections, is that a delay of even a minute could cause the Supervisors to report a group's delinquency to the Secretary of State.

43. Several Supervisors have expressed to me their dismay over the Law, especially that it places us in adversarial postures where they are forced to "turn us in" for submitting forms even a minute over the 48-hour deadline.

44. Many LWVF volunteers are elderly and depend on others for transport. They may have a particularly hard time meeting the 48-hour deadline.

45. In one case, a LWVF member died while in possession of ballot petitions. Her sister ensured that the petitions were later turned in before the deadline, but had a 48-hour rule been in effect, LWVF would have been liable.

46. A rainstorm, flood, or hurricane could also delay a volunteer attempting to deliver forms. In these extreme circumstances, the Law does not automatically waive the fines, even though

weather emergencies are fairly common in coastal Florida. It is not clear how and when the force majeure and impossibility of performance defenses in the Law apply. And even when, or if, they do apply, they must be argued as an “affirmative defense” under the Law, which appears to mean that we would still be cited for a violation of the Law and would only have an opportunity to present these circumstances in our defense afterward. Even more troubling, the Secretary is not required to release LWVF or its local leagues from liability even for a natural disaster.

47. The Law’s 48-hour requirement is all but unintelligible to me. The Law states that forms are due within 48 hours “or the next business day if the appropriate office is closed for that 48-hour period.” Within the same sentence, the regulation thus uses the terms “hours” and “day.” I do not understand whether, in order to receive some “grace period” when offices are closed, an office must be closed for an entire 48-hour period, or just some portion of that period. I also have no idea from the statutory text or from the regulations whether the due date shifts to the same hour and minute on a different day, or allows the submission of forms through the end of that business day.

48. Therefore, if a volunteer collects a form on a Friday night, and offices are closed for the entire weekend, I cannot decipher by what time, if any, the form must be submitted on Monday—or perhaps on Tuesday. Oddly, it might be due *after* a form collected on Saturday morning and due 48 hours later on Monday morning. Alternatively, if a volunteer collects a form on a Thursday—such that it would be due Saturday, when offices are closed—is that form entitled to the grace period even though the office was open for part of that 48-hour period? In thinking about these very likely scenarios, it is simply not clear to me how LWVF volunteers could reasonably know when they are at risk of running afoul of the 48-hour provision.

49. Even to the extent LWVF would be able to comply with the 48-hour requirement in submitting forms, compliance would prevent LWVF from following its standard procedures for ensuring that information is not missing from forms, because volunteers would be in such a rush to submit the forms within 48 hours. LWVF would waste valuable time and incur unnecessary and burdensome costs due to frequent trips to election supervisors or postal offices.

50. Although LWVF prefers to hand-deliver completed applications to Supervisors of Elections to ensure they are properly submitted, in some cases, it has been necessary to submit applications by mail. Although the newly enacted Law purports to continue to allow delivery by mail, it only counts the date of mailing as a "delivery" for purposes of the Law's 48-hour deadline if the mailing envelope is clearly postmarked. LWVF volunteers have no control over whether the postal service properly postmarks every package of applications they mail and have no way of ensuring that the postmark does not become detached, smudged, or otherwise made "unclear." Under the Law's prior, ten-day deadline, volunteers could minimize the risk of incurring fines by mailing forms so that they would arrive well before the expiration of the permissible period of delivery. Now, because of the Law's strict 48-hour deadline, combined with its requirement for a "clear" postmark for the date mailing to satisfy this deadline, it is impossible for a volunteer to submit a completed voter registration form by mail without subjecting LWVF to the potential for civil fines and reputational harm due to factors entirely beyond the control of LWVF or its volunteers.

51. There is a statement on the Division of Elections' website indicating that any affiliate or registration agent for a registered third-party voter registration group must first send any collected applications to the registered organization *before* they can be submitted to election officials. If this is true, it poses perhaps the greatest barrier to compliance with the 48-hour

requirement. Collecting all voter registration applications in our state office would be totally impossible given our structure and de-centralized voter registration practices. Moreover, our state office simply does not have the resources to be collecting, collating, and delivering voter registration forms from our 29 local Leagues. Even if we could comply with that requirement, it would make it physically impossible to then submit these forms within 48 hours. Florida is a massive state, and it is inconceivable that our local Leagues could reliably send collected forms to our state office within 48 hours—let alone with enough time for us to then get the forms to election officials. It would also double the unnecessary movement or mailing of registration forms, increasing the possibility these forms could be destroyed or lost in transit.

Registration Agent Issues

52. Compliance with the Law would require LWVF to report to the State every individual volunteer who engages in voter registration on behalf of LWVF as a “registration agent.” Before helping anyone register to vote, the Law would require each of our volunteers to sign a sworn statement form provided by the Division of Elections that lists several felony penalties for “false registration,” including imprisonment for up to five years and a fine of \$5,000, which warns that falsely swearing to the form is a felony offense. The form does not specify what constitutes “false” registration or swearing to a form. For example, the form lists “submission of false voter registration information” as an example of a “false registration” offense, but it does not explain that submitting forms with inadvertent mistakes would not qualify as “false registration.” I believe the form is intimidating and suggests serious felony charges may flow from even innocent mistakes. It is the last thing I would want to give to someone whom I am encouraging to engage in a public service. I believe that many volunteers would balk at signing such a form.

The average LWVF volunteer, who is often elderly and extremely risk-averse, is particularly likely to be deterred from volunteerism by this form.

53. LWVF cannot force all of its volunteers to become “agents” for voter registration purposes consistent with LWVF’s mission. Formalizing the volunteer process would be a deterrent to many of our volunteers, particularly retired or elderly volunteers, who may view these legalistic forms detailing criminal penalties as an intimidating and complicated process in which they do not wish to become involved. Moreover, LWVF attempts to inclusively recruit volunteers to foster civic participation; LWVF does not want to force volunteers to become its signed, sworn agents in order to help others to participate in our democracy.

54. Local Leagues have no way of knowing when a volunteer stops “working” for them. We ask all members and volunteers to donate their time and create an inclusive environment to encourage *ad hoc* volunteerism when needed at events. We absolutely do not ask when or if each individual plans to “terminate” their volunteer time with LWVF. Doing so would alienate former LWVF volunteers and deter future volunteerism.

Registration, Tracking and Reporting Requirements

55. The new regulations state that any affiliate of a registered third-party voter registration group must also register with the State as a third-party voter registration organization via an electronic registration form that requires a list of its individual volunteers. LWVF does not provide local League volunteers with support staff, nor offices nor equipment, and volunteers frequently have limited familiarity with technology. Making electronic filings would be extremely difficult for them, and would duplicate the information on filings already required of LWVF. The rules are also unclear what other filings the affiliates would have to make—for example, whether they would have to make regular filings to update that initial registration when

new volunteers join their voter registration activity. Repeated filings would place a large burden on our all-volunteer local Leagues.

56. Because LWVF relies on volunteers dispersed throughout the state to collect applications, LWVF cannot, with its limited budget and staff, monitor the daily voter registration activities of each of its 29 local Leagues and their countless volunteers. There is thus a high likelihood that LWVF would not be able to fully monitor, count, and report the use of every voter registration form by every one of its members and volunteers, as the Law's monthly reports require.

57. As discussed above, we have no system of tracking the individual volunteers who donate their time to each of the 29 local Leagues, let alone determining if, or when, they "terminate" serving as a LWVF volunteer. Requiring these all-volunteer local Leagues to send us constant rosters of their volunteers—along with copies of their sworn registration agent forms to be scanned and submitted by LWVF to the State—would necessitate an entire layer of costly bureaucracy that is totally at odds with our mission and our volunteer spirit.

58. LWVF cannot realistically track all forms it "provides" to each registration agent as the monthly forms require. LWVF members and volunteers obtain voter registration forms from numerous sources. Many download state and federal voter registration forms online at home on the way to a registration event, rather than get them directly from LWVF. Some volunteers simply copy the available blank forms held by other volunteers. Even more have habitually obtained Florida voter registration forms from their local Supervisor of Elections. Because of LWVF's decentralized volunteer efforts, it is not possible for LWVF to keep track of every form distributed. Doing so would require new lines of communication between each local League and the LWVF office and would consume untold hours of volunteer resources that could be better spent on civic engagement—the reason that individuals become involved with LWVF.

59. LWVF would not be able to comply with the requisite reporting provisions. LWVF cannot afford for its already over-extended two-person staff to spend the time necessary to prepare and submit the requisite reports to the state. Such reporting would take a considerable amount of time and cost. It would, for instance, require that staff members contact each of the 29 local Leagues and collect and compile information about potentially large number of applications collected by the local league volunteers every month. The volunteers who run the local Leagues have already committed to being responsible for a substantial amount of LWVF-related work, including registering voters. Requiring unpaid volunteers to keep close track of each voter registration form they both distribute and collect would add appreciably to their work load.

60. LWVF employees also do not have the time nor the legal expertise to understand and make sure LWVF is in compliance with the constant, complicated, and byzantine reporting requirements required by the Law. LWVF cannot afford to hire attorneys to work for LWVF on an ongoing or even limited basis to ensure that we strictly comply with all filing and reporting rules for registration forms and agents. We have already spent considerable resources attending rulemaking hearings, discussing the Law, evaluating whether our voter registration work remains feasible under the Law, and responding to members' myriad concerns.

61. In short, the Law would force every volunteer to become an administrator and legal agent of LWVF. Many volunteers are unable to take on such a difficult burden and would find it extremely intimidating. Volunteers receive no pay to register voters, and they are typically unwilling to assume any financial or legal risk for their good deeds.

Form-Marking Requirement

62. In addition to imposing a financial risk to LWVF, the Law also imposes a severe threat of unfair and unjustified reputational risk. Any form containing LWVF's third-party voter registration organization number ("3PVRO number") that is received by elections officials more than 48 hours after completion—to the minute—could be considered a violation of the Law. This could occur if an individual took a "stamped" form from any of our tables and turned it in at a more leisurely pace. For example, an elderly volunteer could set up a registration table on a college campus. A group of students could come up and start filling out forms. Then one could say she forgot her ID and run off with the form to fill it out later—leaving the elderly volunteer helpless to stop her. If the student did not turn in the stamped form within 48 hours of filling it out, LWVF would be liable.

63. In the past, our volunteers have worked closely with, and relied heavily on, county Supervisors of Elections. One key to building that relationship is having LWVF volunteers go into Supervisors' offices and introduce themselves when they pick up the public forms. The Law discourages this method of obtaining forms, though, because it requires that any forms provided to citizen registration groups by county election officials be pre-stamped with the group's 3PVRO number. This means that each uncompleted form we obtain from county Supervisors of Elections becomes a walking liability for LWVF should it be inadvertently displaced or even simply distributed.

64. If we do not obtain forms that are pre-marked, the rules require us to mark our 3PVRO number on each voter registration form that we collect. Seeing us mark their forms with an identifying code could intimidate or dissuade people who strictly value their privacy, object to submitting to the State a record of their association with the LWVF, or are uncomfortable stating publicly that they used assistance to register to vote.

Moratorium

65. As a result of the new Law, LWVF has ordered a statewide cessation of voter registration until the Law is enjoined or limited in such a way as to substantially reduce the organizational and financial risk to the League, its members, and volunteers. LWVF has previously been forced to impose moratoria on voter registration due to similar laws in 2006 and 2008, but ended both moratoria when those laws were enjoined or interpreted and implemented in a way that allowed LWVF to resume voter registration work without fear of debilitating fines or prosecution.

66. LWVF imposed the present moratorium because it is concerned about our reputational and financial liability and that of the local Leagues. LWVF fears that it could be liable for up to \$1,000, even for accidental failure to submit every registration form within the Law's strict 48-hour deadline, which is very difficult to interpret and satisfy. Any fine would tarnish LWVF's previously spotless reputation for voter registration, which we value highly as an organization dedicated to the rule of law and respect for the election process. LWVF's reputation is extremely important, and we cannot risk having LWVF be seen as a law-breaking organization. Anything that would cast doubt on LWVF's integrity would severely damage LWVF and its ability to attract risk-averse volunteers, members, and donors.

67. In addition, LWVF's bare-bones staff and volunteer State Board do not have the time or resources to interpret all of the vague provisions of the Law, figure out how they apply to LWVF, and ensure that LWVF is complying with all of the provisions. LWVF submitted detailed commentary during the rulemaking process governing the regulations implementing the Law, but many provisions of the Law remain hopelessly vague and confusing.

68. For instance, LWVF cannot afford the risk that its volunteers, members, directors, and officers would have to personally pay fines under the Law for being unable to turn in voter

registration forms within 48 hours—to the minute—of the time they are completed. The Law appears to allow individual volunteers to be fined, even without evidence of any intent to do wrong or any actual problems with a voter's registration form. It is not realistic to expect our volunteers to risk fines and other penalties on a ridiculously tight, 48-hour timeframe, when a single day home sick might trigger liability.

69. Furthermore, Florida law makes any general violation of the election code a first degree misdemeanor where no other penalty is specified. Although the Law specifies that fines will be levied for some delivery-related violations, it does not specify the penalties for failing to perfectly comply with all of the *other* complicated provisions in the Law. I am fearful that this puts LWVF and its volunteers at risk of criminal penalties for unintentional failures to comply with all of the other onerous requirements. LWVF cannot in good conscience accept the risk that its volunteers, members, employees, directors, and officers may be subject to criminal misdemeanors for unspecified violations of the Law.

70. In general, it is entirely unclear to me what penalties LWVF may face in the event that it fails to perfectly comply with the Law's myriad requirements. But any action subject to a fine, injunction, or other remedy contemplated by the Law would certainly require LWVF to expend costs and other resources defending its reputation. These costs may include hiring additional attorneys, investigating any complaint, preparing witnesses, preparing for court, and wasting time defending LWVF in the court of public opinion. In fact, even in the case of a natural disaster delaying the delivery of completed registration forms, LWVF only has the option of presenting an "affirmative defense," presumably after being charged with violations of the Law. Any fine, investigation, or prosecution would reduce the time and money LWVF could spend engaging in protected speech to advance its mission.

71. The current moratorium is very disruptive to LWVF's work because the year before a presidential election is ordinarily an incredibly productive time for voter registration. Based on estimates from past years, if the law is not enjoined, LWVF will be prevented from collecting and submitting thousands of voter registration forms from Floridians in advance of the book-closing deadline prior to the 2012 general election.

72. The moratorium disproportionately impacts minority, low-income, and other communities where LWVF targets outreach efforts, and where individuals have registered through third-party voter registration organizations at very high rates. Census statistics show that Florida's African-American and Hispanic voters are more than twice as likely than other voters to be registered via voter registration drives like those organized by LWVF.

73. The moratorium also disrupts LWVF's broader mission to encourage civic engagement. Because voter registration is such an integral part of LWVF's activities, and because LWVF volunteers routinely register voters as part of their education, outreach, and advocacy efforts, LWVF's inability to register voters severely inhibits our ability to further our message of citizen participation in our democracy.

I declare under penalty of perjury under the laws of the state of Florida that the foregoing is true and correct to the best of my knowledge.

DATED this 14 day of December 2011.



Deirdre Macnab

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that a copy of the foregoing *Affidavit of Deirdre Macnab Submitted in Support of Plaintiffs' Motion for Preliminary Injunction* was served via HAND DELIVERY this 19th day of December, 2011 upon the following:

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107 West Gaines Street
Tallahassee, Florida 32399

Gisela Salas
Director of Florida Division of Elections
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COFFEY BURLINGTON

/s/ Kendall Coffey
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Exhibit C

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

LEAGUE OF WOMEN VOTERS OF
FLORIDA, FLORIDA PUBLIC INTEREST
RESEARCH GROUP EDUCATION FUND,
and ROCK THE VOTE,

Plaintiffs,

v.

KURT S. BROWNING, in his official capacity
as Secretary of State for the State of Florida,
PAMELA J. BONDI, in her official capacity as
Attorney General for the State of Florida, and
GISELA SALAS, in her official capacity as
Director of the Division of Elections within the
Department of State for the State of Florida,

Defendants.

Civil No. _____

**Affidavit of Ben Wilcox
Submitted in Support of
Plaintiffs' Motion for
Preliminary Injunction**

I, Ben Wilcox, hereby declare as follows:

1. I am a citizen of the United States and a resident of Leon County Florida.
2. I am a registered voter in Florida, where I have lived and voted since the age of 18. I am a member and supporter of the League of Women Voters of Florida ("LWVF"), and I have served as a Board Member of the Tallahassee League of Women Voters for the last 12 years. I was also formerly the Director of Florida Common Cause. I submit this affidavit in support of Plaintiffs' motion for a preliminary injunction to prevent enforcement of those provisions of the newly enacted 2011 Fla. Laws 40 § 40 (codified at Fla. Stat. § 97.0575) ("the Law") that impose onerous new registration, reporting, and submission deadlines on individuals and civic groups engaged in voter registration, and which are preventing LWVF from fully carrying out its mission of fostering civic participation.

3. I have served as the contract Governmental Consultant for LWVF for the last two sessions of the Florida legislature, where I was LWVF's primary legislative advocate and government relations representative. I was personally present and able to both witness and participate in the legislative process that led to the Florida Legislature's enactment of the Law.

4. The Florida House of Representatives bill that became the law—H.B. 1355—was, as initially introduced in the House, a short bill that was offered on behalf of Florida Secretary of State Kurt Browning to amend the powers of the office of the Secretary of State.

5. During consideration of the bill by the House Government Operations Subcommittee of the State Affairs Committee on April 1, 2011, the brief bill was changed to a 150-page bill by means of a strike-all amendment. Changes to the bill were distributed the night before the Subcommittee hearing to all parties, including the legislators. Based on my conversations with proponents of the bill and comments made during the legislative hearings on the bill, I believe that none of the legislators or staff understood the many provisions of the bill with any level of detail.

6. Members of the Subcommittee did not solicit input from LWVF or from any other citizen voter registration organization. Members did not ask any representatives of organizations engaged in voter registration to testify as to the need for the legislation or the impact it might have on groups and individuals working to help register Floridians to vote.

7. I was able to testify at an April 1st Subcommittee hearing, but only because I put in a card requesting to testify on the bill as a member of the public. At that hearing, I testified that the restrictions on citizen voter registration drives were unnecessary, would not prevent fraud, and would make it extremely burdensome for LWVF and similar organizations to assist others in

registering to vote. I was not asked a single question by any legislator, nor did they respond to my testimony in any way.

8. At no point during House consideration of H.B. 1355 did I hear any Representative or staff member put forward any facts or circumstances detailing why the provisions of the bill were necessary or would prevent fraud. The only statements made by supporters of H.B. 1355 to justify these new provisions were oblique references to ACORN and voter fraud generally. No proponent of the bill explained how provisions of the bill could prevent the type of voter registration misconduct allegedly engaged in by ACORN.

9. During consideration of H.B. 1355 by the full House, Florida legislators opposed to the bill asked a number of questions about the need for the third-party voter registration provisions, including the requirement that voter registration applications be turned in within 48 hours of being obtained. Again, proponents of the bill merely made generalized references to fraud and ACORN and did not address why any of the specific provisions of the bill were necessary.

10. S.B. 2086, as first introduced in the Senate, made largely technical changes to election procedure, and passed out of the Senate Sub-Committee on Ethics and Elections in that form. Senate consideration of a revised version of S.B. 2086, which was turned into the companion bill of H.B. 1355 also by a full text strike-all amendment, was extremely brief, and public discussion of the revised bill was very limited. After S.B. 2086 was amended to match H.B. 1355, including its extreme burdens on voter registration activity, I and Marilyn Wills, second Vice-President of the League of Women Voters of Florida, tried several times to make an appointment with Senator Miguel Diaz de la Portilla, chair of the Subcommittee on Ethics and Elections, but he did not respond to our requests for an appointment.

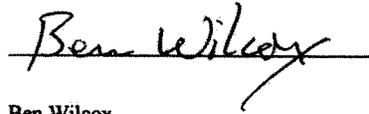
11. The Senate Budget Committee scheduled consideration of S.B. 2086 in its revised form for April 26, 2011, the Committee's last meeting of the legislative session. Despite the fact that 38 individuals and groups had put in cards requesting to testify regarding the bill, the Committee considered the bill at the very end of the Committee meeting, with only 30 minutes remaining in the meeting. This meant that only one individual was able to testify on the bill, and even his testimony was cut short. The other 37 groups and individuals, including me, were not allowed to testify.

12. Dismayed by the Senate's refusal to hear testimony from all speakers, the LWVF requested the public speaker cards submitted at Senate hearings on April 25 and 26 via a public records request. We were permitted to view the cards and from our review we learned that on Monday April 25, members of the public had submitted 39 total cards: 37 against the bill and two with a neutral stance offering to provide information. No one signed up to speak in support of the bill. On Tuesday, April 26 members of the public submitted 39 total cards: one speaker in support of S.B. 2086, one neutral speaker who sought to provide information and 37 requesting to speak against the bill—36 of whom were never heard by the Legislature.

13. At no point during Senate consideration of S.B. 2086 did any Senator or staff member express any position on why the specific restrictions on voter registration drives found in the bill were necessary or would prevent fraud. As in the House, the only justifications given for the need for the legislation were oblique references to ACORN and voter fraud generally. No proponent of the bill made any specific allegation of third-party voter registration misconduct by any organization in Florida under existing law, nor did any proponent of the bill explain why provisions of the bill would prevent the type of voter registration misconduct allegedly engaged in by ACORN.

I declare under penalty of perjury under the laws of the state of Florida that the foregoing is true and correct to the best of my knowledge.

DATED this 14 day of December 2011.

A handwritten signature in black ink that reads "Ben Wilcox". The signature is written in a cursive style and is positioned above a solid horizontal line.

Ben Wilcox

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that a copy of the foregoing *Affidavit of Ben Wilcox Submitted in Support of Plaintiffs' Motion for Preliminary Injunction* was served via HAND DELIVERY this 19th day of December, 2011 upon the following:

Kurt S. Browning
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COFFEY BURLINGTON

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Exhibit D

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

LEAGUE OF WOMEN VOTERS OF
FLORIDA, FLORIDA PUBLIC INTEREST
RESEARCH GROUP EDUCATION FUND,
and ROCK THE VOTE,

Plaintiffs,

v.

KURT S. BROWNING, in his official capacity
as Secretary of State for the State of Florida,
PAMELA J. BONDI, in her official capacity as
Attorney General for the State of Florida, and
GISELA SALAS, in her official capacity as
Director of the Division of Elections within the
Department of State for the State of Florida,

Defendants.

Civil No. _____

**Affidavit of Pamela Goodman
Submitted in Support of
Plaintiffs' Motion for
Preliminary Injunction**

I, Pamela Goodman, hereby declare as follows:

1. I am a registered voter and Florida resident. I currently serve as the First Vice President for the League of Women Voters of Florida ("LWVF"). I was also formerly the Director of Florida Common Cause. I submit this affidavit in support of Plaintiffs' motion for a preliminary injunction to prevent enforcement of the provisions of the newly enacted 2011 Fla. Laws 40 § 40 (codified at Fla. Stat. § 97.0575) ("the Law") that impose onerous new registration, reporting, and submission deadlines on individuals and civic groups engaged in voter registration, and which are preventing LWVF from fully carrying out its mission of fostering civic participation.
2. Prior to my current role as First Vice President of LWVF, I served as President of the League of Women Voters of Palm Beach County from 2005 to 2009. I also have served on the LWVF State Board of Directors since 2007, and I have served in the past on the national League

of Women Voters Nominating Committee and the National Membership Recruitment Committee. While serving as President of the Palm Beach County League, I was appointed by the Supervisor of Elections in Palm Beach County to head a review and audit of voting machines and processes for the 2006 and 2008 elections. I also spearheaded Project ROAR (short for "Reach Out And Register"), LWVF's successful statewide push to maximize voter registration efforts before the 2008 general election.

3. I have received numerous awards for my service, including the Susan B. Anthony Award for Outstanding Feminist 2008 from the National Organization for Women.

4. From 1985 to 1996, I worked at the Fortune 100 Company, The Limited/Express, serving as its CEO between 1993 and 1996. The Limited/Express is a 1.5 billion dollar business with over 850 stores, where I managed hundreds of employees and juggled the logistics of a fast-paced, complex company. From years of honing my business acumen as the lead executive at a large corporation, I have developed a strong sense of how to motivate and engage workers, and I apply this experience to managing and inspiring Floridians to begin and continue volunteering with LWVF.

5. I have extensive experience personally assisting new voters in registering and working with LWVF volunteers to register voters. The culture of LWVF volunteerism is one of public service and civic education. We get together to help other citizens register to vote, particularly those who would have a hard time navigating the voter registration processes without our assistance. This may be because of a disability, lack of transportation, or being intimidated by complex forms that are difficult for many to read and complete. We also work hard to register those who have never registered to vote, including students and newly-naturalized citizens.

6. In discussing the Law governing voter registration with LWVF members and volunteers

in Palm Beach County and across the state, I have found that they are afraid of being found guilty of violations under the Law due to innocent mistakes. Members are particularly confused about the penalties that they, the local leagues, or LWVF could face. LWVF members—including myself—cannot and will not risk being subject to high fines, undefined civil penalties, or criminal prosecution for an inability to comply with the Law’s burdensome and confusing provisions.

7. The newly-required “sworn statement” form (Form DS-DE 120) cites a list of serious felony penalties for “false registration.” We will need to ask every volunteer to sign one of these, which is an intimidating and off-putting way to ask individuals to volunteer their time to register voters. Based on my extensive experience recruiting volunteers, I think many volunteers would stop after a first read of the registration agent forms, which lists numerous felony penalties. Even the possibility of being charged with a crime for attempting to help people register to vote will scare away potential volunteers, particularly because volunteers are worried they could personally be prosecuted even for an accidental failure to comply with the law. In particular, the fact that the registration agent form says that false registration is a felony—without explaining what constitutes “false registration”—will harm our ability to recruit volunteers.

8. In my experience, volunteers and local Leagues are very conscientious and do everything they can to make sure forms are handled flawlessly. They are concerned about maintaining their spotless reputations for successful voter registration.

9. Older volunteers will be particularly worried about violating the Law. In my experience working with this population of volunteers, they are more likely to be intimidated by the administrative burdens of the rules, the registration agent forms, and the extremely short 48-hour return deadline. Thus, many will be discouraged from registering voters, particularly during

evening events or on weekends when postal offices and election offices are closed, shortening the available return time even further.

10. From the Division of Election's website, it is my understanding that completed forms can only be turned in by the LWVF, and not by local Leagues or individual volunteers—or else the individuals could be personally liable for fines. If this would require individuals or county Leagues to mail forms to the LWVF's state office before they could be submitted, my experience in the Palm Beach County League tells me this would be an impossible task. The local Leagues do not receive administrative support from the LWVF, and this requirement would place an enormous burden on our local organizations. Indeed, it is unclear how we would physically be able to comply with the 48-hour return time if we had to first transmit forms outside of our county. Palm Beach is a large county, and returning forms to our county Supervisor's office would be extremely burdensome in its own right. But if the Law also required us to send these forms elsewhere in the state, it would be both impossible and unwise. Florida is a huge state—Palm Beach is over 400 miles away from the state LWVF office in Tallahassee—and I have no idea how we would be able to ensure that forms reached Tallahassee in less than 48 hours, with enough time left over for the LWVF to then collect the forms and turn them in to election officials. It also seems like a very bad idea to require more movement and more handling of these critical documents, creating new opportunities for them to become lost, damaged, or delayed in the mail. At the Palm Beach County League, we have always hand-delivered registration forms, because we feel personally responsible for them. Requiring us to send forms hundreds of miles before turning them in—only to be moved again once they arrive—is at odds with our vigilant accountability over voters' completed registration forms. It would also require us to mail the forms, which we never do because it would require us to move the completed

forms out of our personal control. We simply cannot depend on a third party like the United States Postal System to ensure forms are submitted, because personally ensuring they are delivered to the right election official is critical for both the voter's sake and for the reputation of the LWVF.

11. One of the most meaningful voter registration events that I have participated in was an organized civics education and voter registration drive targeting high school seniors, which the Palm Beach County League held for several years. For this program, we reached out to high school history teachers to ask them to allow a volunteer to come into their classrooms for a full day to teach students about their right to vote—and then help them exercise that right by assisting them with registering to vote. I trained dedicated Palm Beach County League volunteers on how to deliver a short, entertaining civics script and then properly help to register student voters.

12. These specially-trained volunteers went into high schools starting at 7:00 a.m., and during each of seven periods of school classes, they taught a short civics lesson and provided eligible students with an opportunity to register to vote. Volunteers wheeled voter registration forms around the school on a small cart and collected completed forms from interested students. We dedicated an entire week to this program at each Palm Beach high school we targeted. Over the course of the week, the designated Voter Registration Chair, who is the person selected by a local League to supervise voter registration activity, would collect each day's completed forms, seal them in a labeled manila envelope, and set them aside in a secure location. At the week's end, she returned the whole batch of completed high school forms to the county elections office at the end of the school drive. Under the Law, this safe, efficient voter registration process is now banned, as most of those forms were submitted beyond the 48-hour period (and that was *without* sending them to the LWVF first).

13. I strongly believe that this student-focused program has been one of the most successful and meaningful programs in my time with the LWVF, in part because we helped make up for a lack of structured civic education in Florida's classrooms. Unfortunately, the Palm Beach County League cannot engage in this type of drive anymore, as holding such a drive under the Law would create a massive new level of bureaucracy that would either require volunteers to travel to hand in forms at least once every other day, or to constantly mail completed forms to the FLWV. This would not only create an administrative burden for our volunteers, it would require the constant movement of completed forms in a manner that reduces their security and safekeeping by a single, trained individual.

14. In the past, I have frequently made voter registration a constant part of my own personal life in addition to my volunteerism with LWVF. One of the most memorable and meaningful personal experiences I have had was to register my own daughter-in-law to vote in 2010. She worked hard to obtain U.S. citizenship, and in my capacity as a mother-in-law—and in the spirit of a LWVF member—I was delighted to immediately, and personally, offer her a chance to register to vote. Today I would not be able to do the same thing. Because my daughter-in-law would not qualify for the exception in the Law for helping immediate family members to register to vote, I would have to first register with the State and become an independent “third-party voter registration organization” before I could hand my daughter-in-law a voter registration form and offer to turn it in for her.

15. I constantly interact with my fellow Floridians at public events, charity functions, and business and government meetings. Historically, I have carried, in my purse, blank voter registration forms that I have obtained from county elections or DMV offices. When I discover someone has an interest in registering to vote and I offer them a form, I cannot know whether

they perceive me as offering assistance personally, as a representative of LWVF, or both. If the League registers under the Law, I am uncertain if, in these situations, my simple distribution of these forms would trigger LWVF's reporting requirements for tracking all registration forms provided to its agents.

16. Likewise, outside of formal LWVF registration events, I frequently interact with elderly Floridians who lack ready access to online applications or transportation to an elections office, and who may need to update a signature or address on their existing registration. This is extremely common, and I am now unable to spontaneously assist these citizens to register to vote or offer to turn in forms when I meet them, without first registering with the State.

17. The Law is directly at odds with the principles of civic engagement, and it now actually prevents me, in my personal capacity as an engaged citizen, from reaching out to help a friend or fellow citizen become involved in his or her government unless I first register with the State before doing so. I do not believe I should have to register myself, in my personal capacity, as a "third-party voter registration organization" before I can engage in political activities such as distributing and offering to collect voter registration forms. While attending community events, I can no longer spontaneously hand someone, who simply needs to register to vote or update their existing registration, a blank voter registration form and offer to submit the form for that person. If my daughter-in-law needs to update her voter registration, I will not be able to help her with that unless I pre-register with the State, provide extensive personal information, and obtain an agent of process.

18. Because of the Law, I am no longer willing to help others register to vote in Florida. I believe that the new registration, reporting, and 48-hour return provisions stigmatize and penalize positive American civic engagement. I will not put myself at risk of being fined or

subjected to civil or criminal enforcement actions for innocent mistakes, nor will I sign up for constant, monthly reporting requirements and be subjected to unreasonable and unworkable time constraints on my efforts to spontaneously assist members in my community. I have been helping Floridians to register to vote for over 12 years, since I first moved to Florida. This Law will result in fewer voters being registered, and far fewer volunteers willing to help them register to vote. I am one of them.

I declare under penalty of perjury under the laws of the state of Florida that the foregoing is true and correct to the best of my knowledge.

DATED this 13 day of December 2011.



Pamela Goodman

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that a copy of the foregoing *Affidavit of Pamela Goodman Submitted in Support of Plaintiffs' Motion for Preliminary Injunction* was served via HAND DELIVERY this 19th day of December, 2011 upon the following:

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Gisela Salas
Director of Florida Division of Elections
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COFFEY BURLINGTON

/s/ Kendall Coffey
Kendall Coffey
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Exhibit E

Case 4:11-cv-00628-RH-WCS Document 11 Filed 12/19/11 Page 1 of 25

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

LEAGUE OF WOMEN VOTERS OF
FLORIDA, FLORIDA PUBLIC INTEREST
RESEARCH GROUP EDUCATION FUND,
and ROCK THE VOTE,

Plaintiffs,

v.

KURT S. BROWNING, in his official capacity
as Secretary of State for the State of Florida,
PAMELA J. BONDI, in her official capacity as
Attorney General for the State of Florida, and
GISELA SALAS, in her official capacity as
Director of the Division of Elections within the
Department of State for the State of Florida,

Defendants.

Civil No. _____

**Affidavit of Heather Smith
Submitted in Support of
Plaintiffs' Motion for
Preliminary Injunction**

I, Heather Smith, hereby declare as follows:

1. I serve as President of Rock the Vote ("RTV"), a position that I have held for over four years. For more than eight years, I have specialized in nonprofit work encouraging young Americans to register to vote, including prior stints as the National Field Director for the New Voters Project, a project of the Student PIRGs and the Graduate School of Political Management at the George Washington University, with support from the Pew Charitable Trusts.
2. In my role as President of RTV, I have direct knowledge of the organization's structure, organization, and mission. I also work closely with our staff and volunteers running voter registration efforts in the states, and I am updated about our progress on a daily basis. Thus, I have direct and detailed knowledge of our voter registration plans and procedures both nationally and in Florida. I submit this affidavit in support of Plaintiffs' motion for a preliminary

injunction to prevent enforcement of provisions of Florida law, codified at Fla. Stat. § 97.0575, that restrict RTV and similar groups engaged in voter registration efforts (the “Law”).

Rock the Vote’s Mission and Structure

3. Rock the Vote is a nonprofit, nonpartisan 501(c)(3) organization dedicated to engaging young people in our nation’s democracy. In 2012, RTV hopes to be at the forefront of reinvigorating democracy and redefining citizenship for a generation, building relationships with and activating a growing and diverse base of young voters, and ensuring they stay involved while continuing to reach more young people as they turn 18 each year.

4. RTV’s fundamental mission is to engage and build political power for young people in our country by increasing voter registration rates and voter turnout among younger voters. Our principal activities include assisting young voters with registering to vote and getting young voters out to the polls. We also engage in widespread public education efforts, including public service announcements, voter information distribution led by our community street teams, and a highly trafficked website at www.rockthevote.com that offers extensive voting and election information and online opportunities to register to vote using the federal voter registration form.

5. RTV is a national nonprofit organization headquartered in Washington D.C. and founded in 1990. RTV began its first field campaign to encourage young Americans to register to vote in 1992. RTV does not have local or state-based affiliates or branches. Sometimes, but not always, RTV will obtain physical office space when we engage in dedicated voter registration drive activity in the states. In a typical election year, we engage in our online public education and voter registration work nationwide. We also supplement our work with dedicated, in-person voter registration drive activity in ten to twenty states and/or local jurisdictions.

6. In 2008, RTV dedicated over \$4.2 million to voter registration nationally and Florida was one of the top five states in which RTV directed its efforts.

7. When RTV engages in voter registration activity on the ground in select states, we hire and dedicate trained staff members to run that activity. In 2010, for example, RTV employed a single staff person at any given time in the state of Florida, but we had no physical office space there. RTV does not currently have any employees or office space in Florida. While we may hire staff in Florida to conduct registration activities prior to the 2012 election, we do not anticipate obtaining physical offices in the state during that time period.

8. RTV does not provide state-based staff members with office equipment such as printers, fax machines, or scanners. Instead, state-based staff purchase such services, as needed, at office supply and service centers.

9. RTV has approximately 1.5 million members in our national database, including approximately 82,000 members in Florida. RTV does not have a formal membership application process and does not collect dues. Anyone who registers to vote using the forms made available on our website, as well as anyone who signs up to get involved with Rock the Vote on our website (volunteer, take action, get information) or at events, is given the opportunity to opt in to our membership lists and receive regular communications, including updates about policy issues affecting young voters, information about upcoming elections, and “get out the vote” communications. These communications are almost exclusively by email or text message. We collect cell phone numbers—with individuals’ consent—and contact members by phone call or text message to remind them of upcoming elections. We do this to ensure that those we have helped register to vote in fact cast a vote on Election Day. We also offer young people the

opportunity to run their own voter registration drives and volunteer with RTV in their communities.

Rock the Vote's Voter Registration Activity and Online Forms

10. Voter registration is a central activity of RTV. It is integral to our mission of engaging young people in our nation's democracy. Our voter registration work started soon after RTV was founded in 1990. Our first campaign designed to increase turnout of youth voters in elections was in 1992.

11. Our data shows that we register more voters than any other nonpartisan voter registration organization. Since our founding, we have registered more than 5 million voters. Nationwide, we helped approximately 2 million people complete voter registration applications in 2008 and approximately 300,000 in 2010. Most people we register are between the ages of 18 and 29.

12. We help individuals register to vote both online and with volunteers on the ground using physical voter registration applications. Our online voter registration system offers applicants the National Mail Voter Registration Form, which is made publicly available by the Election Assistance Commission. We typically use the national mail-in form for in-person voter registration as well, although our staff members and volunteers may occasionally use the appropriate state form.

13. When applicants use the RTV online voter registration tool, they are asked to answer a series of questions used to collect all of the information needed to register to vote. After an applicant finishes answering the questions, our system fills that data into the National Mail Voter Registration Form and generates a .pdf document of the form with the necessary fields completed. Then, the applicant sees on the screen a big red button that says, "Print your registration form now. You won't be registered unless you print, sign and mail in your form!"

Applicants are told to print out and sign the pre-filled form, and given instructions on how to mail it in.

14. Online applicants are thus responsible for independently signing and mailing the form to the correct address. RTV is not responsible for mailing. RTV does not have access to the completed, signed forms, but RTV does have access to all the information the applicants provide during the series of questions asked by our system.

15. The system automatically and immediately emails all individuals who completed the online process of preparing a registration form a reminder to mail in their completed voter registration form. Another reminder is e-mailed five days later. RTV compares the voter registration rolls with its list of individuals who completed forms online and tries to follow up with those who have completed RTV's online process but do not show up on the voter rolls. We do this by running the list of applicants who have used our voter registration system through the third-party vendor Catalist, which analyzes the voter rolls in every state to identify whether our applicants appear on the rolls. If anyone who fills out a registration form through our website does not appear on the voter rolls within two weeks, we add that person to what we refer to as the "chase list," a list of applicants whom we then contact via phone to remind them to submit their applications.

Rock the Vote's In-Person Voter Registration Procedure

16. During the 2008 election cycle, over 400 individuals signed up to volunteer on the ground in Florida with RTV, in addition to RTV's one full-time staff member. In 2010, RTV had one full-time staff member and approximately 200 volunteers in Florida assisting with voter registration. We do not currently have any staff in Florida.

17. RTV provides a week-long training at its headquarters in Washington D.C. for all state-based staff who will coordinate in-person voter registration drive activity. This includes training on how to ensure that applicants properly fill out voter registration forms, how to properly submit completed forms to elections officials, and how to use RTV's data entry systems. We also give state-specific training to inform staff about particular voter registration requirements in the states in which they will be working. Before staff members can engage in voter registration activity on behalf of RTV, they must acknowledge and certify that they have received various documents, including an employee manual, documents prohibiting partisan activities, and a "do's and don'ts" document.

18. RTV's voter registration drives depend on volunteers, whom we recruit in a variety of ways, including, for example, by sending text messages to people who registered through RTV's website or inviting individuals in person to join us at tabling events. Everyone who registers to vote through RTV's website or at our tabling events is asked whether he or she would also like to volunteer to help others register; this is an opt-in box for anyone using our online registration tool.

19. It is not uncommon for RTV members and other volunteers to show up to volunteer to register voters without scheduling or prior notice. RTV will send out a high volume of e-mail or phone requests to volunteer to our member list, in the hope that a number of respondents will sign up to volunteer at a scheduled RTV event or set up their own event. Non-members often show up to volunteer, particularly if they are friends or family members of scheduled volunteers.

20. A staff member or an experienced and previously trained volunteer (a "lead volunteer") fully trains every volunteer to properly register voters. This training includes information on state registration laws and nonpartisan rules, and it emphasizes that volunteers must treat

registration forms “like gold” and must register everyone regardless of party affiliation or beliefs. Most RTV volunteers are college students or recent graduates between the ages of 18 and 24.

21. RTV’s voter registration events vary, but the majority of our in-person voter registration activity consists of “tabling,” which involves staff or volunteers setting up a table in a high-traffic area from which they can engage passersby and offer them opportunities to fill out and submit voter registration applications. The vast majority of these tabling events are held on college and university campuses or at concerts or festival events.

22. Each voter registration event is run by a staff person or an experienced lead volunteer, who supervises all other volunteers working at that event. Each volunteer is instructed on what to say when speaking to potential applicants. Generally, volunteers open with a question about whether or not the individual is registered to vote at his or her current address. Volunteers are instructed to walk applicants through the form, answer any questions, and help correct any errors. Volunteers are also encouraged to enthusiastically share with registrants the importance of voting and participating in our democracy, discussion topics that inevitably arise at registration events.

23. During the voter registration process, volunteers may hand out buttons and stickers expressing support for greater civic engagement by young voters. They may also hand out “palm cards” that discuss how to get involved in the political process and provide an election protection hotline phone number, or “pledge cards” which applicants can sign to pledge to vote. We physically mail these pledge cards back to the applicants before the election, reminding them of their own promise in hopes of boosting turnout among those who register to vote through RTV.

24. Where possible, RTV staff and volunteers collect applicants’ cell phone numbers and keep voters’ contact information in a secure national database that can be sorted by state. We

obtain this information on the pledge cards or on separate “sticky notes” that are attached to the applicant’s voter registration form. Our staff or volunteers then enter that contact information into RTV’s database system; however, we never enter other private data of the applicants, such as a driver’s license number or social security number. Prior to elections, RTV uses names and contact information of those who have requested additional information about elections from RTV to remind individuals who have registered to get out to the polls and to vote, and to re-register when they move.

25. While RTV volunteers will give people blank forms at tabling events if they ask for them, our voter registration experience demonstrates that individuals are far less likely to properly fill out and submit completed forms on their own than they are if they are assisted by our volunteers. Even among people who were interested enough in registration to visit RTV’s website, and who received multiple reminders from RTV, a significant percentage still are not properly added to registration rolls. In 2008 for example, only approximately 1.5 million of the 2.2 million individuals who visited RTV’s website and downloaded a voter registration form actually made it onto the voter rolls. This demonstrates that our in-person registration work and personal collection of forms is uniquely effective.

26. Accordingly, RTV volunteers are instructed to strongly encourage applicants to fill out the voter registration form in person and hand the completed form to RTV staff or volunteers. RTV believes that this greatly increases the number of individuals who are actually registered.

27. Despite our best efforts, applicants sometimes start to fill out their form in person, but then suddenly take off with a blank or partially completed form. This is especially true when we register voters at concerts or music festivals. While we successfully register lots of attendees before the band starts, once the music starts playing, individuals will frequently stop what they

are doing and leave with a form in hand. This also occurs on college campuses, when students hurry between classes, often without the necessary ID to complete the information required by the form.

28. After volunteers collect voter registration forms at tabling events, the lead volunteer or a staff member hand-delivers or mails the forms to the appropriate elections officials. Whenever possible, forms are dropped off in person to county Supervisors of Election. If RTV staff and lead volunteers lack the ability to drive to county offices, though, they place the completed forms in the U.S. mail. In addition, RTV does not always register voters in their resident counties. Forms for individuals who reside in a different county from where the registration event occurs are placed in the mail as soon as possible.

29. RTV employs several quality control measures during registration activities. Volunteers assisting with voter registration review the forms and make sure all forms are filled out correctly while the applicant is still present. After each form is completed, the forms are placed in an envelope and given to a lead volunteer or staff member for safekeeping. Only staff members or lead volunteers who have been fully vetted by RTV are designated to collect and submit completed voter registration forms. Where possible, RTV keeps records and copies of all voter registration forms completed at our drives.

30. Based on past registration activities in Florida, the entire process of obtaining a completed voter registration form and submitting the application to an election official ordinarily takes two to five days. It is rarely complete within 48 hours.

31. To my knowledge, in our almost twenty-year history, RTV has never been fined or otherwise cited in conjunction with violating any voting registration regulations in Florida or any other state. I am not aware of any allegations of fraud connected to our organization.

32. RTV successfully turned in every completed voter registration form given to any of our staff or volunteers in Florida during the 2008 election cycle by the registration deadline. In 2010, we never took longer than ten days to turn in completed registration forms that were collected by staff and volunteers engaged in registration activities in Florida.

33. In both 2008 and 2010, RTV registered with Florida as a third-party voter registration organization, under the prior law, and submitted quarterly reports of our voter registration activities to the Secretary of State. On or about May 26, 2011, RTV received a letter from the Florida Division of Elections informing us that within 90 days, we must begin complying with Florida's new set of voter registration regulations that were enacted with the passage of the Law. As required by the Law and its implementing regulations, and per the State's directive included in that letter, RTV began submitting monthly reports in 2011.

Rock the Vote's "Democracy Class"

34. An important component of RTV's voter registration and outreach efforts is our "Democracy Class," a collaborative civic education program between Rock the Vote and participating high school teachers. In 2010, when RTV conceived the Democracy Class, we chose a handful of states for our pilot program, and Florida was a natural fit because the state encouraged the pre-registration of 16 and 17 year-olds. We had a staff person on the ground in Florida to administer the Democracy Class in 2010, which was a rousing success. We rolled the program out nationally in 2011 based on its success in Florida and other states.

35. Democracy Class consists of a "toolkit" of materials that teachers can use to supplement their class instruction about civic engagement and the right to vote. It includes a video about the right of 18-year-olds to vote, lesson plans for staging a mock election in class, and a set of voter registration materials for the students.

36. Students participating in Democracy Class learn about the history of the franchise in our country, the countless sacrifices people made to earn and expand the right to vote, the 26th Amendment, and the importance of the right to vote today.

37. RTV will begin promoting each year's Democracy Class on March 23, which is the anniversary of the date on which Congress approved the 26th Amendment, granting 18-year-olds the right to vote, and sent it to the states for ratification. It was ratified 100 days later. RTV therefore urges teachers to complete the Democracy Class program within 100 days of March 23 in commemoration of the 26th Amendment.

38. RTV works with groups such as the National Education Association and the National Council for the Social Studies to promote and identify opportunities for Democracy Class. We also reach out to individual teachers and invite them to collaborate with RTV by offering Democracy Class in their classrooms.

39. Teachers who wish to run a Democracy Class contact RTV for materials. RTV sends these teachers lessons plans and comprehensive instructions, including a primer on proper voter registration and information about how to conduct a mock election. RTV staff then follows up by telephone to ensure teachers have received the materials and are aware of the proper way to implement the lesson plan. Teachers then sign a licensing agreement and a promise to be nonpartisan while engaging in any education or voter registration activity on behalf of Rock the Vote. Once a teacher signs that pledge, RTV mails him or her a full Democracy Class toolkit.

40. As part of the Democracy Class program, all eligible high school students are given the opportunity to register to vote. In most states this means all students who are citizens and are at least 18 years old. In states such as Florida, where 16- and 17-year-olds may pre-register to vote, those students are also given the opportunity to pre-register.

41. In order to facilitate voter registration, each Democracy Class toolkit includes 30 copies of the National Mail Voter Registration Form and an envelope pre-addressed to the state Division of Elections, pre-stamped with sufficient postage to mail in 30 completed registration forms.

42. Teachers collect voter registration applications and send them to the Supervisor of Elections using the pre-addressed, pre-stamped envelope. RTV asks, but does not require, teachers to make copies of voter registration applications and send them to RTV so RTV can keep track of the students that are registered and can remind them to vote. Not all teachers choose to send copies to RTV; some simply collect and mail the completed forms to election officials.

43. In many cases, teachers may make additional copies of the blank national forms we send them. For example, one teacher might copy a stack of application forms for another teacher who wishes to encourage her own students to register to vote. This frequently happens when teachers find out about other teachers in their school participating in Democracy Class, and want their own students to participate as well. Or, a teacher may use registration forms to register friends, family, or acquaintances. We encourage teachers to make as many copies of the publicly available national voter registration form as they need. We will also send additional pre-stamped envelopes if teachers need to mail more than 30 completed forms.

44. RTV also sends each teacher 30 "pledge cards," which students may fill out to "pledge to vote." If students fill the cards out, the teacher sends them back to RTV in a pre-addressed, postage paid envelope. Students are also asked to check a box letting us know if they submitted a completed voter registration form to their teacher, so that we can follow up to ensure those students are actually registered as voters and include them in our "get out the vote"

communications. RTV encourages students to fill out pledge cards by entering them in drawings to win concert tickets and other prizes.

45. Teachers frequently collect voter registration forms over a period of several days after Democracy Class to ensure that every interested student has an opportunity to register to vote.

46. In 2011, approximately 1,200 educators from across the nation participated in our Democracy Class, including 63 in Florida. In 2012, we expect the number to be significantly higher because of the presidential election. We expect around 5,000 educators will incorporate Democracy Class into their curriculum, including approximately 125 from Florida if the program is active.

47. In addition to its Democracy Class, RTV identifies a few schools in Florida for special emphasis in registering voters. RTV focuses on schools in which students are not likely to have many other opportunities to register to vote, or may be less likely to be exposed to information about how important the right to vote is, or why they should register to vote. These tend to be schools in districts that have disproportionately high numbers of low-income and minority students. At these schools, with the cooperation of teachers and administrators, RTV organizes school-wide events to educate students about the right to vote and encourage voter registration.

48. RTV has worked hand-in-hand with Florida Supervisors of Elections on its Democracy Class. It has been my experience that Supervisors of Elections strongly encourage, and are very excited to see, higher levels of voter registration and participation in democracy by young voters. Supervisors of Elections, however, do not have time to do extensive outreach and voter registration efforts in schools. RTV, in collaboration with teachers, has helped meet this need through its Democracy Class. Without Democracy Class and other RTV programs, we have

reason to believe voter registration rates among students and other young voters would be significantly lower.

49. Democracy Class is integral to RTV's mission because it combines education, outreach, and active engagement (through voter registration) of young people. It has been one of RTV's most successful and important programs, and it was particularly effective in Florida because Florida encourages 16- and 17-year old future voters to pre-register.

The Severe Burdens Florida's New Law Imposes on Rock the Vote

Burdens on RTV's In-Person Voter Registration Activity

50. Florida's new voter registration Law will make it extremely difficult to continue to help young people to register to vote in Florida. As described below, RTV lacks the time, resources, and personnel to comply with all of the Law's onerous requirements. In addition, there are some parts of the Law that are unclear. Unless the Law is enjoined or limited in such a way that substantially reduces the burdens and risks it places on RTV, there is no question that we will have to drastically cut back, or perhaps discontinue, our registration efforts in Florida. We have already suspended our Democracy Class program and our in-person voter registration work in the state of Florida since the Law's passage. We have had to turn down requests from individuals and teachers in Florida to collaborate on voter registration activity due to the Law's burdensome new requirements.

51. RTV is extremely concerned that the Law will make it exceedingly difficult to encourage student volunteerism with us. The Law now requires each "registration agent" to sign a sworn form detailing severe felony penalties that result from false registration. While we train our volunteers to ensure no one falls afoul of these laws, introducing a student to civic participation and volunteerism via a list of felony penalties, in turn signed under felony penalty of perjury, is

intimidating and scary for many students. The nature of the required form will lead to fewer students who are willing to participate in and volunteer in RTV's voter registration activity, particularly on a spontaneous basis.

52. As I understand the Law, RTV will be required to place an identifying number on each completed voter registration form. Right-wing organizations heavily scrutinize RTV, and potential voters could fear that they will be harassed for their association with us.

53. When, or if, we do resume on-the-ground registration efforts in Florida, RTV does not understand how the Law's tracking requirements would apply to registration forms made available by RTV online. RTV frequently refers volunteers, teachers, and others to our online voter registration system, and it is unclear if this activity falls under the Law's requirement that we track each form "provided to" our "registration agents." For example, we frequently provide the web address of our voter registration process to teachers involved in our Democracy Class. Under the Law, those teachers may have to register as "registration agents" of RTV because they use our materials to help students register to vote.

54. In addition, we provide Democracy Class teachers, and all of our volunteers, with blank copies or digital versions of the National Mail Voter Registration Form and encourage them to copy and print the forms as needed. It is totally unclear how we would account for and report those copied forms under the Law – it would be essentially impossible. This is of particular concern when the forms we distribute are blank, publicly available forms, and may be used by our volunteers or Democracy Class teachers *either* to help voters register on behalf of RTV *or* to simply distribute a public form to encourage others to vote without any intention of collecting those completed forms. Nonetheless, the Law requires us, for some reason I do not understand,

to track all of the blank forms we provide, even though an identical form can be downloaded from the website of the Election Assistance Commission.

55. RTV also lacks the practical ability to make sure every pre-marked form used at our in-person events is submitted in a timely fashion. As described above, applicants sometimes begin filling out a registration form at a table but then leave with the partially completed form. If this were to happen with a marked form that is then submitted past the 48 hour deadline, RTV would apparently be held strictly liable.

56. It is also unclear to me how the submission timing requirements in the Law work. The law requires that each form be submitted in person within 48 hours unless the elections office is "closed for the 48-hour period." I cannot tell from this instruction whether the closure of a government office for only part of that 48-hour period would impact the return deadline for completed forms. Similarly, while the regulations provide for a two-day return time based on a postmark if the forms are mailed to elections officials, it makes no mention of extending this postmark deadline in circumstances when the U.S. postal offices are closed within some period of the 48 hour window. Finally, the postmark provides the time of receipt for mailed-in forms only when the postmark is "clear." I have no way of knowing whether the post office will provide a clear postmark, and the Law's strict deadline does not permit us to mail completed forms with confidence that they will be received by election officials in advance of this deadline.

57. I understand that the Division of Elections' explanation of the Law's requirements includes a statement that all completed forms must first be turned in to RTV before they can go to election officials. If this is actually what the Law requires, it is extremely burdensome and likely impossible to comply with. RTV's main offices are located in Washington, D.C., and we do not have a formal office Florida. Our organizers would have to mail forms to Washington,

D.C., in order for us to then mail them to the state of Florida. This would absolutely not be possible within 48 hours. It also would require us to place these forms in the mail – twice – rather than use our standard in-person delivery to ensure that they directly reach elections officials.

58. RTV sometimes receives completed forms from students who know we are on campus but who completed their forms days before they submit them to us. RTV would never refuse to accept and help submit an applicant's completed form, but in situations like this one, the Law would present a serious problem for RTV. It appears from the statute and regulations that the Law's 48-hour delivery period starts running from the date and time that a registrant completes the form, even if RTV volunteers actually collect it later. The regulations permit RTV to "provide documentation" that a form was completed before the day that it was delivered to RTV, but this process appears to be available only for mailed-in forms. It is also unclear how we would be able to document such a delay. Therefore, it is unclear whether we could accept a previously completed form from an applicant and submit that form within 48 hours of receipt without subjecting RTV to a fine.

59. RTV already has every incentive to turn voter registration forms in as soon as possible, and it has always done so. We want our applicants to vote, and the earlier we can verify that they are on the voter rolls, the better. However, requiring each form to be turned in within 48 precise hours forces us to operate at the very margins of our ability, with zero wiggle room. Not only does this place undue stress and haste on our successful voter registration processes, but it places entirely unnecessary demands on our volunteers, particularly students. While all RTV volunteers who handle completed voter registration forms have been vetted and proven to act in good faith, they are still extremely busy students. I would hesitate to demand that they place

themselves or RTV at risk of fines or civil penalties if they cannot turn a form around in 48 hours. These students are actively engaged in the political process and willing to donate their limited time to help others register to vote. Hanging the threat of sanctions over their heads will not increase the security of these forms or reduce fraud. All it does is place stressful and punitive demands on volunteers acting in good faith.

60. In our experience, it usually takes staff members or lead volunteers two to five days to ensure that forms are submitted properly. At times, it may be physically impossible for them to collect the forms from other volunteers, check them for accuracy and completeness, and deliver them to a Supervisor of Elections or the post office within 48 hours. It would be extremely difficult to submit every form within 48 hours of it being completed at a tabling event. Many volunteers are students who do not have cars, and many college campuses, where our tabling events are held, are not close to county offices (and are certainly outside of walking distance of those offices). These difficulties are particularly acute on weekends, when we often do voter registration events at concerts, festivals and community events, when relevant offices are closed for some or all of the 48-hour return period and the return window is shortened. Thus, it is likely that because of the Law's 48-hour deadline, RTV will not be able to organize tabling events, especially before or during weekends.

61. Even if it were always possible to submit forms within 48 hours, RTV would likely have to forego asking staff and volunteers to collect data from applicants for follow-up communications, because they would be in such a rush to meet the submission deadline. This would make it impossible for RTV to follow up with applicants if there was any problem with their forms, remind them to vote, or otherwise communicate with them. Subsequent communication with people who fill out voter registration forms is a critical organizing tool and

is essential to our mission. Without it, we will not be able to effectively motivate the population that we serve to get out and vote.

62. In rare instances in the past, RTV has been unable to submit forms through no fault of RTV, our staff, or our volunteers. In 2010, in Ohio, 300 voter registration forms were stolen out of a staff member's car as he was parked on the way to the state board of elections. RTV contacted as many people as possible using previously scanned information and asked them to fill out forms again. In this type of situation, RTV uses stored contact information to ensure that each individual who submitted a completed registration form has another opportunity to register to vote. Without our internal data collection and retention, we would not have been able to follow up with impacted voters to ensure they ultimately got onto the voter rolls.

63. The Law's requirement that we identify all of our registration agents, including when they start and when they end their relationship with RTV would be impossible to satisfy under our model of volunteer driven events. RTV cannot determine who is a registration agent for the organization under the Law. Many volunteers show up without notifying RTV in advance. Volunteers may or may not see themselves as RTV members, and other than opting out of future RTV e-mails, there is no formal way for members to resign their membership. Volunteers may also help people register to vote on their own time in activities not affiliated with RTV. We do not require volunteers to provide us with an "end date" to their volunteer activity, and we believe that doing so would formalize and discourage the exact civic participation that RTV works to cultivate among the younger generation. The Law's new requirement that we update the state about those who "terminate" their status as our volunteer base is bewildering and impossible to satisfy.

Burdens on RTV's Democracy Class Program

64. Under the Law, it is my belief that teachers running Democracy Class would need to be identified as registration agents for RTV because they would be collecting and submitting voter registration applications on RTV's behalf.

65. Because teachers would be registration agents, prior to collecting voter registrations as part of Democracy Class, they would have to sign a statement threatening them with criminal prosecution. I believe teachers would be intimidated by this statement, and many would not sign it. Since the Law passed, there have been reports in the media about Florida teachers who have fallen afoul of the new Law, and who are being investigated or fined for returning voter registration forms later than 48 hours after collecting them from students. I am concerned that between the frightening registration agent form and the publicized investigations of teachers, principals and other administrators may not allow teachers to sign such forms because of concerns about liability and the school's reputation.

66. Even if teachers were willing to sign the forms, RTV cannot afford to expose itself to liability under the Law by listing teachers as registration agents. Under the Law, if a teacher collected voter registration forms during an RTV Democracy Class but did not submit them within 48 hours, RTV would be liable.

67. There are many good reasons why a teacher might not submit an application within 48 hours. First and foremost, teachers are in the classroom teaching students throughout the week, and I would hesitate to place immediate demands on their work or personal schedules. A teacher could teach a Democracy Class on a Friday and give students the weekend to fill out applications. Or a teacher could collect a round of voter registration applications during Democracy Class, but hold on to the completed applications so that students who were absent the day of Democracy Class could fill out the voter registration application on a subsequent day. If

for any reason the teacher mailed the envelope with the completed applications more than two days after the first student signed and dated an application, RTV would be liable for fines. RTV would have no way of tracking all of the voter registration applications that teachers collected from students, yet the applications would be stamped with RTV's third-party voter registration number ("3PVRO number").

68. Additionally, a student may choose to fill out the voter registration application but not return it to the teacher. If the student does not submit the completed application within 48 hours, RTV would apparently be liable under the Law, since the form would be stamped with RTV's 3PVRO number.

69. Because mailing completed forms only constitutes delivery for purposes of the Law's 48-hour deadline if the mailing envelope bears a "clear" postmark when it arrives at the Division of Elections, even a teacher who promptly and properly collects and mails every single completed application risks running afoul of the Law's strict provisions. Even if teachers were able to personally drop off packages of completed forms at the post office during business hours, neither they nor RTV would have any control over whether the postal service properly and clearly postmarked every envelope containing completed forms. Nevertheless, for each and every application that arrives at the Division of Elections more than 48 hours after it was completed and in an envelope that was not clearly postmarked, the Law would impose mandatory fines.

70. RTV would not be able to track all of the voter registration applications bearing its 3PVRO number. Especially in Democracy Class, we would feel compelled to pre-mark any forms used by teachers rather than place the burden on public servants trying to engage young voters. Each of these pre-stamped forms is a floating liability for RTV. For example, a teacher could make a copy of a stamped application to give to a colleague or friend or for additional

students. If that person completed the application but did not submit the application within 48 hours, RTV would be liable.

71. RTV would also be unable to comply with the Law's requirement that it report the number of blank voter registration forms it distributes in Democracy Class. Even if RTV sent out unmarked voter registration applications, teachers and others could make copies of these blank applications, and RTV would have no way of knowing how many applications were copied and distributed. While we do try to assess the number of forms we send out to teachers to track the efficacy of our work, our overarching goal is to get voter registration forms out to those who wish to fill them out. We are not in the business of telling teachers *not* to copy and distribute blank voter registration forms, as we want nothing to hinder the ultimate goal of increasing voter registration.

72. The Law will prevent RTV from incorporating voter registration into Democracy Class. Without the voter registration component, Democracy Class will be significantly less effective in advancing RTV's mission of getting young people involved in the political process.

73. RTV does not have the resources to run an entirely different model of Democracy Class in Florida than it does in the rest of the country in an attempt to somehow comply with the illogical and excessively stringent requirements of the Law. It would be practically impossible for RTV to adequately ensure that neither RTV nor teachers participating in the Democracy Class accidentally create liability for civil fines or criminal penalties.

Conclusion

74. Sadly, the Law has forced us to discontinue Democracy Class in Florida despite the fact that our successful pilot program in 2010 was based here. The Law now undermines Florida's policy of encouraging young people to register to vote by making it effectively impossible for

RTV and teachers to collaborate to help high school students register to vote. Florida is effectively banning RTV from continuing what has been a very successful mission.

75. The Law's provisions governing voter registration directly undermine RTV's ability to express and engage in our mission. RTV's registration events are a central aspect of our advocacy for encouraging and inculcating civic participation in all young citizens. But the Law's provisions requiring registration agents certify to criminal penalties will alienate young students just as they begin their volunteerism through RTV, stigmatizing volunteerism as an activity fraught with risk. Requiring RTV volunteers to be formal agents of RTV, and making them swear to acknowledge serious criminal penalties, are disincentives that will make civic participation with RTV an intimidating, formalistic, and complex process. Similarly, the Law's 48-hour turnaround period and the fines and penalties for failing to strictly satisfy this requirement place undue burdens on our staff and volunteers and will drive away those who would otherwise seek to join RTV in our mission of encouraging political participation.

76. Put simply, Florida's new Law makes voter registration in the state an activity that is simply too costly and too perilous for RTV to engage in. Under the Law's vague but ominous enforcement provisions, the Attorney General could bring an action against RTV for even the most mundane and innocent violation of the law's confusing and complex requirements. The financial and reputational harm RTV could suffer in the likely event that it accidentally failed to comply with one of the Law's incomprehensible provisions would severely impede RTV's ability to engage an entire generation of potential voters, both in Florida and across the nation.

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I declare under penalty of perjury under the laws of the state of Florida that the foregoing is true and correct to the best of my knowledge.

DATED this 12th day of December 2011.

A handwritten signature in cursive script, appearing to read "Heather Smith", written over a horizontal line.

Heather Smith

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that a copy of the foregoing *Affidavit of Heather Smith Submitted in Support of Plaintiffs' Motion for Preliminary Injunction* was served via HAND DELIVERY this 19th day of December, 2011 upon the following:

Kurt S. Browning
Secretary of State of Florida
500 S. Bronough Street
Tallahassee, Florida 32399

Pamela J. Bondi
Attorney General of Florida
107 West Gaines Street
Tallahassee, Florida 32399

Gisela Salas
Director of Florida Division of Elections
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COFFEY BURLINGTON

/s/ Kendall Coffey
Kendall Coffey
Florida Bar No. 259861
2699 South Bayshore Drive, Penthouse
Miami, Florida 33133-5408
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Exhibit F

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

LEAGUE OF WOMEN VOTERS OF
FLORIDA, FLORIDA PUBLIC INTEREST
RESEARCH GROUP EDUCATION FUND,
and ROCK THE VOTE,

Plaintiffs,

v.

KURT S. BROWNING, in his official capacity
as Secretary of State for the State of Florida,
PAMELA J. BONDI, in her official capacity as
Attorney General for the State of Florida, and
GISELA SALAS, in her official capacity as
Director of the Division of Elections within the
Department of State for the State of Florida,

Defendants.

Civil No. _____

**Affidavit of Brad Ashwell
Submitted in Support of
Plaintiffs' Motion for
Preliminary Injunction**

I, Brad Ashwell, hereby declare as follows:

1. I am the Advocate at the Florida Public Interest Research Group Education Fund ("FL PIRG"). I represent FL PIRG in public, including at legislative and administrative hearings, at public events, and in the media. I supervise and coordinate FL PIRG's voter registration activity in close coordination with the New Voters Project, which is run by the Student Public Interest Research Group ("Student PIRG"). I am in daily contact with staff and volunteers from both FL PIRG and Student PIRG. I have current and extensive knowledge of all aspects of FL PIRG's mission, activities, and voter registration work. I was also formerly the Senior Research Associate of Florida Common Cause. I submit this affidavit in support of Plaintiffs' motion for a preliminary injunction to prevent enforcement of the provisions of the newly enacted 2011 Fla. Laws 40 § 40 (codified at Fla. Stat. § 97.0575) ("the Law") that impose onerous new registration, reporting, and submission deadlines on individuals and civic groups engaged in voter

registration, and which are preventing FL PIRG from fully carrying out its mission of fostering civic participation.

2. FL PIRG, which was founded in 1987, is a network of researchers, organizers, advocates, and students across the state. FL PIRG is an affiliate of the U.S. Public Interest Research Group Education Fund ("U.S. PIRG"), a national network of researchers, advocates, organizers and students based in state capitals across the country, which opposes the influence of special interests in issues such as voting rights, political corruption, prescription drugs, and product safety, when these interests stand in the way of reform and progress.

3. Florida Public Interest Research Group Education Fund is a (501)(c)(3) organization. It works to provide an independent voice on behalf of the public interest when public debate is being dominated by special interests with narrow agendas that fail to benefit the greater good. The organization works to protect consumers and promote good government by investigating problems and crafting solutions, educating the public, and offering Floridians meaningful opportunities for civic participation.

4. FL PIRG also has a 501(c)(4) sister organization called the Florida Public Interest Research Group Citizen Lobby ("The Citizen Lobby"). The Citizen Lobby stands up for the public by advocating for the passage of new laws and other protections at the local, state and federal levels. It has won victories for Floridians on a wide range of issues, including the protection of voting rights, healthcare reform, and product safety. The Citizen Lobby is our membership organization, but members also receive updates about the activities of the broader FL PIRG network.

5. FL PIRG has a single office located at 310 N. Monroe St., Tallahassee, FL 32301. I am currently the only full time staff member of FL PIRG.

6. The Citizen Lobby has approximately 6,000 members statewide, along with an e-mail list of 10,455 people who are interested in keeping apprised of its work and the work of its sister organization, FL PIRG.

7. In a given week, there are usually one to ten people volunteering at the state office in Tallahassee. During specific activities and projects, there may be up to thirty people volunteering in the state office

and many more volunteers in the field engaged in direct advocacy, voter registration, or “get out the vote” efforts.

8. FL PIRG opted to register as a third-party voter registration organization under Florida’s prior law. In 2010, FL PIRG did not fail to transmit any voter registration forms to election officials by deadline. FL PIRG has never received a fine or warning from the state for inadequate handling of voter registration forms in all its years of its voter registration work.

9. FL PIRG has not registered with the state since the passage of the Law. But FL PIRG intends to re-launch our voter registration work in Florida in 2012 because it is too high of a priority for us to eliminate. As described below, however, the Law has already severely burdened our registration efforts, and will continue to do so. It has required a huge amount of resources and staff time to analyze and decipher, and still leaves many questions unanswered about how best to comply, if such compliance is even possible. Moving forward, our good faith efforts to comply with the Law will demand a greater amount of funding and other resources. The bottom line is that the Law will make voter registration substantially more difficult for FL PIRG, and will decrease the number of voters we are ultimately able to help register.

FL PIRG’S Voter Registration Activity

10. Voter registration is a key part of FL PIRG’s mission because it supports the organization’s core belief that in order for democracy to work, as many people as possible must be engaged in the process. Increasing participation in our democracy underscores every activity on which FL PIRG works, and civic engagement is crucial to ensuring that our members’ voices are heard and counted on every issue for which we advocate. An integral part of FL PIRG’s work is putting “boots on the ground” both to register new voters and to get out the vote by encouraging registered voters to go to the polls on Election Day. Because we believe that citizens should begin to exercise their voting rights early in their adult lives, student voter registration and mobilization are particularly important aspects of our registration and voting efforts.

11. FL PIRG's voter registration drives are part of a nationwide effort by PIRG affiliates to increase civic engagement. It is my understanding that nationally, U.S. PIRG had active voter registration programs in 24 states in 2008 and in 14 states in 2010. In addition to our on-the-ground voter registration drive work detailed below, FL PIRG has publicized the opportunity to register to vote online.
12. FL PIRG has run voter registration programs in Florida for over twenty years. FL PIRG ran a large voter registration project in 2004, and also run large voter registration drives in Florida in 2008 and 2010. FL PIRG registered approximately 16,000 Florida voters in 2004, 5,000 in 2008, and 2,000 in 2010.
13. In addition to being part of the U.S. PIRG federation, FL PIRG also works with Florida branches of the national Student PIRG network. Student PIRG branches focus on engaging students in the political process; in particular, the Student PIRG "New Voters Project" focuses on registering students to vote. We work in close collaboration with Student PIRG to plan and engage in campus-based voter registration drives, train volunteers on proper voter registration activity, and collect data about our voter registration work.
14. FL PIRG focuses a large percentage of its voter registration efforts on students and other young people. Most individuals registered by FL PIRG are between the ages of 18 and 22. FL PIRG's voter registration efforts have been particularly successful in engaging minority citizens. For example, in 2008, 42% of the citizens we registered self-identified as members of a racial or ethnic minority group.
15. Voter registration is funded as a separate activity within our organization to ensure dedicated and adequate funding for this core piece of FL PIRG's mission. Sustained voter registration presence depends on adequate funding levels. For example, in 2004, FL PIRG only had sufficient funding to support two campus organizers, who worked at different campuses throughout the state. In 2008, FL PIRG had sufficient funding to be able to put organizers on the ground in four universities across the state: the University of Florida, Florida State University, the University of Miami, and the University of South Florida. In 2010, FL PIRG was only able to place two organizers in the state, one at University of Florida and one based in Miami-Dade County.

16. FL PIRG's voter registration activity is primarily grant-based, and we are currently working to secure adequate funding for our aspirational 2012 registration efforts. We are very aware that, in order to successfully register voters in compliance with the Law, we will require significantly more funding than in past years. Regardless of how much funding is secured, ensuring compliance with the new Law's complex and confusing requirements will require us to scale back our registration efforts and spend proportionately less money, time, and resources on voter registration.

Registration Drive Organizing and Staffing

17. FL PIRG has developed a standardized program for engaging in voter registration drive activity, including model procedures and training for volunteers. The voter registration program is scalable, such that FL PIRG can run voter registration efforts for small as well as large target audiences.

18. Generally, there is one full-time FL PIRG staff member, known as a "campus organizer," at each campus voter registration drive. The rest of the participants are all unpaid volunteers under the training and supervision of the campus organizer. Campus organizers are not paid by the number of voter registrations they collect or distribute.

19. Campus organizers are usually recent college graduates who have been working with FL PIRG for one to two years. Most FL PIRG volunteers are students from the campus where FL PIRG's registration drives are held. In addition to general outreach efforts, FL PIRG runs an internship program and holds targeted recruitment drives to attract volunteers.

20. FL PIRG relies on its campus organizers to oversee and implement campus-based voter registration efforts. Campus organizers do register some voters, but they mostly supervise volunteers who, in turn, register the majority of voters at campus drives.

21. FL PIRG provides campus organizers with a job description to outline their responsibilities, and U.S. PIRG provides state-specific training for voter registration activities. U.S. PIRG's senior staff members train campus organizers at national training sessions in August and January. There is also ongoing in-state training throughout the year, run by Student PIRG's New Voters Project staff. After receiving their training, campus organizers are responsible for training volunteers. U.S. PIRG attorneys,

or, in some cases, attorneys paid by Student PIRG, write state-specific voter registration guidelines to help guide campus organizers and staff.

22. Before being allowed to assist anyone in registering to vote, campus organizers provide volunteers with clear ground rules, including an overview of applicable state law, as well as written materials that stress the rules. Volunteers are given a script and are taught to instruct registrants to fill out registration forms properly to ensure that individuals are registered successfully. Volunteers are instructed to obtain confirmation from a senior volunteer or campus organizer to make sure each voter registration form is properly completed by the applicant.

23. At voter registration events, FL PIRG typically sets up a table from which volunteers distribute and collect voter registration forms. Prospective volunteers can sign up at any time and—once trained in the registration procedures—they can help register voters.

24. During voter registration activities, FL PIRG volunteers hand out brochures describing FL PIRG internships and a “New Voters Project” pamphlet that provides information about the FL PIRG website, www.floridapirg.org/voting-democracy, shows where voters can find their nearest polling place, and explains what registered voters need to do to vote in their county. Volunteers are trained to encourage people registering with FL PIRG to become volunteers themselves. FL PIRG volunteers are also instructed to ask everyone who newly registers, or is already registered, to turn out to vote at the polls.

25. Voter registration events are geared toward attracting spontaneous applicants and new volunteers. For example, at one Florida State University event, volunteers dressed as super heroes to attract other volunteers. FL PIRG operates on the principle that any student or voter who is engaged in the political process enough to help others register to vote will, in turn, have a greater stake in the elections process and will therefore be more likely both to vote and to be civically engaged in all aspects of our democracy. Many volunteers join our voter registration activities on a whim, attracted by the concept. Other than training, we do not require them to enter into any formal relationship with us. We broadly encourage any level of volunteerism that we are able to attract, especially on campus. We really thrive by offering spontaneous opportunities for civic engagement.

26. Weekends are the most successful time to conduct voter registration events. FL PIRG often does door-to-door registration and “dorm storming” (door-to-door voter registration in campus buildings and dormitories) on Sundays, when students are least likely to be in class or engaged in other regularly scheduled activities.

Applications, Recording, and Collection Procedures for Registration Events

27. Prior to registering voters, FL PIRG Campus organizers typically obtain voter registration forms from the local Supervisor of Elections. FL PIRG prefers to use the Florida state voter registration forms because it is easier to obtain the physical forms; accordingly, use of the national form provided by the Election Assistance Commission is rare at our registration drives. Since I am based in Tallahassee, I frequently go to the Division of Elections or the local Supervisor of Elections’ office to obtain forms to hand out to our volunteers and staff.

28. Because of the decentralized nature and large scale of FL PIRG’s voter registration activity, FL PIRG requires a large amount of voter registration forms. For example, it is common for us to set a goal of 2,000 registered voters at a campus drive. FL PIRG requires approximately one-third more forms than the number of voters we seek to register, to ensure that campus organizers and volunteers do not run out. Many registrants will take a blank form or begin completing a form and then take it with them before completing it. This is common on campus, especially when students are on their way to class. Therefore, for a given campus, FL PIRG may need more than 2,600 applications.

29. Last election cycle, during a voter registration drive at Florida State University, the Leon County Supervisor of Elections’ office (which is usually a very effective office) ran out of forms and had to get more forms from the Florida Department of State. This was only possible because the Leon County Supervisor of Elections took extraordinary steps to get more forms and because the Florida Department of State is located nearby in Tallahassee.

30. Whether registering people door-to-door, in classrooms, or at campus events, at the end of any registration event, a campus organizer fills out a “batch form” that tracks the date of the event, the names

of campus organizers and volunteers working at the event, the number of people that were registered, and which volunteer registered each set of voters.

31. Where allowed by the school's administrators, the campus organizer makes copies of voter registration forms and mails copies to U.S. PIRG's office in Chicago to enter information into U.S. PIRG's national voter database. This is allowed on most campuses, but if a campus instructs a FL PIRG campus organizer not to make copies of voter registration forms, we do not do so. FL PIRG also attempts to electronically input data from the form whenever possible.

32. Where FL PIRG is not allowed to make copies, campus organizers keep data by copying batch forms listing the number and names of voters registered during a voter registration drive. This is used for "get out the vote" efforts if registrants give FL PIRG permission to contact them. Registrants who give permission will provide their phone number to FL PIRG's volunteers and will receive a day-of text message or phone call reminder to vote on Election Day. Based on a study done by the Analyst Institute, FL PIRG estimates that this increases voter participation among those whom FL PIRG registers to vote by 4.4%.

33. FL PIRG instructs campus organizers to try to submit completed voter registration forms as quickly as they can. But we recognize that in certain cases, such as an evening event or multi-day registration drives where forms are collected and consolidated before submission, more time is needed. Consolidating forms allows organizers to check them for completeness and accuracy prior to submitting them to the Supervisor of Elections and reduces the possibility that any forms will be misplaced or lost.

34. FL PIRG prefers that its campus organizers physically drop off voter registration forms at Supervisors of Elections' offices whenever possible, so that the organizer can confirm delivery by getting a receipt from the Supervisor of Elections listing how many voter registration forms were dropped off. If necessary, campus organizers may mail the forms. This may be necessary when a campus is not close to a Supervisor of Elections' office and the campus organizer does not have a car. A two-day return is our default goal; however, during crunch times or multiday drives in particular, we do not routinely turn in all forms within 48 hours of receipt. Following such a tight deadline would drain critical resources from our

organizers, as they would have to spend much more time in transit and on administrative responsibilities, rather than registering others to vote. Thus, it can take between two and four days after a form has been filled out and given to a FL PIRG volunteer for our organization to properly process it and submit it to a Supervisor of Elections.

35. If a campus organizer or senior volunteer is unable to go directly to the Supervisor of Elections' office after an event, completed forms are locked somewhere secure, such as a student government office, the office of the dean of students, or the FL PIRG office.

36. There are three stages at which FL PIRG checks voter registration forms for accuracy. First, the volunteer helping an individual register to vote checks the form to make sure it is complete. Second, the campus coordinator (or other supervising staff member) double-checks the application. Third, the campus organizer reviews all voter registration forms to make sure they are fully and properly completed. If FL PIRG notices a problem with a voter registration form, we will use the contact information collected from the applicant to inform him or her that the form has not been completely or properly filled out and to ask whether he or she would like to correct the application. In most cases, FL PIRG is able to get the form corrected, but this may take some additional time. In all cases, FL PIRG submits forms to a Supervisor of Elections. If there is a problem with a form that has not been corrected, FL PIRG flags it for the Supervisor of Elections.

37. In some cases, it takes more than two days for registrants to correct mistakes on their voter registration forms after filling out the form. If FL PIRG had to submit all forms within two days, it would not be able to submit as many correctly completed forms.

38. Although FL PIRG prefers to collect voter registration applications, it is very common for us to distribute forms without collecting them after they are completed. Frequently, individuals who express interest in registering to vote may not have the time, information, or inclination to complete a voter registration form either at a voter registration drive event or during door-to-door voter registration activity. In these situations, FL PIRG's volunteers and staff will always provide a blank voter registration form to the individual, encourage him or her to fill it out, explain that FL PIRG is happy to collect a form

if and when it is complete, and explain how the applicant can submit the voter registration form on his or her own. We do everything we can to make it as easy as possible for people to register to vote. We would never refuse to provide someone with a registration form.

39. FL PIRG frequently places stacks of voter registration forms near classroom doors, near the cafeteria cash register, on tables in student centers, and in other similar locations. Individuals may then submit their own forms or may return their completed forms to any FL PIRG staff member or volunteer for FL PIRG to submit.

40. Indeed, it is not always clear whether an individual will complete the form and turn it in to us, or submit it on his or her own. As noted, it is very common for someone to start filling out a form with FL PIRG at a campus drive table, intending to give the completed form to us, and then suddenly leave with it upon realizing he or she is late for a class or other obligation. In those types of circumstances, we would never demand that individuals hand us their partially completed applications; instead, we encourage them to complete the forms at their own convenience.

Chill on Registration Efforts

41. I have read the provisions of HB 1355. Many of the provisions are confusing, and I am not clear how they would apply to FL PIRG. The provisions are also very burdensome and would seriously compromise our ability to engage in voter registration activities.

42. In order to understand and comply with these confusing and complicated provisions, FL PIRG will be required to hire additional administrators and organizers, and take costly preparation measures in order to continue our voter registration activities.

The Law's 48-Hour Requirement

43. The Law's requirement that forms be submitted within 48 hours of collection will be extremely difficult to comply with in many circumstances. Also, I am confused about how this requirement applies when completed forms are collected after the close of usual business hours, and over weekends and holidays.

44. The Law states that when a Supervisor of Elections office is closed “for” the 48-hour return period, the form may be submitted on the next business day. However, it is unclear to me when exactly this grace period applies. It is not apparent whether the office must be closed for the entire 48-hour period; if so, the grace period would only be available in very limited circumstances. On the other hand, if the grace period does apply when the relevant office is closed for only some of the 48 hours, it is unclear whether this applies equally to office hours (for example, forms collected after 5 p.m.) or only to office closures for an entire day. If the latter, I do not understand exactly when such forms would be due—whether the due date would be a specific time, or any time before the next business day closed. For example, if a form is collected Friday afternoon and would be due Sunday afternoon, when an office is closed, I do not know if the form is eligible for the grace period, such that it is due the next business day—Monday—and if so, at what time.

45. The 48-hour turnaround time is particularly troubling as it relates to FL PIRG’s frequent voter registration work during the evening. Nighttime events are extremely effective on campus, after classes are over and when students have more time to complete voter registration applications. But under the law, conducting voter registration efforts after 5:00 p.m. becomes more complicated because of the 48-hour requirement. Because both post offices and Supervisor of Elections’ offices generally close at 5 p.m., they would thus be unavailable for submission of forms during the final hours of the 48-hour deadline. If no grace period goes into effect, and these forms must be submitted within 48-hours, this means that all registration forms collected after 5 p.m. are effectively required to be turned in even before 48 hours has elapsed.

46. According to its website, the Division of Elections is apparently forbidding registered groups from having their registration agents submit completed forms. It is unclear who, other than me, would be authorized to turn in forms on behalf of FL PIRG if our registration agents—campus coordinators and volunteers—are unable to do so. Thus it seems FL PIRG volunteers must first send all forms to FL PIRG, presumably for me, as the sole full-time employee of FL PIRG, to submit. Given our structure and limited resources, we could not possibly comply with the Law if this central submission of forms were

required. FL PIRG places volunteers throughout the state, and many of them are located hundreds of miles from my office in Tallahassee. It would be difficult to ensure those forms reached me within 48 hours, let alone in time for me to then take those forms to election officials. I do not have the capacity to be at the FL PIRG office at all times to receive forms from our staff and volunteers across the state, or to constantly deliver those forms when they arrive. Indeed, I travel a lot for my job, and am only in the Tallahassee office about 70% of the time. Furthermore, having our staff or volunteers mail those forms to the main FL PIRG office would increase the movement of completed voter registration forms in a manner that would create the unnecessary possibility that they could get lost or delayed in the mail. It would also dramatically increase the cost of submitting these forms, especially because—if there was any remote hope of getting these forms in on time—we would have to make expensive overnight shipments on a daily basis.

47. To avoid the risk of violating the difficult and confusing 48-hour requirement, campus organizers and volunteers will have to focus on getting forms copied and sent to the Supervisor of Elections' offices (or, if the rule requiring centralized submission applies, to FL PIRG in Tallahassee) almost constantly—in lieu of registering people to vote. This not only drains valuable resources from our voter registration work, but increases the constant traffic and movement of voter registration forms, which I believe reduces the security of these applications. The constant movement of forms places a special burden on student staff and volunteers, who frequently have no automobiles and are therefore unable to drive to a Supervisor of Elections' office or post office during business hours.

48. The 48-hour requirement will be especially difficult to comply with during particularly busy periods for voter registration. For example, on a large campus such as Florida State, it is common for FL PIRG to collect forms from 1,000 people in the days leading up to a voter registration deadline. During these busy times, for the security of the voter registration applications, FL PIRG's limited staff and volunteers may retain the voter registration forms collected at that event in one place for three to four days and then submit the entire lot at once. The new Law prohibits this and requires our staff and volunteers to take time away from direct voter registration activity to dedicate it to daily travel. Because

we are only comfortable permitting campus organizers or staff to handle completed forms on their own, this would require that the most experienced staff and volunteers be constantly pulled away from supervising voter registrations events in order to drive forms to a post office or Supervisor of Elections' office. This will lead directly to fewer registered voters, and to the unnecessary constant movement and separation of voter registration applications.

49. Although regulations implementing the new Law permit us to submit completed voter forms by mail, the date of mailing only counts as a delivery for purposes of the 48-hour deadline if the mailing envelope bears a clear postmark. Because our campus organizers and staff have no control over whether the postal service properly and clearly postmarks an envelope, I am concerned that even a timely mailing may result in liability for FL PIRG if a package of forms arrives more than 48 hours after the forms were completed.

Registration Agent Requirements

50. The sworn statements that each staff member, campus coordinator, or volunteer must sign, coupled with potential personal liability they must agree to assume, will have a chilling effect on voter registration drives.

51. As I understand HB 1355, FL PIRG will have to require every person assisting with voter registration to sign sworn statements threatening criminal prosecution for false registrations before they can engage in registration activities. From my experience working with students and other young people, I believe the intimidating registration agent form will significantly burden FL PIRG's ability to recruit volunteers. Some students will hesitate to join our volunteer efforts, particularly those drawn in spontaneously, if they must first sign a form listing multiple felony penalties. Moreover, certain school administrators will not want their students to participate in voter registration drives for fear of fines or reputational damage to the school.

52. It is unclear to me whether our volunteers could face personal liability for failing to turn in a form within 48 hours. I know they could be held personally liable for late submissions under the prior law's ten-day deadline, and the statute's language on fines is unchanged by HB 1355. I also know that a third-

party voter registration organization can be held liable for high fines even where a delay may be out of their control, because the Law does not require the Secretary of State to waive fines even when forms are delayed by a natural disaster or freak occurrence—like a car accident. Students cannot risk any amount of fines or any other potential liability, and will be unlikely to take that risk in order to help fellow students register to vote—particularly where such fines may be wholly outside of their control.

53. I also understand that FL PIRG will have to register every volunteer as a “registration agent,” and then subsequently report the “termination” of each volunteer. Requiring volunteers to become “registered agents” of FL PIRG runs contrary to FL PIRG’s tradition to welcome individuals spontaneously motivated to engage in the political process. We never insist that our volunteers inform us if they intend to continue to be involved in voter registration activities after a single event, as we do not wish to formalize or dissuade spontaneous democratic participation. As such, it will be both impractical—if not impossible—and contrary to FL PIRG’s mission to require each volunteer to specify the precise scope of their volunteerism with FL PIRG.

Form-Marking and Tracking Requirements

54. As I understand it, under HB 1355, any voter registration form marked with FL PIRG’s third-party voter registration organization identifier will need to be submitted within 48 hours of completion or FL PIRG will risk significant fines. This will require FL PIRG to constantly monitor and control every voter registration form containing its “3PVRO” identifying number in order to stop individuals who might choose to complete it later and submit it on their own. If an individual takes a pre-marked form, completes it on her own but fails to submit it within 48 hours, FL PIRG will be liable for the “late” submission, over which FL PIRG never had custody or control.

55. Because FL PIRG does not always know which individuals will complete a form and return it to us on the spot and which might keep the form for later submission, it is impractical for FL PIRG to work with two separate stacks of applications—i.e., one for people FL PIRG registers in person and one to give out as blank applications. Moreover, even if FL PIRG were to try doing so, it could no longer rely on obtaining forms from Supervisors’ offices. This is because, under the Law, forms must be pre-stamped

with a group's 3PVRO number before distribution by election officials. To the extent we want to protect the organization and have blank forms solely for distribution or copying, we will need to obtain these forms in another manner. But, of course, if a volunteer forgets to put our 3PVRO number on any blank forms that is ultimately completed and submitted by us, this too could result in liability.

56. The Law also requires every registered organization to report, each month, the number of forms provided to and collected by its registration agents. FL PIRG will thus have to keep track of all voter registration forms, including blank forms that we simply distribute and do not collect.

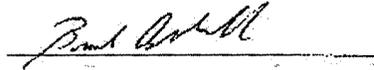
57. It is unclear whether this requirement applies to blank forms that are copied or printed by our staff or volunteers. FL PIRG's volunteers may print out or photocopy voter registration forms on their own, without FL PIRG's knowledge. Assuming that copies count as forms "provided to" our agents, it would be extremely difficult for FL PIRG to track all forms provided to its agents. FL PIRG depends on many volunteers making voter registration forms available at many different locations, and we will have no way of tracking every form that volunteers acquire. Moreover, we feel that we should not have to dedicate significant administrative resources to tracking the distribution of publicly-available forms.

58. Information on Florida voter registration forms is generally available to the public, and it is my understanding that voter registration forms stamped with FL PIRG's 3PVRO number will publicly associate each of our registered voters with us. FL PIRG believes that when voters realize that their registration forms will publicly identify that they registered with us, there will be a set of people that will not register at our events. In fact, this is one reason FL PIRG separates voter registration work from other advocacy work; FL PIRG wants to register as many people as possible regardless of their political beliefs or affiliation.

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I declare under penalty of perjury under the laws of the state of Florida that the foregoing is true and correct to the best of my knowledge.

DATED this 4 day of December 2011.

A handwritten signature in cursive script, appearing to read "Brad Ashwell", is written over a horizontal line.

Brad Ashwell

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that a copy of the foregoing *Affidavit of Brad Ashwell Submitted in Support of Plaintiffs' Motion for Preliminary Injunction* was served via HAND DELIVERY this 19th day of December, 2011 upon the following:

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Secretary of State of Florida
500 S. Bronough Street
Tallahassee, Florida 32399

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**United States Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Senator Richard J. Durbin, Chairman**

New State Voting Laws II: Protecting the Right to Vote in the Sunshine State
Friday, January 27, 2012
Tampa, Florida

Opening Statement

(As Prepared for Delivery)

This hearing of the United States Senate's Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights will come to order. Today's hearing is entitled, "New State Voting Laws II: Protecting the Right to Vote in the Sunshine State." The hearing will examine the impact of HB 1355, Florida's new voting law.

Expanding and Protecting Right to Vote

Four days from now, hundreds of thousands of people across the state of Florida will go to their local polling places to cast a ballot for the person they believe is best prepared to represent their political party in this year's presidential election. The Republican contest is wide open, but I am fairly confident that President Obama will win the Democratic primary.

This time-honored tradition of public debates, intense campaigns, and the orderly selection of party nominees is a hallmark of our democracy. Of course, the core element of that democracy is the constitutionally protected right of every citizen of legal age to cast a vote for the candidate of his or her choice.

But it is important that we recall that until the early 20th Century most American adults could not vote. And even after the franchise was legally expanded, a violent racist campaign prevented many African Americans from voting. Sadly, the Jim Crow laws of that era were a reality in Florida, and it was not until 1969 that

Florida became one of the last states to ratify the 19th Amendment, which expanded the right to vote to women.

Six Constitutional Amendments and numerous laws, regulations, and court decisions have helped make the promise of “one person, one vote” a reality for all segments of our society.

But we must be constantly vigilant against threats to these hard-fought victories. The Supreme Court’s *Citizens United* decision, which was issued two years ago this week, opened a flood of special interest cash into elections, resulting in the non-stop TV ads that Floridians are suffering through in the lead up to the primary. At the same time, over the course of the last year, the right to vote has come under attack nationwide.

New State Voting Laws

In more than 35 states, legislation has been introduced that threatens to roll back the progress our country has made over several generations expanding and protecting the right to vote.

More than a dozen states have already enacted laws that eliminate same-day registration, require voters to present restrictive forms of identification before voting, reduce the number of early voting days, and make it harder for first time voters to register.

These new voting laws appear to be part of a coordinated, well-funded effort to reduce turnout among specific groups of people, namely minority, young, low income, and rural voters.

In response to this disturbing trend, the Subcommittee on the Constitution, Civil Rights and Human Rights held the first Congressional hearing to examine these new state voting laws in September 2011.

At that hearing, we learned that these new state voting laws threaten to keep as many as 5 million Americans from voting in 2012.

As the testimony at today's hearing will demonstrate, many of those voters who may find their path to the ballot box blocked or filled with obstacles live right here in the state of Florida.

Sen. Bill Nelson asked the Subcommittee to hold this hearing because of his concern that the constitutionally protected right to vote is under attack in the State of Florida. Today's hearing is the first-ever field hearing of this Subcommittee.

I thank Sen. Nelson for his advocacy on this issue and I share his concern that Florida's new law, HB 1355, threatens to disenfranchise hundreds of thousands of Floridians.

Florida's Law: HB 1355

As we will hear from today's witnesses, HB 1355 makes a number of changes to Florida's voting laws, including:

- Cutting the number of early voting days almost in half, from 14 to 8.
- Eliminating early voting the Sunday before an election.
- Requiring third party organizations that register voters to register with the state and meet an array of onerous administrative requirements or face hefty fines of hundreds or even thousands of dollars.
- Requiring Florida residents who have moved within the state and are updating their addresses at their polling site to vote a provisional ballot. For the record, more than 40% of provisional ballots were not counted in the last election.

Governor Scott and Questions About the Law

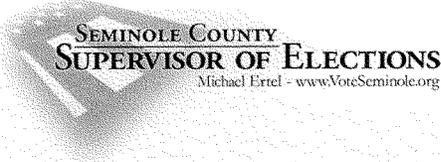
Governor Rick Scott signed HB 1355 into law last year. In September of last year, I sent a letter to Governor Scott asking whether he planned to take any action to ensure that HB 1355's new restrictions would not disenfranchise Floridians. To this day, the Governor has not responded to my letter.

I invited Governor Scott to testify at today's hearing, hoping he would explain his support for HB 1355 and answer the questions that have been raised about the law. I am disappointed that the Governor did not respond to my invitation.

Had Governor Scott or a designated representative of his administration accepted our invitation, they would have had an opportunity to answer the questions many are asking about the law, including:

- Was the provision of HB 1355 that eliminates early voting on the Sunday before an election specifically targeted to reduce the turnout of African American and Latino communities, who make up the overwhelming number of voters on the Sunday before an election?
- Did the Florida legislature anticipate that HB 1355's new administrative requirements for third party voter registration groups and the threat of hefty fines imposed would force groups like the League of Women Voters, Rock the Vote, the Boy Scouts and other respected, non-partisan voter registration groups to indefinitely suspend all voter registration drives in the state?
- Why does HB 1355 require Floridians who attempt to update their addresses on Election Day to cast provisional ballots, a large percentage of which are not counted in the final result?

I am very pleased that we are joined by a distinguished panel of witnesses who will provide insight on these and other questions concerning the new law.



SEMINOLE COUNTY
SUPERVISOR OF ELECTIONS
 Michael Ertel - www.VoteSeminole.org

United States Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights
Field Hearing on Election Laws, Tampa, Florida – January 27, 2012
Michael Ertel, Seminole County Supervisor of Elections
Ertel@VoteSeminole.org – 407.708.7712

Chairman Durbin, Senators,

First, I want to thank you for the opportunity to present to this committee. I think the timing of this committee meeting is of note, as well as the location. Every four years Florida is the epicenter of the elections world, and 2012 will be no different. Listed as the largest swing state in the country by most pundits, and with the Interstate-4 corridor – the several-county stretch of road from here in Hillsborough, through Polk, Osceola, Orange and Seminole Counties, ending in Volusia County – being the most fought-after battleground in the state, it is not hyperbole to state that these several counties will truly be the voters who decide the next leader of the free world.

Thus, our elections system will be scrutinized. I am not here to defend our system in Florida as perfect and without room for improvement. In fact if I were an editor with a red pen, there would be several improvements I'd like to see.

Scrutiny, debate and disagreement are fine, but I hope we can have this rational discussion about Florida's elections process without scare tactics, partisan machinations or the ghosts of years-old jokes dominating the discussion.

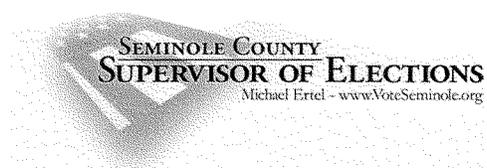
As Americans we deserve better than to allow fear-mongering profiteers to dominate rational discourse at the expense of our national pride in the most efficiently run, voter-focused elections process in the history of the world. Because if voters have been scared into thinking their ballot will not count, then no matter how fair the election, no matter how efficiently run the process, no matter the winner or loser, the voter will have doubt on the outcome.

Today I want to rationally discuss the three issues that seem at the heart of these hearings (Voter Registration, Early Voting and Eligibility Verification) and let you know how we have implemented the new laws in our county.

Voter Registration

You may have heard of the high school teachers in Florida who have been caught in a bind because the new laws failed to exempt high schools from the third party voter registration rules. In Seminole County, we found a legal and effective way to comply with the laws, yet keep our high school students registering to vote at their schools. I personally named every high school principal in Seminole County a "Deputy Supervisor of Elections" with the very limited authority of registering the students who attend the schools at which they are the principals to vote. Problem solved. I hope future legislation will exempt high schools principals from the third party voter registration rules and continue to allow statewide registration of our high school students.

1500 EAST AIRPORT BLVD., SANFORD, FL 32773 HOTLINE: 407.585.VOTE WWW.VOTESEMINOLE.ORG



SEMINOLE COUNTY
SUPERVISOR OF ELECTIONS
Michael Ertel - www.VoteSeminole.org

You have also heard that the League of Women Voters of Florida has suspended conducting voter registration drives. Even before this law was put into effect, I sent the president of the Florida League of Women Voters and other local groups an email begging them to not cancel their registration drives. To that end, I even offered the services of our office to attend any and every registration drive they wanted to conduct. We would stand side-by-side with them and collect the registration forms directly from the voter at their registration drive. The citizen who wished to be registered to vote would have their forms directly in the hands of the office responsible for processing their registration. Not ten days later. Not 48 hours later. Immediately. We offered instant service to alleviate their fears, build voter confidence and most importantly, keep the League of Women Voters and other groups registering people to vote. The Florida League never responded. I have submitted a copy of those emails from May, 2011 for the record.

Early Voting

Florida is one of the most active states in the nation relating to early voting. Did you know that according to the National Conference of State Legislatures data, Florida is one of only twelve states that even offer statewide early voting on the weekends? And yes, we have been one of the few counties in Florida that have offered it for years.

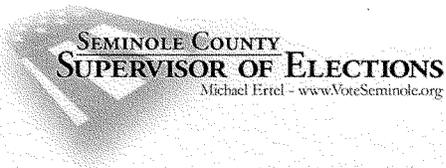
Speaking of Sundays. Some have stated they believe the new laws will negatively affect blacks, Hispanics, and hard-working single mothers because they all love Sunday early voting. While we don't have real statistics on the voting habits of hard-working single mothers, I pulled the real data for the black and Hispanic community from the only statewide election conducted under the new law – the current election. Based on my data from this very election, Sunday is actually the *least* likely day that a black voter will cast their ballot, and the *second least* likely day that a Hispanic voter will cast their ballot. Of all the black voters who have cast an early voting ballot in the first five days of this election, only seven percent did so on Sunday. Of the Hispanic voters who cast an early voting ballot in the first five days of this election, only 16.95 percent did so on Sunday.

Eligibility Verification

Earlier testimony alluded to students and others who wait until Election Day to tell us where they live. To be very clear: failure to update your address with the elections office until the last minute does not invalidate your right to vote, but it does mean your information will be verified before your ballot is counted. And contrary to what you may have been told, voters who cast a provisional ballot are not required to come into the elections office to prove their eligibility to cast a ballot. We can, and do, verify nearly every provisional ballot without the voter having to come into our office. If you are qualified to cast a ballot in that precinct, that day, your vote will count. Those who are telling you otherwise are trying to scare you into thinking Florida law relating to eligibility verification puts the onus on the voter. It clearly does not. In Florida your provisional ballot is presumed eligible unless the facts dictate otherwise.

As I've said before, I'm not naïve enough to believe that stating the facts will cause those who profit – either personally, professionally or politically – from election chaos to amputate fear-mongering from their body of rhetoric.

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SEMINOLE COUNTY
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Personal appeal to voters:

So to Florida's voters watching this today I simply ask: please don't be misled into believing your local elections officials don't want you to vote. Next time someone tries to scare you into not voting or believing your vote will not count, I hope you will do your own research by contacting your local elections office for the facts. Florida elections administrators want you to register to vote, learn about the candidates and issues, and cast a ballot that reflects your choices. Don't let anyone scare you into thinking otherwise.

If I have time, please allow me to close with a short anecdote.

A few months into my first term as Supervisor, we conducted an election for one of our cities. On the ballot was one race (mayor), with two candidates. A sailor who lived in the city had a standing request for an absentee ballot, and it was our job to get him the ballot. Yet, it turns out that at the time of the election, he was on a submarine. Sending an absentee ballot to a submarine is quite difficult, since the post office doesn't have its own delivery subs. But the sailor had a standing request, so we were going to get him his single ballot, for one race, two choices. We tried contacting his unit's voting assistance officer to see if we could fax the ballot, but he told us we couldn't. We had to get the sailor his ballot. We then tried to email the ballot, but the sailor couldn't get email attachments on the sub. We had to get the sailor the ballot! I then called navy headquarters in Washington D.C. and again called the unit's voting assistance officer. In the middle of this big election, I was spending a great deal of my time trying to get this sailor whom I'd never met his ballot. I would stay up for hours late at night in the office trying to figure out a way to ensure this sailor had the opportunity to vote.

Finally, we were able to get the unit's leaders to allow us to fax the ballot at a very specified time. I convened a special public meeting of our canvassing board late at night our time to send the faxed ballot at the precise time the unit said we could fax it. We all stood over the fax machine with sweaty palms and smiling faces, as the fax went through! We did it! After hours of work, brainstorming and communication, we got the sailor his ballot!

He didn't vote.

A few weeks later, when he got to a phone line, he called me in absolute amazement at the amount of effort we put in to get him his ballot. But, he said, he didn't vote because he didn't know the candidates or their positions on the issues. He wasn't going to vote simply because he had the opportunity, he knew he had the responsibility to cast an informed vote.

That, I believe, is the moral of this entire set of hearings. As elections administrators, we have the obligation to ensure opportunity. As voters, we have the obligation to ensure that we take this most precious gift from our Constitution and use it responsibly.

Thank you.

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APPENDIX No. 1

It is my opinion, the origination and thus the intent of our effort to reform Florida's election laws in 1977 differed significantly from the origination and intent of the passage of HB 1355 in 2011.

First, the impetus of our election reform originated in the Secretary of State's Office through the Division of Elections. Our intent was to improve and update our election laws after more than a decade without any major reforms.

This is complete contrast to the HB 1355, which according to newspaper reports, neither the Secretary of State nor his Division of Elections initially requested or initiated. The 2011 changes to the election law apparently originated exclusively from the Republican Legislature and its leadership in both chambers.

Furthermore, it has been widely reported in the press that a single, highly partisan body, the American Legislative Exchange Council (ALEC), a highly conservative and partisan group, supplied the impetus to similar electoral changes not just in Florida, but in at least twelve other states.

In 1977, our efforts of election reform sought not only comments by Florida legislators from both parties, but most importantly from local supervisors of election who under the Florida Constitution are directly responsible for the administration of the election laws in their local communities and counties. Each of Florida's 67 counties has its own Supervisor of Election, 66 who are directly elected and one of which is select by their county manager.

As local Supervisor of Elections, each of them represent the elected official most intimately aware of the administration and enforcement of Florida election laws within their own counties. Their responsibilities include the smooth and efficient administration of the election laws as well as reporting any problems or incidences of fraud or abuse in the electoral process. They view themselves as nonpartisan administrators and not partisan policy officials. It is through their statewide body, The Florida Association of Supervisors of Elections or FSASE that local Supervisor of Elections experiences and recommendations from a local elections are gathered and then transmitted to the Florida Legislature.

It is to these constitutionally elected and appointed local officials and their association, that the Secretary of State and his Director of the Division of Elections, as well as Florida Legislatures, must, or should I rephrase, they should seek direction and advice when election laws are to be amended either to improve their administration or to combat fraud.

APPENDIX No. 1

Unfortunately, in 2011, the Florida Legislature introduced specific major changes to the election laws apparently without prior input from the Supervisors of Elections or their Association, the Florida State Association of Supervisors of Elections (FSASE).

In other words, neither the Supervisors of Elections nor their Association requested or initiated HB 1355 any of the controversial provisions to the election laws this Committee is reviewing. In fact, some supervisors have stated that neither the Supervisors of Elections nor their Association supported these most controversial provisions.

This lack of support by the Supervisors of Elections or their Association of the most obnoxious provisions was based in part in appropriate deference to the political process in which "policy" properly rests with the legislative branch of government. Because of their positions, most want to avoid policy issues and debates. However, what limited official response in writing from their association exists was negative and their recommendations were primarily ignored.

Based on an official transmission by FSASE to the Florida Legislature of April 25, 2011, they commented that certain new recommendations and procedures, would "interfere and disrupt voting and election administration of the general elections"; would cause significant "delays at the polls"; "could result in significant crowding and confusion at early voting sites and on Election day"; disrupt the smooth administration of "the General Election in the state"; and most importantly as related to one specific proposal the Association commented, "there are no reports of widespread abuse or double voting" to justify the proposed change.

While these official FSASE comments were directed at a different bill (CS/CS/CS/SB 2086), this bill was a companion bill to the house version, HB 1355 that passed, and the provisions of the bill commented on were similar if not identical to HB 1355.

I would also like to comment at this point that my experience with the Supervisors of Elections as Secretary of State, and in my conversations with them since, that the overwhelming majority, both Republican and Democrat backgrounds, have been not only bipartisan and fair in the administration of elections within their counties, but they also have been the leaders in expanding voter registration and voter participation in their respective counties.

The Florida Legislature does not have written transcripts of the committee hearings on HB 1355. Therefore, Brennan Center transcribed all of the oral tapes of all of the committee hearings. The Brennan Center represented to me that there were no reports at these hearings of verifiable electoral fraud or abuse sufficient to justify the imposition by the Florida Legislature of the controversial provisions about which this Committee is concerned.

APPENDIX No. 1

As contrasted to our Legislative Reform in 1977, where we actively sought and received input from legislators of both parties, and actively sought and received input from Supervisors of Elections and groups involved in registration and elections, both Democratic, Republican and Independent, **the 2011 election bill was totally partisan in its origination and its passage**, where recommendations from the Democratic minority as well as respected voter registration groups, such as the League of Women Voters, were ignored.

The vast majority of all citizens and their elected officials want to see expansion of the electoral process to all qualified citizens, they want to see efficient and smoothly administered elections, they want to protect the integrity of the ballot, and they want to prevent fraud.

If indeed this had been the purpose of HB 1355, the bill would have received bipartisan support by representatives and senators in both chambers, the bipartisan support of all volunteer and other groups involved in the electoral process, as well as widespread support in the press and media.

This did not occur. In fact, the exact opposite occurred. Practically every major newspaper in the state criticized the bill, and every bi-partisan and non-partisan groups opposed the legislation. Additionally, at the legislative hearings, members of the minority party and other involved groups predicted that the new election procedures would suppress voluntary voter registration efforts throughout the state. Specifically they warned that the bill would severely impact the registration of new minority voters, that it would adversely affect full participation in the electoral process of minority voters, that students' voice through the elections would be adversely impacted, that many others who needed assistance as the poor would be adversely impacted, and that these reforms would adversely impact the smooth administration of the elections. Instead of making the elections more efficient and saving the taxpayers money, HB 1355 would complicate the administration of elections making them more inefficient and cost the taxpayers of Florida more money.

As contrasted with our election reform, in which we received strong bipartisan support from both chambers (I believe our reform passed both chambers with overwhelming if not unanimous support), the present legislation, HB 1355 passed on a highly partisan vote not only through most committees but also through both chambers.

APPENDIX No. 2

The elimination of early voting on the Sunday before the Tuesday election terminates what is referred to as "Souls to the Polls", which involves transporting voters primarily in Black and Hispanic communities to the polls to cast their ballots.

In Florida's 2008 election, approximately 33.2 percent of voters that Sunday were African-American – double the percent of African-Americans voting early that year. The statistics of Hispanic voters that Sunday are comparable.

The Palm Beach Post stated that "[more] than half of the black voters [in the 2008 election] voted before Election Day and many of them went on [the] final Sunday.

The Florida Legislature knew the importance of early voting and the Sunday before the Tuesday election to minority citizens.

The Florida Legislature passed this legislation reducing early voting days over the objection of the Florida State Association of Supervisor of Elections, and in disregard to their warning that 15 early voting days were imperative to a smooth General Election of the State.

The comments of FSASE regarding the shortening of early voting days from 14 to 8 days, are as follows.

"While this may be workable with respect to primary elections, not having a 15 day time frame for the General Election could result in crowding and confusion at early voting sites and on election Day at the precincts. Maintaining 15 days for the General Election is imperative to a smooth General Election in the state."

The reduction of early voting days and the elimination of the Sunday before the Tuesday election as an early voting day for the General Election was passed by the Florida Legislature and signed into law by the Governor. I believe it is a direct, intentional effort to reduce minority voting in our primaries, and as such an attack on minority voting that is a disgrace to the Legislature and the Governor as well as to the people of this state whom they allegedly represent.

APPENDIX No. 3

New voting restrictions recall days of Jim Crow

Posted: December 11, 2011 - 12:04am | Updated: December 11, 2011 - 3:12am

Bruce A. Smathers was a member of the Florida state Senate before his election as secretary of state of Florida, during which service he reformed state election law. He may be contacted at sec.state78@gmail.com

A critical tenet of our American democracy is every citizen's right to vote. It's a right in which we take great pride, though it took more than a century of struggles before all citizens could cast a ballot.

Today, the progress from this struggle is being blatantly eroded in Florida and other states.

This Jim Crow suppression of voter registration and minority voting comes in the form of legislation passed earlier this year by our state lawmakers and signed into the books by Gov. Rick Scott.

The justifications for reducing early voting days and subjecting volunteer voter registration drives to harsh penalties are reminiscent of the arguments for the Jim Crow-like laws of long ago: "Protect the integrity of the ballot" ... "fight fraud" ... "make the vote meaningful" ... "save money."

The tools of yore — poll taxes, literacy tests, white (only) primaries — yielded the same results that this new legislation will: suppression of disadvantaged and minority citizens' opportunity, ability and right to vote in Florida. How?

First, the law reduces the "early voting" period from 14 days to eight, adversely affecting citizens who need more time and assistance to get to the polls or vote.

These include our handicapped, our wounded veterans, our elderly and many African-American and Hispanic citizens.

Second, it cancels early voting on the Sunday before Tuesday's election. That terminates "Souls to the Polls" transporting voters in primarily black communities to polls that Sunday.

In Florida's 2008 election, approximately 33.2 percent of voters that Sunday were African-American — double the percent of African-Americans voting early that year. The statistics on Hispanic voters that Sunday are comparable.

Third, the Florida Legislature with this new law complicated registration procedures, increased labor and expense for Supervisors of Election, and made minor technical violations subject to large fines.

The law compresses the time for a volunteer to turn in new voter applications from 10 days to just 48 hours — or, the volunteer suffers punitive civil fines and penalties up to \$1000!

Recently two Florida teachers, attempting to engage their high school students in civic matters, including pre-registering them to vote, ran afoul of this provision.

APPENDIX No. 3

Census figures reveal that Hispanic and African-American voters are twice as likely as white voters to register through volunteer organizations.

The Legislature is aware of this disparity, thus deliberately intended to suppress volunteer voter registration. They used this a century ago, and it worked, so they're returning to such Jim Crow tactics. They have throttled voter registration efforts of Florida's League of Women Voters, teachers, students and others.

The 2008 and 2010 elections in Florida produced no false voter registration or evidence of fraud to justify such changes. The Association of Supervisors of Elections, all locally elected county officials responsible for voter registration did not request this new law. They did not support these provisions.

Many of my Republican friends were shocked at the passage of this law. They can't comprehend why the Legislature enacted a law that will suppress the ability of churches, volunteer and charitable groups to help disadvantaged minority and aged citizens exercise their Constitutional right to register and vote.

The League of Women Voters, which has conducted bipartisan voter registration drives for 72 years, has terminated its voter registration efforts in Florida because of this law.

The president of the League characterized the proposed law last spring as "a return to Jim Crow-style tactics to suppress voter registration and participation."

As former secretary of state and chief elections officer of Florida, I agree.

These Jim Crow tactics speak for themselves.

Bruce A. Smathers was a member of the Florida state Senate before his election as secretary of state of Florida, during which service he reformed state election law. He may be contacted at sec.state78@gmail.com

 APPENDIX No. 4

Why would anyone want to suppress voluntary voter registration? It is the epitome of citizen involvement in the electoral process of which all Americans from whatever party or allegiance can be justly proud. It is the essence of what we need to do to improve participation of all our citizens and thus our Democratic process.

Furthermore, voting registration rates in America are lower than practically every developed democracy in the world, even though our democracy is older than any other democracy in the world. We should be encouraging rather than suppressing voter registration!

Why suppress voluntary voter registration efforts? The answer is easy.

Census figures reveal that Hispanic and African-American voters are twice as likely as white voters to register through volunteer organizations. In Florida, Hispanic, and in this instance I would emphasize the growing number of new Puerto Ricans citizens in central Florida, and African-Americans statewide are perceived to vote more heavily Democratic than Republican.

The Florida Legislature and the Governor were aware that minority voters disproportionately relying on volunteer voter registration. I believe that they deliberately and intentionally enacted this legislation which patently suppresses volunteer voter registration efforts. Am I exaggerating ?

The League of Women Voters after 72 years of bipartisan efforts in Florida to increase voter registration and thus voter participation has been forced to cease their activities in Florida.

La Raza which focuses on Hispanic voter registration has also ceased their activities in Florida.

These organizations along with the NAACP and the Rock the Vote, a student oriented voter registration organization, have filed a law suit under the Voter Registration contesting these discriminatory laws and actions.

This section is consistent with other provisions of this law, such as the reduction of early voting days, to suppress voter registration suppression ultimately suppresses voter participation of minorities as well as students and other groups that may lean Democratic.

The legislation mandates the reduction of time to return voter registration forms from 10 days to 48 hours and imposes bureaucratic hurdles to the obtaining of registration forms and even obtaining volunteers to participate in these registration drives. Voter registration forms are required to have the hour and exact minute a registrant completes the registration form. Punitive civil fines for all third party registration organizations, whether they be individuals or multi-county totaling up to \$1,000 exist for even inadvertent violations. These threats of punitive civil fines coupled with possible criminal felony violations reflect the Florida

APPENDIX No. 4

Legislature's efforts to suppress volunteer registration groups such as the League of Women voters.

While speciously alleging that this is to insure the efficient and orderly return of voting registration applications to protect the registrant, I am unaware of any reports of credible evidence that there was a problem in this area, much less of any problems on a numerical basis that would offset the obvious reduction of voter registration efforts.

As reported in my remarks, neither the Brennan Center nor the Florida State Association of Supervisor of Elections have reported widespread voter registration fraud to justify this provision.

The insult to this state and our democracy is they have already been successful.

My statement indicates the potential for tens of thousands of unregistered qualified voters who could be registered by volunteer voter registration drives such as the League of Women voters and La Raza will not be registered.

Since the new law dealing with Third-party voter registration became effective last year, for over seven months *traditional* volunteer voter registration drives have come to a practical standstill.

Even if the Federal courts rule this law illegal, or the Florida Legislature amends the law to permit the activities of volunteer voter registration groups to resume as they have in the past, irretrievable damage will have already occurred during the possibly up to 12 months time during which Tallahassee has suppressed voter registration under these new provisions.

In registration efforts, time is critical the Florida Legislature and Governor are succeeding in reducing the opportunity for volunteer voter registration drives, even if the law is repealed.

It is to the shame of the Florida Legislature and the Governor, that tens of thousands of qualified citizens will not be registered and thereby not participate by voting in our state and Federal elections.

In contrast to the disgraceful conduct in Tallahassee, at a county, and municipal and community level the great majority of Floridians have welcomed greater voter registration efforts and many have participated in these efforts. I specifically want to include as leaders in the effort to expand voter registration the local Supervisors of Elections of both parties; both the local Democrats and Republicans as well as groups such as the League of Women Voters, La Raza, Rock the Vote and myriads of other groups who believe America's democracy works best with an educated, informed and registered electorate.

APPENDIX No. 5

Please insert DS – DE 120 , "THIRD-PARTY VOTER REGISTRATION ORANGIZATION REGISTRATION
AGENT'S SWORN STATEMENT - available on the Florida, Secretary of State, Division of Elections website
under Third Party Registration

APPENDIX No. 5A

Permit me to comment in detail on **DS-DE 120, the Sworn Oath**, legislatively mandated to be signed by every voter registration agent/volunteer, stating they will obey the registration laws. It outlines a multitude of criminal violations which include third degree felony penalties.

As an attorney, a former Assistant State Attorney and as former Secretary of State and Chief Elections Officer this Sworn Statement is intimidating to me.

When my son was in high school, he participated in voter registration drives Under this new law, I would be hesitant to involve him in voter registration.

I doubt that most college educated adults, including the press members who are covering this hearing could understand the complexities of this new law, or be eager to risks the civil fines and third degree felonies the state is so manifestly threatening you with, much less for you to encourage any teenage children to participate in a voter registration drive.

If this is language unintelligible or intimidating to you, can you imagine what a young person or adult with just a high school education from an economically deprived neighborhood, who might even speak Spanish as a first language, might feel about swearing that they know and will obey all state laws and rules regarding voter registration, and then become involved in voter registration in their neighborhoods and risk up to thousand dollar fines (which would economically ruin themselves or their families) or subject themselves to a third degree felony (which would ruin their lives).

The Florida Legislature does not want to get Florida volunteers involved in voter registration. However, unfortunately, such is the state of Law in Florida today.

Specifically, the Sworn Oath creates many problems.

In the Sworn Statement, the volunteer first swears that they will obey all state law and rules regarding the registration of voters. While this is seemingly appropriate, in order to swear that you will "obey" all state laws and rules regarding the registration of voters, you have to know what are "all the state law and rules" are before you can swear to obey them.

Unfortunately, after intimidating any voter registration volunteer with lists of third degree felonies –

The Florida Legislature did not mandate an Third-party Voter Registration Manuel which explains all of the laws and rules for voter registration to insure that a voter registration agent/volunteer understands these voter registration laws and rules so they can effectively and safely register voters and avoid violating Florida laws and criminal statutes.

APPENDIX No. 5A

So, the State of Florida's tells the citizen volunteer, if you want to register voters, you had better bring an attorney with you, (if you can afford it). WHY?

Because the *next* sentence in the Sworn Statement is "

"I understand the penalties for false registration may include a term of imprisonment of up to five years and a fine of up to \$5,000 ..."

To further let a volunteer know the legal dangers they face if they want to register voters and improve our democracy... the *next* sentence states .

"Subsequent convictions may result in greater penalties"

Does this mean if the volunteer innocently turns in twenty false registrations, and is convicted, they may be considered subsequent convictions? Of course not. Attorneys know that this is not the law ... but what does this gratuitous comment mean to the average citizen who is not an attorney ... And why did they insert extra-warning for a citizen who just wants to volunteer to help his or her community?

To explain what they are talking about, the very *next* sentence reads...

"False registration offenses include, but are not limited to, offenses constituting a felony of the third degree," [that's highly informative] ... **"such as false swearing or submission of false voter registration, and giving anything of value that is redeemable in cash to any person in consideration of that person becoming a registered voter or altering a voter registration application of another person."**

First of all, this information regarding FS 104.012, was not mandated by the Florida Legislature and **DS-DE 120** mentions only part of the felony violations enumerated by this section. What's further amazing is that in spite of a legislative mandate to list the criminal penalties for "false registration", the legislature did not mandate listing the civil fines for turning in a registration form late which could total up to \$1,000, the most likely violations. May I say for the 99% of us, potential fines up to \$1,000 are important to know.

Unfortunately, if a single voter registration volunteer/agent/organization, reads and signs this form provided by the state, they may believe they have an understanding of the Florida election law violations, but they really do not, because oath makes no mention of the most likely violations under Florida's new law. And as mentioned before, the Legislature, while mandating this sworn statement, failed to mandate and Voter Registration Manual to tell the volunteer how to avoid these criminal penalties.

 APPENDIX No. 5A

As an average volunteer, I still have no idea what "false registration" or "submission of false voter registration information" really means..

The way this Sworn Statement is written, a volunteer would believe that any false voter information on the registration form, even if they do not know the information given to them by the person they are trying to register is false, would constitute a crime. Thus, if a volunteer innocently submits that false information, they would be subject to up five years in prison!

And under this scenario created by the Sworn Statement, if any volunteer innocently submits 20 voter registration forms which are "false" according to the Sworn Statement, he or she might be subject to twenty felony violations each with up to 5 years, or possibly totaling 100 years or life imprisonment !!!!!!!.

Would any citizen in this court room or in Florida in their right mind submit a voter registration form, much less multitude of forms in Florida?

What is just as disturbing as the complexity of the laws and rules which might trigger civil fines and felony crimes, it the fact that Florida's document that every voter registration volunteer is required by law to sign, inaccurately and egregiously misstates what are the criminal laws dealing with Florida elections!

How can any volunteer, regardless of their education, be expected to know the election laws and rules of the State of Florida when apparently the State of Florida Does Not Even Know their own Election Laws?

First this state issued document states.

"I understand the penalties for false registration may include a term of imprisonment up to 5 years and a fine up to \$5,000, pursuant to sections 775.082, 775.083 and 775.084, Florida Statutes."

What the sworn statement does NOT say is that for false registration to be a felony, there must be criminal intent. An unintentional or accidental false registration is not a felony.

Furthermore, false registration actually does not relate to the voter registration agent or volunteer, but as a crime relates only to the elector who is registering to vote and who makes the false registration. Thus the statement mixes, without explanation to the reader, actions by registration applicant and the voter registration agent/ volunteer.

 APPENDIX No. 5A

Moreover, as it relates to a voter registration agent, under Florida Statutes Section 104.011, to commit a crime that would subject a person to a third degree felony, the individual submitting false voter registration information must do so "willfully", which for non-lawyers means with knowledge that it contains false information.

Thus, criminal intent is also necessary to create a felony under FS 104.11.

This critical element of criminal intent to submit false information, is not mentioned in this state published Sworn Statement, which just reads "submitting false voter registration (willfully, unwillingly or innocently) constitutes a felony.

Likewise as to F.S. 104.012(4), "altering a voter registration application of another person" is not a felony if it is done with "the other persons knowledge and consent". The Sworn Statement does not include this critical phrase, thus stating that "altering a voter registration application of another person (with or without their knowledge and consent) is a third degree felony.

By not including the explicit critical provisions of Florida criminal statutes (F.S. 104.012(4) in this formal oath, the State of Florida misstates Florida Law and creates a multitude of scenarios where a non-attorney volunteer might feel they would innocently violate criminal statute by actually lawful action under Florida laws.

Again, how can a Florida citizen who wants to be a good citizen and help their state by engaging in volunteer voter registration expect to know the elections laws of the State of Florida, when the State of Florida egregiously misstates Florida law in this mandated sworn statement the volunteer must sign?

Let me create possible scenarios that would face any voter registration volunteer under the law.

Remember a voter registration volunteer is now required to place the hour and minute on the voter registration form, which notation becomes an official integral part of the registration form under Florida law, an essential element to trigger fines up to \$1,000 for violations,

An individual volunteer operating by themselves places the exact time on the registration form as required by law on a Friday morning, and before returning to the Supervisor of Election on Sunday morning, suddenly discovers that their watch was five minutes slow! What does the volunteer do to avoid committing a third degree felony and risk going to prison?

APPENDIX No. 5A

If the volunteer changes the signed registration form to correct the mistake, are they, willfully "altering a voter registration application of another person, without[their] knowledge and consent" as the criminal code (see F.S. 104.012 (4)) reads? ... OR, if they turn in the registration form with the incorrect time ... are they willfully "submitting false voter registration information" (see F.S. 104.011(2)). Whatever they might do in those two alternatives, whether they *intentionally* correct the time or they *intentionally* submit the registration form without the correct time, one can interpret the statutes that they have technically, but willfully violated a felony law possibly subjecting them up to five years in prison.

The easiest alternative is for the volunteer to telephone the registrant and inform the registrant of the error and obtain their consent, but the registration form does not contain the registrant's telephone number.

The only recourse is to retrace their steps to personally visit the applicant and have them initial or provide other evidence they have knowledge and consent to the modification. But, it is Sunday morning and does the volunteer know where the registrant goes to church, or if he or she is even at home?

What happens if the volunteer has gathered twenty voter registration forms and each form has the same five minute error? What can they do, but retrace their steps and obtain written verification of the change from each registrant to avoid the possibility of third degree felonies? And guess what? Now they are subject to absolute fines of \$250 for each late registration form, because they *willfully* turned in these registration forms late to avoid possible felony violations as they tried to correct what was initially an innocent mistake.

Unfortunately, in this complex mountain of bureaucratic technicalities of the new third party voter registration laws and rules, there are many hypothetical scenarios that would place the average citizen volunteering to register voters in danger of punitive fines and criminal penalties

Another catch-22 the State has now created, is that the State of Florida requires a voter registration agent to sign this Sworn Statement swearing that "the facts stated in it are true" before they can begin to register new voters.

But, the sworn statement they are signing is not true because it misstates Florida criminal law. If the volunteer signs the Sworn Statement as required by law, knowing that the Statement misstates the criminal laws of Florida, the volunteer under the same criminal Florida laws, as stated directly in the Sworn Statement "**commits perjury by a false written declaration**", another felony of the third degree.

APPENDIX No. 5A

The Florida Legislature, and the Department of State, under this mandated form, have inadvertently and accidentally risked making potential felons of the thousands of volunteer men, women, and students who volunteer to register voters by requiring them to sign this inaccurate Sworn Statement before they even begin to gather voter registration forms.

No wonder a Supervisor of Elections who read this Sworn Statement told me they would never sign this document. **What rational citizen, student, parent, school teacher or other adult volunteer, regardless of education level or social economic background, would dare to engage in voluntary voter registration efforts!**

And what about law enforcement?

Not only are Supervisor of Elections required to report those who violate, technically or otherwise, the provisions involving civil fine violations to the Secretary of State, but, they also are required to turn over potential criminal violations of the criminal code to the State Attorney.

Florida Statutes, 104.11 makes it a misdemeanor criminal penalty against any sheriff, deputy sheriff or other local officer for "refusing to perform his or her duties relating to elections."

Thus, through a section that is intended to require local law enforcement officers to enforce what up to now have been progressive elections laws, this provision now works to force local law enforcement to enforce this state mandated reversal of registration and voting opportunities.

This blatant change to the registration laws acts to suppress traditional volunteer voter registration groups and activities. These in turn suppress minority and other groups registration. It thus voting fits neatly into a comprehensive plan to accomplish these goals similar to other provisions of HB 1355 .

What is happening? The answer is simple. **The Florida Legislature was more interested in intimidating and discouraging potential voter registration volunteers and groups, rather than preventing violations of the voter registration laws over the specious argument that the State had to protecting the registrant.**

If there are allegations of problems protecting registrants registration form, this Committee should demand verification and documentation.

I believe the lack of this documentation, established by the transcripts of the legislative committee hearings, will amply show that the alleged need, when contrasted with the adverse impact on tens of thousands of unregistered voters will amply display the inaccuracy, falsehood and hypocrisy of the proponents of this change.

APPENDIX No. 6

So whom do the changes in Florida adversely affect and why are these changes bad?

One primary group affected adversely are college students who tend to vote Democratic.

In university towns and cities, where a large portion of the students may have come from other areas of Florida, the problem could be significant. Students who first come to college may suddenly become interested in civic affairs or excited by an issue or a professor, and decide to vote on election day. This is something we as a society ought to celebrate and encourage ... our young people becoming excited about civic affairs and wanting to become participant citizens in our democratic processes.

Apparently, the Florida Legislature and the Governor do not agree.

The other group primarily affected adversely are transients like renters and others in metropolitan areas who may change their residence to a new county within that metro district or to a new metropolitan area altogether in search for work or other reasons.

I have been informed that statistics show that minorities, particularly **Hispanics and African Americans, move more than twice as often whites every five years.** Thus, these minorities will be twice as likely as whites to be adversely affected by this law.

The law states because a qualified voter has moved to a new county and show up at a precinct in their new county on election day with driver's license or other identification showing residence in their old county, unlike before, they now cannot vote like other citizens, they must vote through provisional paper ballots.

Why is voting by a paper provisional ballot such a burden or unfair?

First, making this person fill out a paper provisional ballot, takes more administrative commitment and time by precinct workers who has to assign an individual to assist this voter ... and then after the voter has finished voting by paper ballot, they have to place their ballot in an envelope, seal and then sign the envelope, and then return it to the precinct workers. After this the paper provisional ballots must be collected and sent to a central area where their signature is once again validated for the alleged voter, then the ballots are open, reviewed for errors, then tabulated and counted by a the county canvassing board. However, before the Supervisors are allowed to count the vote, they must first contact the Supervisor from the county the voter came from, who then has to comb his or her voting records to determine whether the voter had previously voted in that county.

All of these new procedures, creates an unnecessary burden on the administration of our election laws, directly proportional to the amount of provisional ballots that must go through this cumbersome time consuming procedure.

APPENDIX No. 6

Needless to say, going through this process not only slows the balloting at the local precinct where the paper ballot is cast, but also the collection, transportation, distribution, verification, opening, re-verification, tabulating and counting by hand is immeasurably more labor intensive, costly and time consuming than when voting by automated machine at the precinct, also substantially delaying the results of the election until all the provisional ballots have been verified and counted.

More importantly, some Supervisors of Elections have stated that there is a significantly greater likelihood of a paper provisional ballot being discarded or not counted, than a comparable machine cast ballot, for a variety of possible reasons.

One obvious reason is when the signature is being verified, and the ballot being determined be valid, the voter is unavailable to answer in questions and correct any technical problems that can be corrected.

For example, if the voter has changed their name, or even changed the way they sign their name, they can resolve any confusion or misunderstanding right at the precinct polling place. However, if the signature appearing on the envelope containing the provisional ballot does not exactly match the signature maintained by the county or the state, the provisional ballot is immediately discarded and not counted.

This and other measures can cause paper provisional ballots to be counted at substantially lower rates than machine ballots cast at the voting precinct.

When the Florida Association of Supervisor of Elections states that there could be tens of thousands of such ballots, particularly in large metropolitan districts or counties with large colleges or universities, besides the increase in administrative burden and costs, there is a substantial risk of a sizeable number of ballots being discarded and not counted.

There is also the concern that when presented with a paper provisional ballot rather than a regular ballot, and the time and effort to fill it out, and the likelihood that the ballot may not be counted, the potential voter feels they are not fully participating on an equal footing with other citizens, may become discouraged and decide not to vote.

Furthermore, as indicated in my remarks, there was already substantial protection against double voting in the old law. Any person requesting to vote on election with ID showing residence in another county would first have to present sufficient identification to prove their identity. They then would have to swear under a written oath that they had not voted in the other county and were qualified to vote in the new county. Since a single violation of any of the five sworn statements they made would create a third degree felony subjecting them to up to a five year prison, what other deterrent is rationally needed.

APPENDIX No. 6

Absent a strong indication of widespread double voting and abuse, which even FSASE stated did not exist, why did the legislature change the procedures?

Unfortunately, the answer reflects the explanations of the other procedures you are investigating.

Since this procedure is more likely to affect students as well as minorities and poorer citizens who are transient, this new law will depress the voting and thus the ability of these groups to fully participate in the electoral process.

With no evidence of widespread abuse and fraud in the area of double voting or similar election fraud, once again it is clear that the Governor and the Legislature's interests, as reflected in the other provisions, was the politically partisan suppression of registration and voting rights of groups likely to support Democratic candidates.

From: Ertel, Mike
Sent: Thursday, May 12, 2011 3:10 PM
To: 'deanaschott@yahoo.com'; 'lanejane63@gmail.com'
Cc: 'Deirdre Macnab'; Ehrgott, Helen
Subject: LWW registration drives

Deanna, Jane,

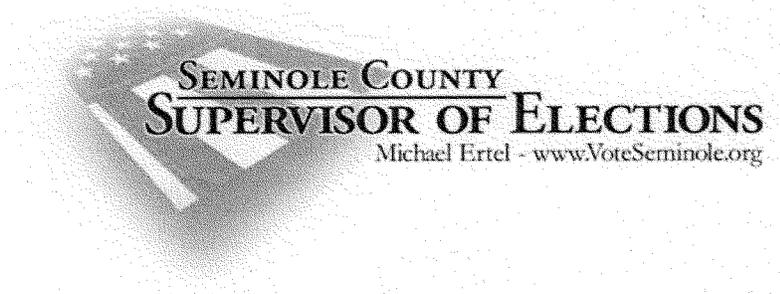
I saw Deirdre's press release about the League no longer being able to conduct voter registration drives in the wake of the new legislation.

If you have any drives scheduled already – please don't cancel them! We'll happily send a staff member or myself to the drive to help facilitate the registration. Getting our folks registered to take advantage of their voting opportunity is one of our primary missions, and when we see a valuable community asset such as the League of Women Voters in a voter registration bind, it is incumbent on us to make sure it works out well for you.

If you don't have any drives on the horizon, please let us know how we can help with any future drives.

Mike

Michael Ertel
Seminole County Supervisor of Elections
www.VoteSeminole.org
Voter Hotline: 407.585.VOTE
Direct Line: 407.708.7712
Cell Phone: 407.687.3654
Home Phone: 407.365.0755
en espanol: www.VotoSeminole.org



SEMINOLE COUNTY
SUPERVISOR OF ELECTIONS
Michael Ertel - www.VoteSeminole.org

*These men ask for just the same thing, fairness, and fairness only.
This, so far as in my power, they, and all others, shall have. -- Abraham Lincoln*

Under Florida law, email addresses are public records. If you do not want your email address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

From: Ertel, Mike
Sent: Wednesday, May 18, 2011 10:51 AM
To: Ertel, Mike
Subject: Don't cancel the voter registration drive!

Note about the new Florida Elections law expected to be signed today:

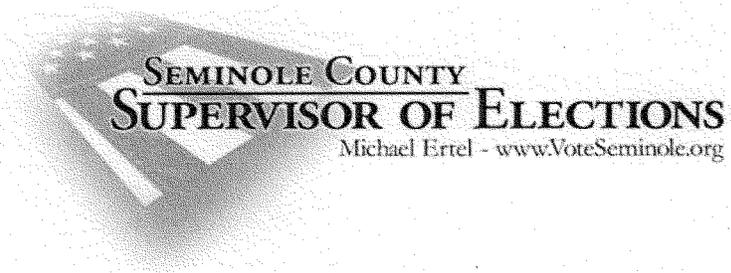
If you have a voter registration drive planned and worry that the new election law (expected to be signed by the governor today, according to news reports) will hinder that drive – please do not cancel the registration event! Our office will staff any nonpartisan voter registration drive any organization would like to conduct, no matter what day of the week or time of the day. We will also securely transport the new voter registrations back to our office, saving your organization the time and expense of that task. If you know of any group or organization that is considering canceling a voter registration drive, please have them contact us, so they don't cancel.

As you all know, our office is hyper-dedicated to registering as many people to vote as we can. So far in the month of May, we have conducted registration drives at the Hispanic Chamber's Business Expo, the Tuskawilla Montessori Springfest, the Seminole County Student Museum festival, the Geneva Founders Day celebration, Sanford's Alive After Five street festival, Altamonte Springs' Family Fest, and the Jewish Community Center's Israel Independence Day event, among others.

Please use us as a resource to ensure as many people in your organization are registered to vote! If you would like for either myself or a team member to speak to your community group about the new law changes, redistricting, or anything else elections-related, please feel free to contact us.

Mike

Michael Ertel
Seminole County Supervisor of Elections
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Cell Phone: 407.687.3654
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FOCUS

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January 19, 2012

U.S. Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights
U.S. Senator Dick Durbin, Chair
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Durbin:

On behalf of FOCUS, thank you for creating the opportunity for Floridians to speak out about HB 1355 and Florida's efforts to disenfranchise minority, young, senior, and low-income voters.

As a faith-based, grassroots community organization made up of 15 congregations and 30,000 families, FOCUS provides leadership training so that low-income and working class families can speak powerfully on their own behalf, collectively negotiate their interests in the public square, and create systemic policy change. *The mission of FOCUS is to transform Central Florida by bringing people together across race, denomination and neighborhood to create a region that values the contribution of every Orange County resident, regardless of their race or economic background.* FOCUS is a member of the PICO National Network.

FOCUS is working to ensure that America and the state of Florida remains the land of opportunity for all citizens and that everyone has the right to vote and participate in our democracy. Nonprofit and nonpartisan, FOCUS has always encouraged people to get involved in our democracy and exercise "faithful citizenship".

Many of our congregations have organized voter registration drives, but the steep financial penalties and unclear consequences for third parties registrations created under HB 1355 have left many congregations afraid to assist people with even this most basic right and responsibility that all Americans share. Many of our African-American congregations have encouraged people to vote early after worship services on the Sunday before elections. Now, this new law ends early voting on Saturday.

In addition to these measures, we are deeply concerned that Governor Scott has implemented new clemency rules requiring an additional five to seven year waiting period before any ex-felon can vote. FOCUS leaders in the historic African-American community of Parramore in Orlando are taking action to simplify the process of voting rights restoration for citizens with past felony convictions.

We urge the Senate Judiciary Committee and Department of Justice to take swift and immediate action to protect the civil rights of Floridians so that all people may participate in the most fundamental right of our democracy and vote in November 2012.

I can be reached at (407) 924-8905 or ebuckley@focusorlando.org. Thank you for your attention.

Sincerely,

Liz Buckley, Executive Director

Statement from the FSA:

Students are citizens and voters of the State of Florida, and as such, demand accessibility and fairness with regards to Florida's election laws. The Florida Student Association recognizes that Florida's students and younger generations are not involved in the selection of our state leaders. This is incredibly important given that higher education has become, and continues to become, less and less of a priority in the state's budgeting process. In order for students to be adequately represented, we have to have greater access and involvement in the selection of our representatives. In particular, the FSA strongly supports SB 516 (Senator Nan Rich), which extends early voting access and establishes universities as early voting sites. HB 1079 (Rep. Joe Gibbons) is the companion bill in the State House. In addition, the FSA supports HB 1189 (Rep. Mark Pafford), which would repeal voting barriers within HB 1355 and is necessary in order for SB 516 to permit early voting access and early voting sites at colleges and universities. SB 1636 (Sen. Nan Rich) is the companion bill in the Florida Senate.

Regards,

Michael Long

Student Body President, New College of Florida

Chairman, Florida Student Association

Member, Florida Board of Governors



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Andy Ford
President

Joanne McCall
Vice-President

Clara Cook
Secretary/Treasurer

January 24, 2012

The Honorable Richard Durbin
United States Senator
Chairman, Judiciary Subcommittee on
The Constitution, Civil Rights, and Human Rights
711 Hart Senate Office Building
Washington, DC 20510

Dear Senator Durbin:

On behalf of the 145,000 members of the Florida Education Association, thank you for inviting us to share our concerns regarding Florida's voting law. We believe the voter law is a voter suppression trifecta, making it harder to register to vote, harder to cast a vote, and harder to have your vote counted.

From the very beginning, passage of this measure has had a chilling effect on teachers helping eligible high school students to register to vote. Two teachers in Florida have already run afoul of the law when helping to register their students to vote. Are there others? How many teachers have stopped registering because of the new law altogether? Secretary of State Browning, an appointee of Florida Governor Rick Scott, has urged Attorney General Pam Bondi to seek civil fines from a teacher for providing guidance to their students to register to vote, an annual event many educators believe to be a part of their civics lessons. This is a clear illustration of the overall negative impact this law has had on educators teaching our students about our democratic society and the privilege of voting in a government "of the people, by the people, for the people."

There is great concern among our member leaders that the new voter law shortening the early voting period will lead to delays and long lines at voting precincts on Election Day, particularly in Florida's major cities. Early voting has allowed counties to accommodate the growth of Florida's 12 million-member electorate over the last decade without expanding the number of precincts. Early voting is critical to allowing the large number of voters that we have to access the system. This bill, by cutting access to early voting by 50 percent, is simply suppressing the vote.

Affiliated with
NEA, AFT, AFL-CIO

Established 1886 in DeFuniak Springs, Florida



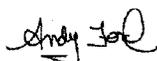
The measure will modify a 1973 law that allowed voters to make minor changes before voting on Election Day. Those changes include addresses and last names. The new law requires these voters be given a provisional ballot, which would be subject to review before they can be counted after Election Day.

This measure will also heavily impact college student voters, who often attend schools away from their hometowns, and women voters, who may have changed their names because of a marriage or divorce.

Clearly this voter law will decrease voter turnout and potentially suppress participation in the democratic process for just about everyone who votes in Florida. This voter law is counterproductive for Florida and further limits opportunities for voters to cast their ballots. Our goal should be to work to increase voter turnout and encourage citizens to participate in the political process. This law is a step backwards in time.

Thank you for scheduling your hearing in Tampa. I believe the Senate subcommittee hearing sends a clear signal that key leaders in the federal government are taking voter suppression in Florida seriously.

Sincerely,

A handwritten signature in black ink, appearing to read "Andy Ford". The signature is written in a cursive, somewhat stylized font.

Andy Ford, President
Florida Education Association

Democratic Haitian American Caucus of Florida (DHACF)

January 20, 2012

The Honorable Senator Dick Durban & Senator Bill Nelson

Dear Senators Durban, Nelson and Members of the Judiciary Committee:

Subject: "New State Voting Laws II: Protecting the Right to Vote in the Sunshine State"

Question: What does voting mean to me?

Answer: To me voting is a prized expression of participation and the most visible symbol of citizenship in a civilized, modern and democratic society. But don't just take my word for it. As the Arab-Springers or US 99% Occupiers.

Why: When I was eight years old and living luxuriously in the suburbs of Petionville, Haiti, one day my parents told me I would be going to New York with my Dad, now deceased. In those days and in that society you didn't ask what or why. So the day came that our immediate family, Mom, Dad, me and 3 other siblings, went to the airport in the capitol city of Port-au-Prince and Dad and I boarded a Pan Am flight stopping in Miami on the way to New York City. No sooner had we sat down and Dad secured my cotton "coat" than two men in uniforms entered, arrested Dad and left me next to his vacant seat. Mercifully, a flight attendant escorted me off the plane before takeoff and into the arms of my mother.

So what?: Well, the relevance of this story to voting is that my Dad was trying to leave Haiti after a "change of government, a/k/a coup d'etat" by the opposition had branded him persona non grata and targeted for exile. The method of being "targeted" was to confiscate opponents' homes, businesses and intensify another type of "campaign" of harassment and intimidation and worse, of those persons or families that had taken the "wrong" side. Yes, the government had changed and there were opposing sides but "voting" was no where to be found.

What next?: I won't keep you in suspense any longer. Firstly, after a couple of days under arrest Dad was released and he and I took another Pan Am out of Haiti. That was because years prior my parents had married and borne their first child, me, in New York, making me a United States citizen and a minor. I'm told my Dad was able to escape imprisonment and torture because he was finally allowed to escort his little, American daughter back to her home country. Mom, also deceased, and the rest of the family followed a year later by ship with some of our possessions. Of their eight children either born in the U.S. or naturalized citizens, all have become active voters, like many other immigrants who have over time made up the melting pot of opportunity, rule of law and freedom of expression that is the shining beacon of Democracy in the United States of America. Therefore, the current Republican rampage on the right of American citizens to vote inside our own country is tantamount to a crime. Voting should be made easier, not harder. Voters like me will remember for a long time the obstacles placed on our access to the voting booth and by whom, particularly among the hundreds of thousands of Haitian-American residents of Florida who are, like me, first generation Americans who cherish and will continue to fight for the right to vote. Please encourage sunshine in the Sunshine State.

The Democratic Haitian American Caucus of Florida (DHACF) is chartered by the Florida Democratic Party to organize in all 67 counties Democratic voters including those of Haitian descent.

Respectfully submitted, Evelyn
 Evelyn T. Garcia
 Florida DNC Member &
 President-Democratic Haitian American Caucus of Florida (DHACF)
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January 23, 2012
 Statement on Voter Suppression in Florida
 Phyllis Hancock

As President of the **A. Philip Randolph Institute Central Florida Chapter**, I have been involved in voter registration in the African American community since the 2004 election cycle as volunteers. We have registered citizens in Orange, Osceola, Seminole, Lake, and Volusia counties. We have been responsible in registering over 3000 voters through canvassing neighborhoods door to door, Health Fairs, Job Fairs, Sporting, Housing Authority, Restoration of Civil Rights Education Workshops, College Campuses and Town Hall Meeting events. We registered our family members, coworkers, guests at our meetings and friends.

As Director of Orlando Votes Project for **Florida Consumer Action Network in 2010** we met our goal of registering 18,000 citizens. Our operation had two components, field and quality control.

Our Field Operation involved our canvassers

- Staffing
 - Employment application
 - Background checks
 - Sample Field Visit
- Training
 - Application Requirements
 - Interaction with applicants
 - Requirements on Public and Private Property
 - Dresses appropriately for the weather
- Evaluating
- Coaching

Our Quality Control Operation consisted of

- Intake and Output count of applications
- Required field completed on the applications
- Internet and/or phone verification of applications
- Evaluation report on each canvasser
- Feedback to Field Operations Assistant Director
- Filing an Activity Report to the Secretary of State

The impact of the new law has impacted our decision to withdraw the **A. Philip Randolph Institute CFL Chapter** to withdraw as a third party organization for registration due to the high risk of fines and criminal charges. The public often have memory loss, illegible handwriting, transpose numbers or provide false information just to strike up a conversation with a canvasser. It impacts the false negative stereotype that 3rd Party group's canvassers create false applications. Relying on the public to provide information to completing the applications may jeopardize us losing our 501(c)3 status for our nonprofit. We will no longer be able to provide our service at events, family, friends or guests at our monthly meetings. We are coordinating with the Supervisor of Elections to provide their staff at our Restoration of Civil Rights Education Workshops which limits us tremendously. It is too difficult to collect or implement quality control measures of applications from volunteers to insure we meet the from a 14 day turnaround to 2 days. In our "Get Out The Vote" Program, the reduction of Early Voting schedule from 15 to 8 days discourages voters that they will stand in longer lines than they did in 2008 and with No Sunday schedule, it conflicts with their only day off and the Souls to the Poll Program (black churches bus after worship to go vote) may be eliminated. Many African Americans have a head

of household of one that usually works more than one job therefore the Sunday elimination is a hardship. Lastly, the change of address from a county to county move generating a provisional ballot risks the vote to counting.

I am no longer employed with **Florida Consumer Action Network** therefore; I do not have the direct knowledge of new law's impact.
Thank You

Statement of Record:

My name is Trevor D. Harvey, and I am the president of the Sarasota County Branch, NAACP. Our organization since its charter in Sarasota have promoted and organized voter registration drives, to include the most recent Souls to the Polls event. We feel the recent law eliminating early voting the week prior to the General Election is detrimental to our communities and is a modern day Jim Crow law to disenfranchise the minority voter.

The NAACP in Sarasota along with all of the churches (20) in the minority community come together to make sure we have every church bus/van on the road on that Sunday transporting our senior citizens and anyone else that needs a ride to the polls to make sure their vote is casted. By time the day is over we could have transported at least a thousand (1,000) people to and from the polls. This law in fact could prevent a 1,000 people from voting, which could determine an election in a community our size.

Proponents will lead you to believe that some of the new laws are to combat voter fraud, but have not been able to prove, or provide proof the voter fraud is happening within our polling places. Again, this is a tactic to disenfranchise the voter. In most cases voters arrive at polling places with some form of identification the verifies who they are. To stipulate government issued only ID's is ludacris and the reason for it is unfounded.

Again, all these new laws are a way to disenfranchise the minority voter and encourage them not to participate in their God given right, and thats to VOTE. This is exactly what the Jim Crow Laws of the 50's did and now has resurfaced under a new name and title. Let's stop the madness and reverse these laws, so all citizens can vote without pressure. It's our constitutional right.

Submitted by
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Statement of the Honorable Alcee L. Hastings
 Senate Judiciary Committee
 Subcommittee on the Constitution, Civil Rights and Human Rights
“New State Voting Laws II: Protecting the Right to Vote in the Sunshine State”

January 27, 2012

Mr. Chairman, the foundation of our democracy was and continues to erode under a coordinated, systematic attack spanning the nation. Many state governments have threatened the integrity of our elections with recently enacted laws creating barriers to the polls and unnecessarily restricting voter registration. Florida Governor Rick Scott recently signed into law one such measure, HB 1355. That law limits access to the polls for minorities, seniors, and college students. It also makes early voting much more difficult and imposes unnecessarily burdensome regulations on voting registration groups.

These laws taking effect in Florida and across the country are problematic because they will disenfranchise minorities, seniors and college students, many of whom voted for President Obama in the 2008 election. For example, more than 21 million Americans lack a government ID, a disproportionate number of whom are low-income individuals, minorities and the elderly. The American Civil Liberties Union (ACLU) reports: “As many as 25% of African Americans of voting age lack government-issued photo ID, compared to only 8% of their white counterparts. Eighteen percent of Americans over the age of 65 do not have government-issued ID.”

These changes neither improve the election process nor make it more reliable or transparent in any way. Rather, they echo memories from a dark period in American politics when only the privileged few were permitted to vote, and Jim Crow laws were the order of the day. Because these election law changes have the same intent and consequences as voter suppression tools like the poll tax, the new laws are effectively an end-run around Constitutional protections.

The Republican-controlled state legislatures that enacted these laws are deliberately taking the vote away from voters whose votes they don't like. These states are unequivocally recreating offenses from an embarrassingly wrong-headed point in our country's history. Nearly five decades after the elimination of the poll tax, we should be striving to make access to the polls easier, not harder.

PRINTED ON RECYCLED PAPER

Finally, I consider it a privilege to be able to submit my testimony for the record before this Senate Subcommittee. I only wish I were able to similarly testify before one of the Committees in the House with jurisdiction over this issue. Despite a record number of bills restricting the vote enacted last year, the Republican-led House of Representatives has held no hearings in the 112th Congress. Back in November, I, along with almost 40 other Democrats, sent a letter to the House Judiciary Committee and Committee on Oversight and Government Reform requesting a hearing on these practices.

Responsibility seems to only extend to one side of the Capitol on this issue. Not only is there still no hearing scheduled, I have yet to receive a response from either Chairman Lamar Smith or Chairman Darrell Issa. Therefore, I thank the Subcommittee for holding this critically important hearing and calling greater attention to this matter.

Mr. Chairman, while great strides have been made to improve our elections in recent years, problems still persist. Continued efforts to suppress the rights of voters not only threaten our democracy, but also the integrity of our elections. It is time for this to change. If these efforts are allowed to move forward, they will have a devastating effect on our democratic process all across the nation.

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Testimony of

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and
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and

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Before the
United States Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights

“New State Voting Laws II: Protecting the Right to Vote in the Sunshine State”

January 27, 2012

Chairman Durbin, Ranking Member Graham, Senator Nelson, and distinguished Members of the Subcommittee, thank you for inviting me to speak here today and for providing me the opportunity to discuss the potential impact of recent changes to voting rights in Florida.

My name is Daniel A. Smith. I am Professor of Political Science at the University of Florida. My collaborator, Professor Michael Herron at Dartmouth College, could not be here today, as he is currently Visiting Professor at the Hertie School of Governance in Berlin, Germany.¹

Professor Herron and I have published dozens of articles in the discipline's top journals, and we are recognized experts on the effects of election laws on voting behavior in the American states. Professor Herron's co-authored article, "The Butterfly did It: The Aberrant vote for Buchanan in Palm Beach County, Florida," is widely recognized as one of the definitive studies of the 2000 election in Florida. My research on election laws in the American states has been cited in numerous state and federal court cases. Since moving to Florida in 2001, I have been asked to testify on election issues before both the Florida House and the Florida Senate, and I have served as an expert witness for the Florida Secretary of State, defending the state's public campaign finance disclosure laws.

I am not here today, however, to defend the recent changes to Florida's election laws implemented by the Secretary of State in accordance with House Bill 1355.² Indeed, in our opinion, several of the recent changes to voting rights and electoral processes in Florida under HB 1355 seem to be specifically targeted to reduce the voting participation of certain demographic groups.

I must emphasize that I am here before you as a scholar, not as a partisan or a citizen activist. Professor Herron and I are currently conducting statistical analyses of the effects of HB 1355 on voter participation in Florida for the State Politics and Policy conference to be held next month in Houston. Our research is empirically-driven and will be subjected to rigorous peer-review.

Specifically, Professor Herron and I are interested in the differential effects of the state legislature's decision in 2011 to truncate early in-person voting in Florida. Our research is motivated by a simple empirical question: based on patterns of early voting observed in the period before the 2008 General Election, what is the likely participatory impact in Florida of reduced early voting opportunities?

In my testimony today, I will discuss some of Professor Herron's and my preliminary findings concerning early voting patterns in the 2008 General Election. If time permits, I will then touch upon two other aspects of HB 1355, specifically the burdens it places on individuals and groups wishing to register new voters and the law's requirement that registered voters must cast provisional ballots if they have moved within the state and not officially changed their addresses with appropriate Supervisors of Election.

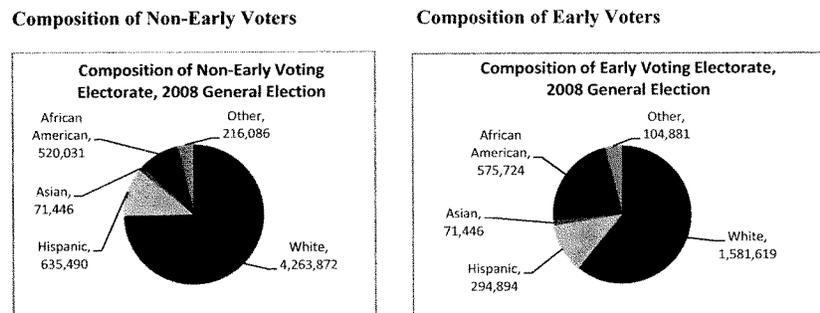
¹ My comments represent my personal views and are not necessarily those of the University of Florida or any other organization with which I am now or have previously been affiliated. The same is true for Professor Herron.

² Fla. Laws ch. 2011-40 (HB 1355). Available: <http://www.flsenate.gov/Session/Bill/2011/1355>.

The Differential Impact of HB 1355 on Early Voting in the 2008 General Election

By many accounts, early voting was a tremendous success in the 2008 General Election.³ Of the roughly 8.3 million Floridians who cast ballots in the election, over half did so prior to Election Day, including some 2.62 million voters who cast early, in-person ballots at hundreds of non-precinct voting sites that dot Florida's 67 counties.⁴ As media reports indicated at the time, African Americans voters seemed more inclined to cast early ballots, as many were driven—sometimes literally—by “get your souls to the polls” mobilization efforts led by advocacy groups.⁵ Indeed, blacks cast roughly 22 percent of the total votes in the 2008 General Election even though they comprised just 13 percent of the state electorate. As Graphic 1 reveals, not only did African Americans cast *more* early, in-person ballots than they cast on election day, but African Americans accounted for a much greater proportion of the early voting electorate than they did on Election Day, Tuesday, November 4, 2008. The pie charts in Graphic 1 are based on the county-level early voting files that are discussed later in this testimony.⁶

Graphic 1. Comparison of Florida Non-Early Voters and Early Voters, 2008 General Election



³ See, for example, “Early voting suggests 2008 may see record turnout, expert says,” *CNN*, October 21, 2008. Available: http://articles.cnn.com/2008-10-21/politics/early_voting_1_early-voting-early-ballots-count-ballots?_s=PM:POLITICS; Kendric Ward, “Absentee Ballots Front-Load Florida Elections,” *Sunshine State News*, October 6, 2008. Available: <http://www.sunshinestatenews.com/story/absentee-ballots-front-load-florida-elections>; Kate Phillips, “Florida Extends Early Voting Hours,” *New York Times*, October 28, 2008, <http://thecaucus.blogs.nytimes.com/2008/10/28/florida-extends-early-voting-hours/>.

⁴ In Florida, absentee ballots may be turned in early (or on Election Day). We use the term “in-person early” (EIP) voting to mean casting a non-absentee ballot in-person, prior to Election Day, at an early voting center.

⁵ The NAACP is credited with creating the slogan in 2000, “Get all souls to the polls.” During the final days of the presidential campaign, Democrat Al Gore exhorted to crowds in Florida, “it’s time to take your *souls to the polls*” on Election Day, as early voting had yet to be adopted. See Rupert Cornwell, “With 48 hours to go, the candidates try to close the deal with America,” *The Independent*, November 6, 2000. Available: <http://www.independent.co.uk/news/world/americas/with-48-hours-to-go-the-candidates-try-to-close-the-deal-with-america-623223.html>.

⁶ Approximately 98% of all early voters from the 2008 General Election are represented in the right panel of Graphic 1. We do not know the racial and ethnic identities of the remaining approximately 2%, coded “Other.”

This election year, citizens in the Sunshine State have fewer opportunities to cast early ballots. In May, 2011, the legislature passed House Bill 1355, an omnibus elections bill that was the product of an 11th hour, strike-all amendment.⁷ Governor Rick Scott signed the bill into law.⁸

Among its many provisions that restrict early voting, HB 1355 reduced the total number of days, from 14 to eight, that county Supervisors of Elections may offer early voting. HB 1355 also completely eliminated early voting on the Sunday immediately preceding Election Day—which in 2008 was offered to voters in ten of the state’s 67 most racially and ethnically diverse counties. And, HB 1355 gave county election supervisors the discretion to reduce from 96 to 48 the total required number of hours early voting polling stations are required to be open.⁹

Despite these clear reductions outgoing Secretary of State Browning and his staff appear to have misinformed the public about the number of total hours of early voting hours that are *required* under HB 1355. Last May, Secretary Browning claimed that, although the number of early voting days was shortened under the new law, the total number of early voting hours would remain the same. “The new law makes early voting more accessible now than ever before,” Secretary Browning averred, “by expanding the number of hours that election supervisors can open early voting sites—from just eight hours before, to 12 hours a day.” Without providing evidence, Secretary Browning went on to claim that the reduction in early voting days was designed “[t]o combat voter fraud,”¹⁰ as well as “[t]o reduce the

⁷ Florida House of Representatives Staff Analysis, CS/CS/HB 1355, Elections Committee. April 18, 2001.

⁸ HB 1355 amended the Florida Election Code (chapters 97-106, Florida Statutes) and became law (Chapter 2011-40, Laws of Florida) on May 19, 2011.

⁹ Early voting under HB 1355 is to commence on a Saturday, ten days prior to an Election Day, and it must end on a Saturday, three days prior to Election Day. See Justin Levitt, “New State Voting Laws: Barriers to the Ballot?” Testimony of Professor Justin Levitt, Loyola Law School, Los Angeles, Before the United States Senate Committee on the Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights, United States Senate, September 8, 2011. Available: <http://www.judiciary.senate.gov/pdf/11-9-8LevittTestimony.pdf>.

¹⁰ If preventing voter fraud were the true intent of HB 1355, then in this new law there likely would have been attention placed on cracking down on what appears to be the not-so-uncommon practice of fraudulent absentee ballots in Florida. Absentee ballot fraud is not limited to mayoral races in Florida’s metropolitan areas, which are well documented. See, for example, Dahleen Glanton, “Differences Cited in ‘98 Miami Vote Case,” *Chicago Tribune*, November 13, 2000. Available: http://articles.chicagotribune.com/2000-11-13/news/0011130119_1_absentee-ballots-miami-mayoral-election-new-election. In November, 2011, for example, several people in rural Madison County, including a candidate on the local ballot for school board, were arrested by the Florida Department of Law Enforcement and charged with obtaining absentee ballots for other people without the voters’ knowledge or consent. The school board candidate and her accomplices then provided an alternate address for the ballots to be mailed to the registered voters by the county Supervisor of Elections and allegedly then retrieved the ballots from the fraudulent locations, brought the ballots to the voters—sometimes with the ballots already filled out—and had the voters sign the absentee ballot signature envelopes. “Madison County officials arrested for voter fraud,” *WTXL*, November 1, 2011. Available: http://www.wtxl.com/content/localNews/story/Madison-County-officials-arrested-for-voter-fraud/-Nq7HTFCCU-kRpw39U_2tA.csp. Rather than addressing absentee ballot fraud, HB 1355 actually eliminated the provision that existed in 2010 when the above fraud occurred, making future absentee ballot fraud more difficult to prosecute. In particular, prior to the passage of HB 1355 Supervisors of Elections were required to send absentee ballots to voters’ registered addresses unless said voters were absent from the county, hospitalized, or temporarily unable to occupy residences. Now, under HB 1355, instead of being required with the forgoing exceptions to send an absentee ballot “[b]y nonforwardable, return-if-undeliverable mail to the elector’s current mailing address on file with the supervisor,” Supervisors of Elections may mail an absentee ballot “to any other address the elector specifies in the request.” Chapter 101.62 “Request for absentee ballots.” Available: http://statutes.laws.com/florida/TitleX/chapter101/101_62. One possible explanation for the reason that Florida state lawmakers appear to have turned a blind eye to absentee ballot fraud in the state is the partisan divide on absentee voting. Registered Republicans in Florida are likely to use this form of convenience voting much more than their Democratic counterparts, and in the 2008 General Election Republicans had a 10.8% lead over Democrats

burden on poll workers and provide needed flexibility to local election supervisors.” Summarizing the legislation in an op-ed in a *St. Petersburg Times* op-ed, he reiterated, “Early voting remains at 96 hours, with greater flexibility for counties.”¹¹

The watchdog Politifact took issue with Secretary Browning’s claim regarding the total number of early voting hours required under HB 1355, rating his statement as “*Mostly False*.”¹² In fact, the aggregate number of early voting hours that county Supervisors of Elections *must* remain open under HB 1355 has been cut in half, from 96 hours, which was required in 2008, to 48 hours.

HB 1355’s reduced number of early voting hours in advance of Florida’s Presidential Preference Primary on January 31, 2012, will lead to diminished opportunities for citizens of the state to cast early ballots. When compared to the total number of early voting hours offered during the January, 2008, Presidential Preference Primary, voters in the Sunshine State have 1,888 and $\frac{1}{2}$ fewer hours in the aggregate to cast early, in-person votes across the state’s 67 counties. On average, counties have cut the number of early voting hours they offer—compared to the 2008 Presidential Primary—by more than 28 hours.¹³ The decrease will be even greater when the five counties, Collier, Hardee, Hendry, Hillsborough, and Monroe, which are awaiting United States Department of Justice preclearance under Section 5 of the Voting Rights Act, are removed from the equation, as at present these counties still must offer a total of 96 hours of early voting beginning 15 days before Election Day.¹⁴

In addition to the reduced number of early voting hours under HB 1355, as a consequence of this new law there will almost certainly be in 2012 considerable inequality in opportunity for Floridians to vote early. In part such inequality looks to be a function of county. Under HB 1355, Supervisors of Elections have the discretion to offer between six and 12 hours of early voting for each of the eight days polls are open—this amounts to a minimum of 48 hours and a maximum of 96 hours. Some counties offer as few as 48 hours of early voting, the minimum allowed under HB 1355. For example, the number of early voting hours for the presidential primary is only 48 hours in Citrus, Okeechobee, and Putnam counties, which is *half* the number of hours they had in 2008. Citizens in Alachua, Okaloosa, and DeSoto counties have only 55 hours to vote early this year, a 43 percent drop compared to the total number of early voting hours available to vote in the 2008 primary. Contrary to the assertions of Secretary Browning, only two of the 62 counties not falling under the jurisdiction of Section 5 of the VRA—Lake County and Miami-Dade County—are offering the full 96 hours of early voting permitted under HB 1355.¹⁵

voting absentee ballots through Election Day. 47 percent of those who voted absentee were Republicans and 36 percent were Democrats. See, The Florida Senate, Committee on Ethics and Elections, “The Effect of Early Voting on Voter Turnout in Florida Elections; 2010 Update,” October 2010. Available: <http://www.flsenate.gov/Committees/InterimReports/2011/2011-118ce.pdf>.

¹¹ Kurt Browning, “Florida’s early voting remains at 96 hours,” *St. Pete Times*, May 23, 2011. Available: <http://www.tampabay.com/opinion/columns/floridas-early-voting-remains-at-96-hours/1170931>.

¹² Politifact, “Flexibility in early voting means possibly less hours to vote,” *St. Pete Times/Miami Herald*, July 27, 2011. Available: <http://www.politifact.com/florida/statements/2011/may/23/kurt-browning/flexibility-early-voting-means-possibly-less-hours/>.

¹³ In the 2008 presidential preference primary, early voting stations across the state’s 67 counties were open a total of 6,432 hours; in the 2012 presidential preference primary, they are open a total of 4,542 and $\frac{1}{2}$ hours.

¹⁴ Further analysis of the decline in early voting hours under HB 1355 can be found here: Daniel A. Smith, “Reduced and Uneven Hours for Early Voting in Florida’s Presidential Preference Primary,” January 12, 2012. Available: <http://electionsmith.wordpress.com/2012/01/12/reduced-uneven-hours-for-early-voting-in-floridas-presidential-preference-primary/>.

¹⁵ The raw number of early voting hours being offered by each of the 67 counties in the 2012 Presidential Preference Primary can be accessed here: Florida Secretary of State, Division of Elections, “Early Voting Sites by County,” January 2012. Available: http://election.dos.state.fl.us/pdf/Early_Voting_Sites_PPP_2012.pdf.

Professor Herron and I believe that the truncating of early voting under HB 1355 will likely have in the 2012 General Election differential impacts on turnout across various demographic groups. This conclusion is based on our analysis of early voting patterns from 2008 General Election. In order to study patterns of early voting across Florida from 2008—and to answer the question, which types of voters in 2008 voted early and on what particular days—my co-author and I followed a two-step procedure.

First, we assembled from public sources the complete set of 2008 General Election early voting files, one file from each of Florida's 67 counties. Each such early voting file contains a list of voters who voted early, and to the best of our knowledge these lists are comprehensive. Each early voting file consists of records, one record per early voter, and across the combined 67 early voting files there are 2,642,724 records of individuals who voted early in the 2008 General Election.

Each record among the approximately 2.6 million early voting records specifies the date on-which a particular early voter voted, for example, October 23, 2008 (a Thursday) or perhaps November 2, 2008, a Sunday. These dates are key to the analysis that follows.

Besides dates of early voting, each record among the 67 early voting files, as before one record per early voter, is associated with a voter identification number. The records in the 67 early voting files do not specify voter demographics, e.g., voter race, voter date of registration, voter gender, and so forth. They also do not specify voter histories, e.g., whether a voter cast a vote in the 2004 General Election.

Second, we took a Florida voter file, created in March, 2010, and merged this file with the aforementioned 67 early voting files. The reason we took this step is because the Florida voter file contains demographic data on voters as well as voter histories. In our Florida voter file there are a total of 12,387,165 records. Each record is associated with one registered voter, and each record has a voter identification number. This number allows us to associate records in the Florida voter file with records in early voting files.

Given the presence of voter identification numbers in the 67 early voting files and in our overall Florida voter file, we successfully merged 2,592,061 early voting records from the 67 early voting files into the main Florida voting file. This means that approximately 98% of voters whose identification numbers appear in the early voting files were successfully merged. We suspect that the 2% of early voters who were not so merged reflect people who moved out of Florida between the date of the 2008 General Election and the date that our voter file was created.¹⁶

We also discovered a number of voters whose counties of residence in the overall Florida voting file did not match counties of residence based on the 67 early voting files. For these voters we assumed that the county of residence in the early files is correct. When our calculations require us to know the county in which a voter lives, we therefore use the latter. We suspect that differences in counties of residence between early voting files and the overall voting file reflects moving within Florida.

So, when precisely did early voters vote in the 2008 General Election? The answer to this question is shown in Figure 1.

¹⁶ This small unmatched population is excluded from the analysis that follows. In the process of working with the combined Florida voter file and the 67 early voting files, we discovered a small number of data errors. Among the 67 early voting files, for example, there are four records from Palm Beach County with dates of early voting from 2005. Obviously such dates are wrong, and we ignored early voting records with clearly erroneous early voting dates. We also discovered records of individuals who according to early voting files voted early in the 2008 General Election but, according to the Florida voter file, did not vote early. For these records we assume that the early voting files are correct.

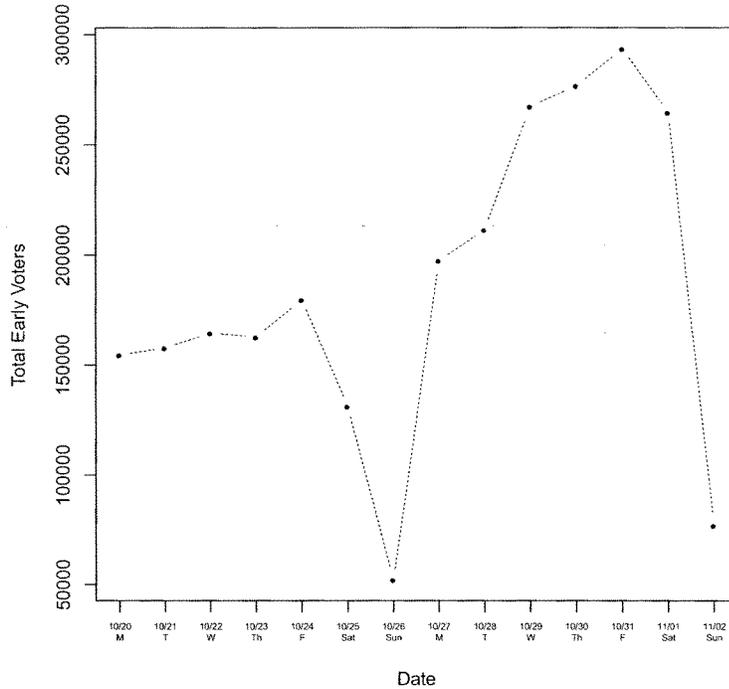


Figure 1. Patterns in Early Voting across Florida

Several patterns in this figure are notable. As is evident by solid dots in the figure, there were more early voters in the second week of early voting than in the first. In addition, in the early voting period there were weekend effects. Namely, in both the first and second weeks of early voting, the number of early voters was smaller on Saturday and Sunday than on the preceding weekdays. The Friday-Saturday dropoff was larger in the first week than in the second, relatively speaking. However, the Saturday-Sunday dropoff was greater in the second week of early voting.

The drop in the number of early voters on the two Sundays of early voting is a bit deceptive because only ten counties in Florida offered early voting on Sunday during the run-up to the 2008 General Elections. These counties were Bradford, Broward, Dixie, Duval, Jackson, Miami-Dade, Palm Beach, Pinellas,

Sarasota, and Seminole.¹⁷ To this end Figure 2 is analogous to that seen previously, but the new figure is based only on the counties that had early voting on Sundays.

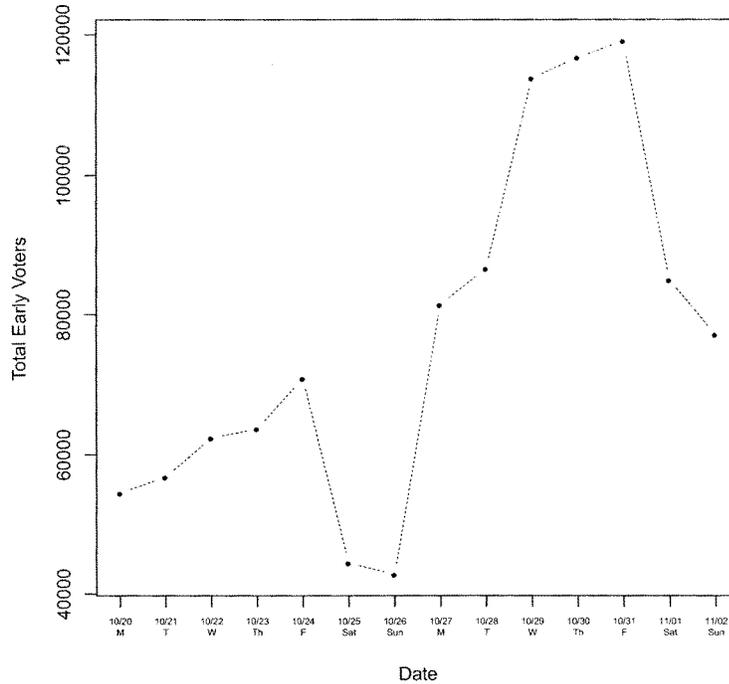


Figure 2. Overall Patterns in Early Votes across Counties that Offered Sunday Early Voting

The patterns in this figure (based on ten counties) are similar to those seen for all 67 Florida counties except for the fact that, among the counties that offered early voting on Sunday, early voting counts on Saturday are not as different from Sunday counts as they are across all of Florida.

¹⁷ We determined the counties offering Sunday voting according to their official filings to the Secretary of State. See: Florida Secretary of State, Division of Elections, "Early Voting Sites by County: General Election – November 4, 2008." Available: <http://election.dos.state.fl.us/pdf/CountyEarlyVotSitesGen08.pdf>.

Insofar as my co-author and I are interested in whether there is variation across groups of early voters in when they voted early, we need to disaggregate the above figures by group, for example, by racial and ethnic groups. We consider here four groups, White, Hispanic, Asian, and African-American.¹⁸

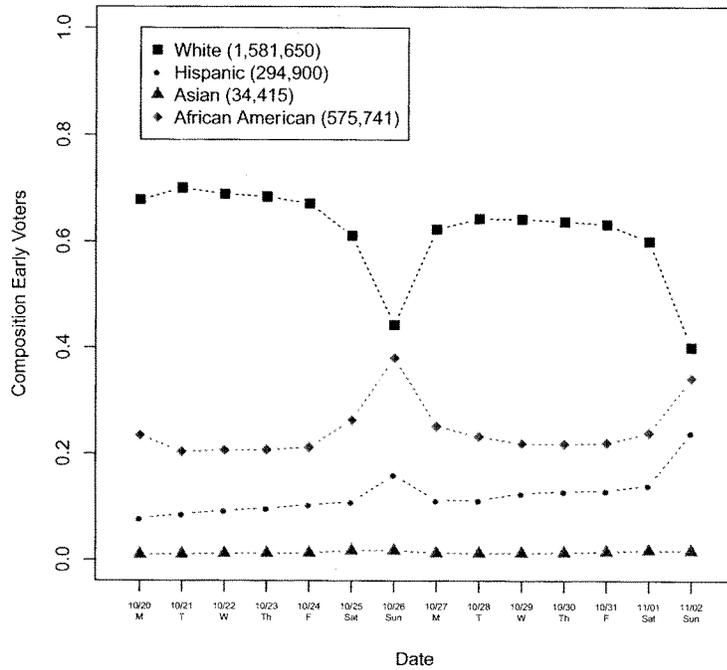


Figure 3. Racial/Ethnic Composition of Early Voters

Figure 3 describes the composition of the early voting electorate by race and ethnicity as it varied from October 20, 2008, through November 2, 2008. “Composition” here means the fraction of early voters on a day that is of a particular racial/ethnic group. By construction the four fractions on a given day sum to one (or 100%), and recall that these numbers are based on 98% of all voters who voted early in the 2008 General Election.

One can see from the black squares in Figure 3 that, on all early voting days, whites made up the largest racial/ethnic group of voters. African Americans were the second largest group, again on all early voting

¹⁸ In the race/ethnicity-based figures that follow, we ignore voters who listed neither White, Hispanic, Asian, nor African American as their racial or ethnic categories.

days, followed by Hispanics and then Asians. Nonetheless, the extent to which whites comprised the largest racial or ethnic group varied by day, mostly obviously on Sundays. In particular, the greatest dropoffs in white early voting rates occur on Sundays, and on these days the fraction of African American early voters jumps. There is a slight decline in the composition of white early voters on Saturdays, but the Saturday effect is not nearly as pronounced as the Sunday effect.

Another perspective on racial/ethnic differences can be seen in Figure 4. This figure describes, for each of the four groups race/ethnic mentioned, the fraction of each group that votes on a given day. For each group, the sum of the early voting fractions across the 14 days of early voting is one (or 100%).

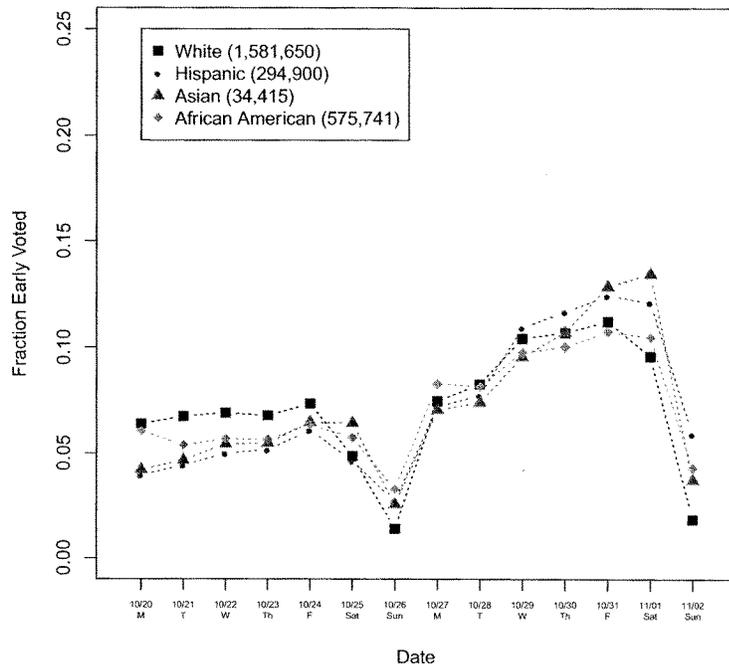


Figure 4. Racial/Ethnic Trends in Early Voting

Here we see a different view of racial/ethnic early voting trends. As is evident in Figure 4, white early voters tend relatively speaking to vote in the first half of the early voting period and not on Sundays. This is evident in the fact that, on both Sundays of early voting, the solid black squares in Figure 4 are the lowest of the four symbols.

In contrast, on the first Sunday of early voting, the racial/ethnic group with the highest participation rate was African American voters. And on the last Sunday, the group with the highest participate rate was Hispanic voters, followed by African American voters.

We already noted that not all Florida counties allowed for voting on Sundays in the period surrounding the 2008 General Election. With this in mind Figure 5 is constructed similarly to the above figure but it includes only early voters from the ten so-called Sunday counties.

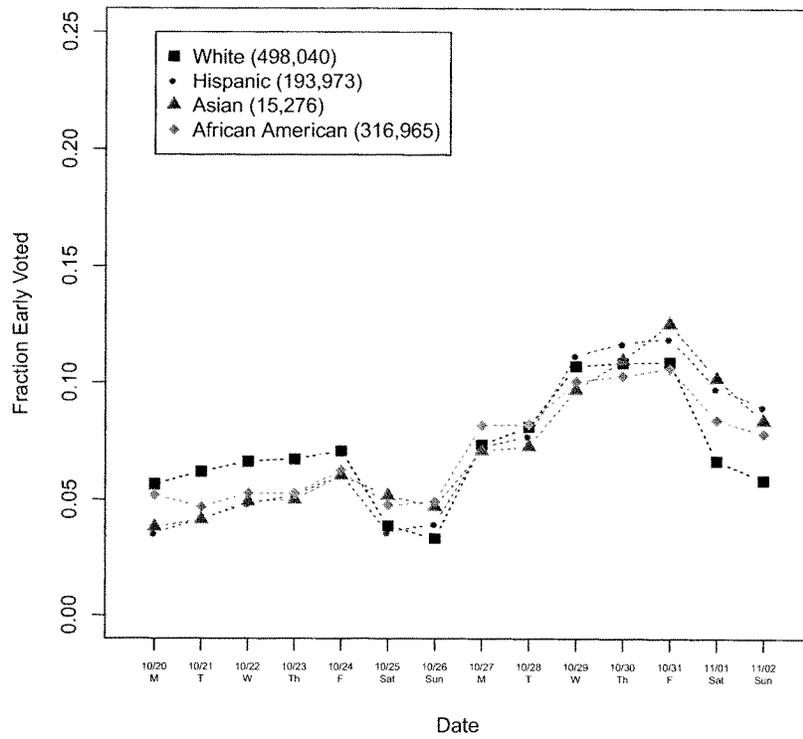


Figure 5. Racial/Ethnic Trends in Early Voting among Ten Sunday Counties

The implication of Figure 5 is clear: looking only at the ten Sunday counties in Florida, one sees that white early voters voted disproportionately less often on Sundays compared to Hispanic and African American early voters. This trend holds on the Saturday before the 2008 General Election and was true for African American, albeit not Hispanic, voters who cast ballots on the previous Saturday.

My co-author and I cannot explain definitely why the members of a particular racial or ethnic group might have a preference for early voting on a given day of the week. However, we can say that, relatively speaking, whites choosing the convenience of voting early in person do so less frequently on Sundays compared to African American and Hispanic voters. With respect to early voting on Saturdays, whites vote less often than do African Americans. Asian early voters appear disproportionately to prefer Saturdays.

We now turn to the issue of age. To consider whether there is a relationship between age and date of early voting, we partition all early voters into three classes: those 22 years old and younger as of November 4, 2008, those 65 years and older, and those in between.

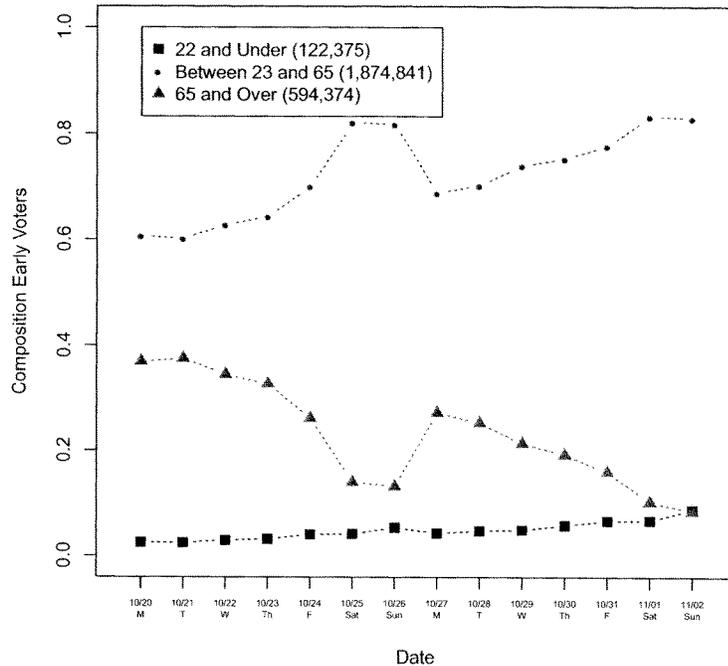


Figure 6. Age-based Composition of Early Voters

Figure 6 shows that the age-based composition of the early voting electorate varies dramatically across days. It is always true that the largest group of voters is the middle group. This is hardly surprising given the age ranges considered here; the middle age group spans over forty years in contrast to the young group, which spans only five. Even so, Figure 6 has one clear implication: compared to mid-week voting patterns, older early voters vote relatively infrequently on weekends.

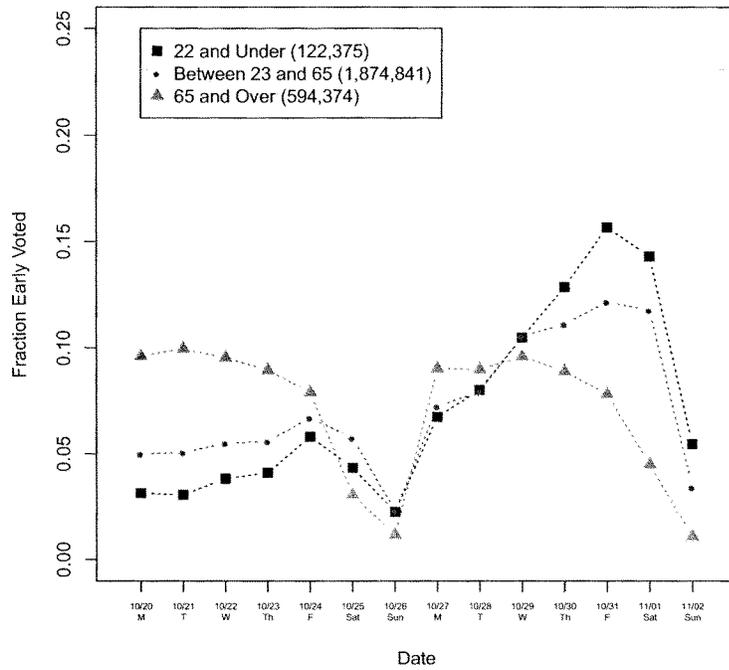


Figure 7 Age-Based Trends in Early Voting

If we look at the fraction of each age group as it varies across the 14 days of early voting—see Figure 7—we see that older voters tend to vote in the early part of the early voting period and very infrequently on Sundays and to some extent Saturdays. Young voters, in contrast, tend to vote toward the end of the early voting period and disproportionately often on weekends.

Related to age is date of registration, and we divide our early voters into two groups, those whose year of registration was prior to 2008 and those who registered in 2008.

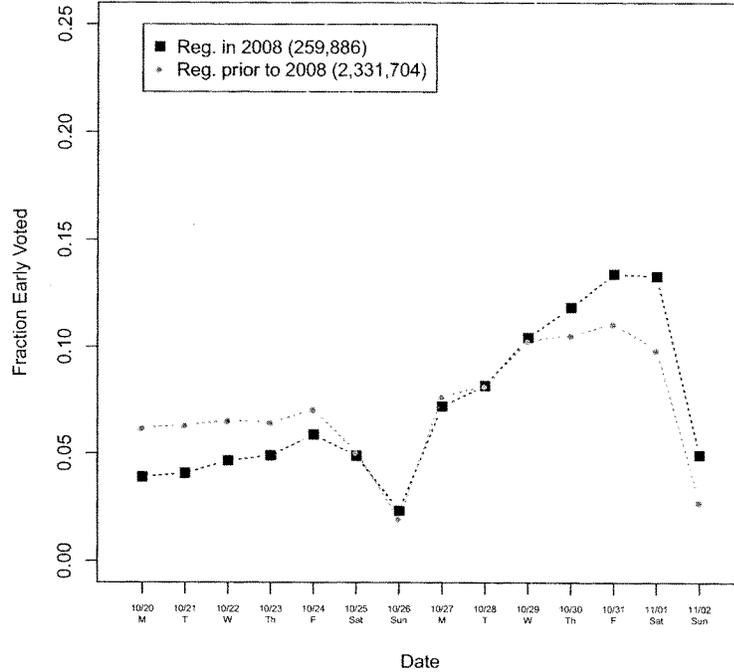


Figure 8. Registration-Based Trends in Early Voting

It is apparent from Figure 8 that early voters registered prior to 2008 were relatively more likely to cast a ballot during the first week of early voting. And, we see as well that early voters who registered in 2008 were relatively more likely to vote in the final week of early voting, especially on the final four days, including the final Sunday before Election Day.

Finally, with respect to General Election vote histories of voters who voted early in the 2008 General Election, it is clear from Figure 9 that first-time, early voters tended to wait until the end of the early voting period to cast their votes, compared to non-first-time, early voters. Note that Figure 9 includes only those early voters who were registered as of October 6, 2000. The number of "Prior Votes" (see the legend for Figure 9) is the number of General Elections in which a voter voted, starting with 2000 and ending with 2006.

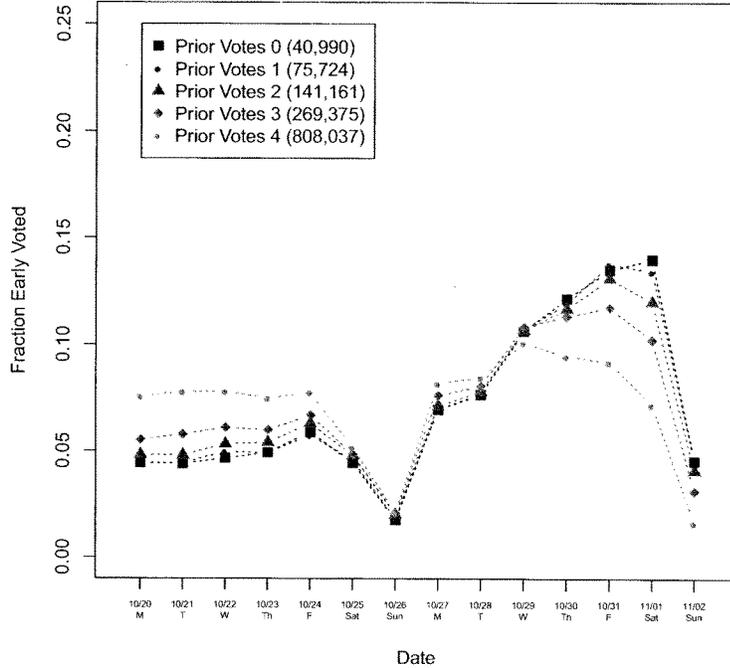


Figure 9. Voter History-Based Trends in Early Voting

HB 1355 has reduced the number of early voting days, has cut in half the required number of early voting hours, and has altogether eliminated early voting on the final Sunday before Election Day. The effects of these changes will likely have differential effects on Florida's electorate. For instance, even though African Americans comprised only 13 percent of total voters and 22 percent of early voters in Florida in the 2008 General Election, they accounted for 31 percent of early voters on the final Sunday of early voting. Hispanic voters, who comprised 11 percent of total voters and 11 percent of early voters in the 2008 general election, accounted for 22 percent of the early voters on the final Sunday of early voting. While older and more regular voters enjoyed the convenience of voting early in the first week of early voting, younger, first-time, and newly registered voters disproportionately chose to vote toward the latter half of the early voting period and often on the final Sunday of early voting.

The Differential Impact of HB 1355 on Voter Registration

As has been well publicized, there is evidence that HB 1355 has dampened the ability of citizens in Florida to become registered to vote. HB 1355 has placed severe burdens on “third-party” individuals and organizations interested in promoting civic participation by assisting citizens to register to vote. The implementation of the law has led both the Florida League of Women Voters and Democracia USA, a nonprofit civic organization geared towards empowering Latinos, and other organizations to suspend their voter registration activities.¹⁹ In addition, the Florida Department of State last fall investigated at least six separate cases in which individuals were suspected of violating new voter registration restrictions put in place by HB 1355, including at least two public school teachers who collected voter registration forms from their students.²⁰

Prior to the passage of HB 1355, organizations as well as individuals—including me—engaged in voter registration outreach. Over the years, I have allowed nonpartisan student groups to hand out and collect voter registration forms in my classes. I no longer do so, not because I have become anti-democratic, but because I am no longer asked. Voter registration drives on the University of Florida campus—once a perennial sight—have all but dried up.

To be sure, HB 1355 is not the first time the Florida legislature has tried to crack down on voter registration drives. In 2005, the legislature passed an elections reform bill that levied substantial fines for individuals and organizations that delivered completed voter registration forms to elections officials more than ten days after the form was completed.²¹ Several groups, including the League of Women Voters, suspended their voter registration activities because of the legislation. A federal court struck down the fine structure, ruling that voter registration drives entail core political speech which is protected under the First Amendment.²²

HB 1355, however, goes further in making it difficult for individuals and groups to register new voters by erecting considerable barriers to their civic efforts. Individuals and groups must first fill out an official form from the Secretary of State if they intend to help distribute, collect, and submit registration forms to people other than their immediate family, and they have 48 hours to deliver a completed form to the appropriate county Supervisor of Elections.²³

The Florida legislature’s apparent rationale for the new governmental regulation was steeped in the anti-democratic rhetoric of making voting a privilege, not a right. “We’re going to have a very tight election here next year,” commented the bill’s sponsor, Rep. Dennis Baxley, a Republican from Ocala, “and we

¹⁹ Mary Ellen Klas, “Groups urge feds to block voter registration and early voting changes,” *St. Pete Times*, July 15, 2011. Available: <http://www.tampabay.com/blogs/the-buzz-florida-politics/content/groups-urge-feds-block-voter-registration-and-early-voting-changes>.

²⁰ Mark Matthews, “State investigating four more election violations,” *Orlando Sentinel*, November 9, 2011. Available: http://blogs.orlandosentinel.com/news_politics/2011/11/state-investigating-four-more-election-violations.html.

²¹ Florida Election Code (chapter 2005-277), House Bill 1567. Available: http://laws.flrules.org/files/Ch_2005-277.pdf.

²² *League of Women Voters of Florida v. Cobb*, 447 F.Supp.2d 1314, 1322 (S.D. Fla. 2006).

²³ A Third-Party Voter Registration Organization (3Pvro) is “Any person, entity, or organization that solicits or collects any voter registration application,” with few exceptions. Any person wishing to solicit or circulate voter registration forms must provide the Secretary of State with their name, address, and sworn declaration. The 3Pvro must file monthly reports to the Secretary of State accounting for all the “registration forms provided to and received from its registration agents during the preceding month.” See Florida Secretary of State, Division of Elections, “Third-Party Voter Registration Organizations,” 2011. Available: <http://election.dos.state.fl.us/pdf/TPVRFinalFactSheet.pdf>.

need to protect the integrity of the election.” “When we looked around,” Baxley continued, “we saw a need for some tightening.”²⁴ In May, 2011, on the floor of the State Senate, Republican Mike Bennett of Bradenton spoke passionately in support of HB 1355:

Do you read the stories about the people in Africa? The people in the desert, who literally walk two and three hundred miles so they can have the opportunity to do what we do, and we want to make it more convenient? How much more convenient do you want to make it? Do we want to go to their house? Take the polling booth with us?

This is a hard-fought privilege. This is something people die for. You want to make it convenient? The guy who died to give you that right, it was not 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 them to go down there, and have to walk across town to go over and vote.”

Politifact’s Truth-O-Meter rated these statements, “Pants on Fire.”²⁵

With respect to the restrictions placed on “third-party” individuals and groups interested in helping fellow citizens to register to vote, state lawmakers in Florida were presumably cognizant of the surge of African Americans who registered to vote in Florida prior to the 2008 General Election. Between December, 2007, and October, 2008, an additional 233,130 black Floridians registered to vote, individuals referred to “Obama-inspired surge” voters.²⁶ Citing Current Population Survey data from Florida, Justin Levitt at the Loyola Law School in California reported in his Senate Testimony to your Subcommittee last fall, that “while 6% of non-Hispanic white voters reported registering through a voter registration drive in 2008, twice as many—12% of Hispanic voters and 13% of non-Hispanic African-American voters—reported registering through a drive.”²⁷ One interpretation of HB 1355 is that this bill was intended to stifle “third-party” voter registration drives in Florida to ensure there will be fewer African American surge voters in 2012.

An examination of monthly records prepared by the Florida Department of State, Division of Elections, records that are required by the 1993 National Voter Registration Act, reveals that HB 1355 likely has had a dampening effect on the registration of new voters in Florida. In addition, there is no evidence that HB

²⁴ David G. Savage, “Election laws tightening in GOP-run states,” *Los Angeles Times*, October 30, 2011. Available: <http://www.latimes.com/news/nationworld/nation/la-na-vote-florida-20111031,0,1962738.story>.

²⁵ Politifact interviewed several African voting rights and elections experts from six Francophone Sahelian countries who happened to be in Gainesville, Florida, in May, 2011, learning about elections in the United States as part of a State Department educational grant of which Dr. Smith was co-Principal Investigator. After their laughter subsided, the African participants whom Politifact interviewed made it clear that Africans did not have to trek hundreds of miles through the sand to cast their ballots. Alpha Faye of Senegal noted that most voters could access their polling stations only a few kilometers from where they lived. Abdoulaye Issoufou, a member of Niger’s Independent National Electoral Commission, stated, “It is more difficult to vote here than in Niger.” Mehla Ahmed Talebna, a former government Minister in Mauritania, affirmed, “No question, no one walks through the desert to vote.” See: Politifact Florida, “Says people in Africa ‘literally walk two and three hundred miles’ in order to vote,” *St. Petersburg Times/Miami Herald*, May 6, 2011. Available: <http://www.politifact.com/florida/statements/2011/may/06/mike-bennett/think-we-have-it-tough-africa-people-walk-300-mile/>.

²⁶ Stephanie Slade and Daniel A. Smith. 2011. “Obama to Blame? African American Surge Voters and the Ban on Same-Sex Marriage in Florida,” *The Forum* 9(2), Article 6. Available: <http://www.bepress.com/forum/vol9/iss2/art6>

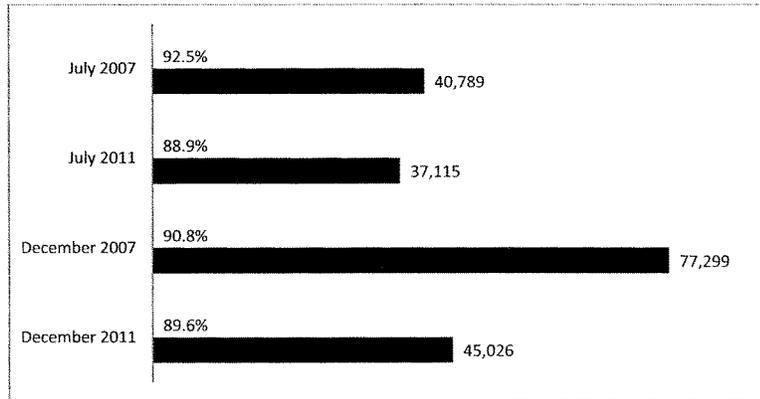
²⁷ Justin Levitt, “New State Voting Laws: Barriers to the Ballot?” Testimony of Professor Justin Levitt, Loyola Law School, Los Angeles. Before the United States Senate Committee on the Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights, United States Senate, September 8, 2011, p. 5. Available: <http://www.judiciary.senate.gov/pdf/11-9-8LevittTestimony.pdf>.

1355 has reduced the number of invalid voter registration forms that are submitted to the 67 county Supervisors of Elections, various authorized state agencies (e.g., any Florida driver's license or tax collector's office), and "third-party" individuals and organizations who have registered under the law.

For example, as Graph 2 displays, in July, 2007, the Division of Elections received a total of 40,789 voter registration applications and determined that 92.5 percent were valid. Four years later, in July 2011, the first month HB 1355 was in effect, the Division of Elections processed a total of 37,115 voter registration applications. Of those, 88.9 percent were deemed to be valid.

Even more dramatically, in December 2007, the Division of Elections processed 77,299 voter registration applications, with a 90.8 percent validity rate. Four years later, in December, 2011, it processed 45,026 voter registration applications, but determined that only 89.6 percent were valid.

Graph 2. Total Number of Voter Registration Applications Received and Percent Valid, Florida Division of Elections, 2007 and 2011



Not only is the number of new voter registrations down appreciably from comparable months four years ago, but the percentage of valid new registrations under HB 1355 is also lower, indicating that third-party groups such as the League of Women Voters and other groups who collected and submitted voter registration forms in 2007, but were not so involved in 2011, are not the cause of invalid voter registration forms being submitted for verification. Rather, what is clear from these figures is that the increased burdens placed on third-party persons and organizations wishing to register citizens to vote resulting from HB 1355 have done little to prevent the submission of invalid voter registration forms.

The Differential Impact of HB 1355 on Election Day Provisional Ballots

As with voter registration and early voting, HB 1355 may have a pernicious effect on voters who are currently registered in a county but who have changed—yet not updated—their permanent addresses with appropriate Supervisors of Elections. Under the new law, legally registered voters who move from one county to another will no longer be able to cast *regular* ballots; instead, before they are permitted to vote *provisional* ballots, they will have to submit a change of address form directly to the Supervisor of Elections in their new counties of residence. They will not be permitted to change their addresses at polling stations. The paperwork must be completed prior to casting a provisional ballot.

Legally registered voters who move *within* Florida counties will still be permitted to make address changes at the polls on Election Day, but they will not be permitted to vote *regular* ballots (with the exception of active military in uniform and their immediate family members). They, too, will have to cast *provisional* ballots.²⁸

The Office of the Secretary of State makes it sound as though casting a provisional ballot is similar to casting a regular ballot. If a voter has to cast a provisional ballot, “The local canvassing board will simply compare your signature on the provisional ballot certificate with the signature on your voter registration record. If the signatures match, your provisional ballot will be counted.”²⁹

Of course, what the Division of Elections does not mention is that, if a legally registered voter casts a provisional ballot for any reason (e.g., his or her eligibility is challenged by another person; he or she moved within Florida or within a county and is in the incorrect precinct when trying to vote; he or she is a registered voter but does not appear on the precinct register), after Election Day, the local three-member canvassing board will exercise judgment on whether the voter casting a provisional ballot is eligible to vote, including making sure his or her signature on the provisional ballot certificate and (if necessary) address change form matches the signature on file with an appropriate Supervisor of Elections.

But history shows that casting a provisional ballot in Florida in no way guarantees that a voter’s ballot will count. In the 2008 General Election, less than half of all provisional ballots cast were actually deemed to be valid. According to the Florida State Department, of the roughly 8.3 million ballots cast, 35,635 were provisional ballots.³⁰ Local canvassing boards, however, only validated 17,312 of these.

In 2008 there was a tremendous amount of variation across the state’s 67 counties regarding the number of provisional ballots cast and the percentage that were actually counted. In six counties, all of them rural, all of the provisional ballots that were cast (a total of 54) were counted by canvassing boards.³¹

²⁸ Under the law, a voter must cast a provisional ballot, which will not be counted until after the unofficial results are tabulated by the Supervisor of Elections and reported to the Secretary of State. The local canvassing board, under the direction of the Supervisor of Elections, has two working days to count provisional ballots. The board is to examine the voter’s “provisional ballot certificate, and any and all other information and evidence, if anything is available. The board must count your provisional ballot unless the board determines, based on preponderance of the evidence, that you are not entitled to vote.” Sec. Florida Secretary of State, Division of Elections, “Frequently Asked Questions,” 2011. Available: <http://election.dos.state.fl.us/gen-faq.shtml#link3>.

²⁹ Florida Secretary of State, Division of Elections, “Frequently Asked Questions,” 2011. Available: <http://election.dos.state.fl.us/gen-faq.shtml#link3>.

³⁰ The following figures are drawn from, Department of State, Division of Elections, “November 2008 General Election: Ballots Cast,” 2008. Available: <http://election.dos.state.fl.us/reports/pdf/2008BallotsCast.pdf>; and Department of State, Division of Elections, “November 2008 General Election: Provisional Ballots,” 2008. Available: <http://election.dos.state.fl.us/reports/pdf/2008ProvisionalBallots.pdf>.

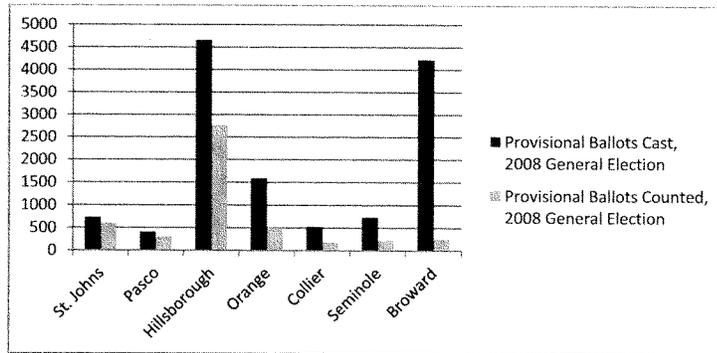
³¹ The six counties with 100 percent acceptance of provisional ballots in the 2008 general election were: Baker (0/0); Dixie (11/11); Hamilton (12/12); Holmes (13/13); Lafayette (3/3); and Suwannee (15/15).

Other counties, as Graph 3 reveals, also had high percentages of validated provisional ballots. For example, over 82 percent of the 731 provisional ballots cast in St. Johns County, 72 percent of the 411 provisional ballots cast in Pasco County, and nearly 60 percent of the 4,659 provisional ballots cast in Hillsborough (a Section 5 Voting Right Act county) were added to the total vote.

In contrast, as Graph 3 also reveals, several counties rejected the preponderance of provisional ballots that were cast on Election Day. Some 4,222 provisional ballots were cast in Broward County; of these only 264 (6.3 percent), were counted as valid by the canvassing board. Some 1,590 voters cast ballots in Orange County in the 2008 General Election, but only 503 (31.6 percent) were deemed valid by the canvassing board. Only 227 of the 740 provisional ballots cast in Seminole County—30.7 percent—were validated by the canvassing board. The canvassing board in Collier County, which requires Section 5 preclearance from the United States Department of Justice, accepted 36.5 percent (191 of 524) of the provisional ballots cast in the 2008 General Election.

Because of the tighter restrictions placed on address changes made by registered on the day of the election, HB 1355 may exacerbate the number of provisional ballots cast in upcoming elections, which in turn, may increase the number of ballots cast by legally registered voters that will not be counted.

Graph 3. Comparison of Cast and Counted Provisional Ballots, 2008 General Election



Conclusion

My testimony has provided an original, empirical analysis of early voting patterns from the 2008 General Election, and among other things I have argued that this analysis shows that HB 1355 will have differential effects across many groups in Florida, including racial and ethnic groups. I have also offered comments about third-party voter registration efforts and the casting of provisional ballots, and overall my testimony indicates that there is a need for Congressional oversight of HB 1355 as it relates to voting rights in Florida. HB 1355 places considerable burdens on the right of citizens to vote in the Sunshine State.

We thank you again for the opportunity to have testified, and I look forward to answering any questions that you may have.



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STATEMENT OF

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Chesapeake Region
Michael H. Charwin
James P. Joseph

Submitted to:
The Senate Judiciary
Subcommittee on the
Constitution, Civil Rights and
Human Rights

New State Voting Laws II:
Protecting The Right To Vote in
the Sunshine State

On

January 27, 2012



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**Lawyers' Committee for Civil Rights Under Law
 Submitted before the Senate Judiciary Subcommittee on
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Introduction

The Lawyers' Committee for Civil Rights Under Law thanks United States Senator Dick Durbin (D-IL), Senator Bill Nelson (D-FL) and the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights for holding this critically important field hearing to bring much needed attention to the current assault on voting rights in Florida, particularly as it relates to H.B. 1355. We appreciate this opportunity to comment on this restrictive voting law that threatens the rights of voters in Florida. We are thrilled to have this field hearing as one of many steps Congress is taking to address and highlight the importance of protecting the right to fully participate in our democracy for all Americans, especially the most vulnerable amongst us.

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.

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, the Florida state legislature is actively trying to make it harder for certain segments of the



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citizenry to vote and have their voices heard. It is telling that during the debate on imposing the barriers we will address in this testimony, 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.”

Unfortunately this sentiment won the day and Florida voters now face voting changes that include: 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 opportunity to vote when they move between Florida counties and do not provide notice of their change of address to election officials in their new county prior to election day.

These voting changes now are being implemented throughout the state, with the exception of the five counties (Collier, Hardee, Hendry, Hillsborough, and Monroe) where the state must obtain preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. With regard to Section 5 preclearance, the state has filed suit in the U.S. District Court for the District of Columbia, and the Lawyers' Committee is representing interveners in that suit – the National Council of La Raza and the League of Women Voters of Florida – to oppose preclearance (the law firm of Bryan Cave and the Brennan Center for Justice are Co-Counsel with the Lawyers' Committee). This testimony will



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discuss the likely impact of these changes as informed by the work of the Lawyers' Committee in helping voters in Florida during the past ten years.

Recent History of Lawyers' Committee Voting Rights Advocacy in FL

During the Presidential Election of 2000, Florida was at the center of this nation's electoral morass. On November 7, 2000, the Lawyers' Committee received numerous calls from voters who had been turned away from the polls or who had problems casting their ballots. As a result, Lawyers' Committee staff, alongside our allied organizations, galvanized our resources in Florida to combat the unprecedented challenges facing voters during the election. As summarized by the non-partisan U.S. Commission on Civil Rights ("USCCR"), which held extensive hearings in Florida following the 2000 elections, the problems encountered by voters included "inexperienced poll workers, antiquated machinery, inaccessible polling locations, and other barriers to being able to exercise their right to vote." The USCCR found that African American voters were disproportionately affected and disenfranchised. The report detailed that African Americans cast 54% of the 180,000 spoiled ballots in Florida, despite comprising only 11% of the electorate. African Americans also bore the brunt of the State's pre-election purge of registered voters from the voting rolls. Florida provided counties with inaccurate lists of individuals identified as convicted felons who were then disqualified from voting by the counties in non-uniform and inaccurate voter purges. Thousands of qualified voters, who were disproportionately African American, were disenfranchised in this manner. The conclusions reached by the USCCR following three days of hearings were unambiguous: "widespread voter disenfranchisement – not the dead-heat contest – was the extraordinary feature in the Florida election."

In response to the 2000 Election debacle, in 2001, the Lawyers' Committee joined with the N.A.A.C.P. the ACLU and other allies to file *NAACP v. Harris*, a class-action lawsuit against the state of Florida election. The lawsuit challenged the voting irregularities and the mass disenfranchisement, and sought to eliminate discriminatory and unequal voting policies and practices from Florida's electoral system. The lawsuit arose from the calls received and the investigation following the election and sought fundamental changes to the voting practices in Florida to make them fair and equal for all Floridians. In 2002, a settlement was reached with provisions aimed to achieve greater accuracy in the maintenance of voter registration rolls, statewide uniformity in Election Day procedures and allowing the motor vehicles department to

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automatically change a customer's address for voting purposes, unless the customer specifically refused.

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In an effort to further ensure that voters had access to assistance when problems arose before and on Election Day, the Lawyers' Committee joined with the National Coalition on Black Civic Participation, People For the American Way, the NAACP and others to establish the Election Protection Coalition. The Lawyers' Committee continues to lead Election Protection and works with its allies, including the National Association for Latino Elected Officials (NALEO), the National Bar Association (NBA), Common Cause, NAACP, Rock the Vote and numerous others to provide voters with a comprehensive suite of resources. These resources include the nationwide **1-866-OUR-VOTE hotline** – to ensure all voters are able to cast a meaningful ballot. Election Protection has field programs in Miami Dade, Broward, Palm Beach, Orange and Hillsborough counties. These field programs are organized by Election Protection Legal Committees consisting of local volunteer attorneys who work with grassroots organizations. On Election Day, attorneys participating in the field program monitor target precincts and work with Election officials to ensure that voter inquiries and problems are addressed. The problems uncovered by Election Protection will be discussed later in this testimony.

Discriminatory Impact of Voter Suppression laws and H.B. 1355

The proliferation of oppressive voter laws sweeping this nation, by many accounts, is just as insidious as the Jim Crow laws of the 1950's, if not worse. Nearly 50 years after "Bloody Sunday" in 1965, when Alabama Gov. George Wallace sent club-wielding state troopers on civil rights marchers attempting to cross the Edmund Pettus Bridge, we are once again fighting attacks against our fundamental right to vote. Like the literacy laws and poll taxes of the past, modern day restrictive voter ID and felony disenfranchisement laws disproportionately affect minorities. Sadly, these attacks are not a coincidence. 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. It is through this lens that we must consider the utility and impact of recent voter suppression efforts across the country, particularly in Florida, a Presidential swing state and a key domain in the fight for control of the U.S. Senate.



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The Lawyers' Committee developed the "Map of Shame" to highlight this attack on certain voters sweeping the nation. It is well documented that minorities disproportionately lack government-issued photo identification. Hence it is beyond credibility to ignore the discriminatory effect of these repressive laws upon people of color.

Effect of Restrictive Voter ID laws

While Florida, for the time being, has not implemented another restrictive voter ID requirement, H.B. 1355 was passed under the same climate as other voter ID laws, with the same purpose – to limit the franchise and limit the participation of certain voters. The facts do not lie. Restrictive voter ID laws disenfranchise eligible voters—especially the elderly, young voters, minorities, low-income voters and those with disabilities. Even when state legislatures claim to offer "free" voter ID, this fails to account for the documentation voters must pay for before that can even get the new ID. In summary, the well cited 2006 nationwide survey by the Brennan Center, 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 \$35,000¹. The same study cited found that African Americans are more than three times as likely as Whites to lack a government-issued photo ID, with *one in four* African Americans owning no such ID.²

¹ 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>

² Restrictive voter ID requirements also disproportionately affect elderly voters. In fact, 18% of citizens nationwide who are above the age of 65 lack a current, government-issued photo ID. 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. 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>

Information from the states particularly elucidates the detrimental impact of restrictive voter ID laws. 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



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Mississippi is another state worth taking a close look at in light of recent events. With the passage of Initiative 27 in November 2011 (requiring Mississippians to provide a government issued photo ID in order to vote) by a 62%-38% margin, Mississippi added to its ugly history of election laws that have a disproportionately negative effect on African Americans. An analysis by the Lawyers' Committee for Civil Rights Under Law found the state's non-white minority overwhelmingly rejected the initiative by more than 75%, while the state's white majority supported it by more than 82%.³ This is significant because the Mississippi vote shows how racially polarized restrictive voter ID bills truly are. When given a chance to express their opinion at the ballot box (Mississippi is the first state with a significant minority population to have photo voter ID on the ballot), minorities overwhelmingly voted their disapproval. Our nation was founded on the principles that the rights of the minority should not be abridged by the will of the majority. As a result of the Mississippi vote, thousands of Mississippians who went to the polls this past November to vote "no" on Initiative 27 may be turned away next November.

H.B. 1355

Despite the facts and the lack of credible evidence of voter fraud and the substantial evidence indicating disproportionate impact upon minorities, low-income, the elderly, students and voters with disabilities, the Florida legislature passed H. B 1355. As justification for the changes proposed by Florida's H.B. 1355, we have already noted that state Senator Michael Bennett emphatically believes that voting and voter registration should be made more difficult under Florida law. Yet, Senator Bennett's comments are in stark contrast to the experiences of state Representative Cynthia Stafford stating:

Secretary of State estimated that 198,000 registered Georgia voters lack a driver's license or alternate state photo ID.² 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.² 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.

³ "Pulling Back the Curtain on Mississippi's Voter ID Initiative." *Lawyers' Committee for Civil Rights Under Law*, January 2012.



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“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.”⁴

While many state legislatures across the country introduced restrictive voter identification laws, as discussed above, this commentary speaks to the purpose of Florida’s legislation which is to undermine the organizations and rules that ensured greater participation in the vote. We believe that three of these changes are particularly burdensome and greatly undermine the rights of voters, particularly minorities.

I. Restrictions on Third-Party Voter registration organizations

Section 4 of H.B. 1355 and the implementing regulations adopted by the Florida Secretary of State imposes tremendous restrictions on citizens and organizations that conduct voter registration outreach and voter registration drives in Florida. Its impact, particularly on the National Council of La Raza is further elucidated in the testimony below. Citizens and organizations are now required to:

1. Register with the state before collecting voter registration applications from Florida registration applicants (or soliciting for collection of such forms);
2. Inform the State of the name of each and every individual (“registration agent”) who will conduct voter registration on its behalf or in association with it and provide temporary and permanent addresses for each such individual;
3. Submit a sworn statement from each registration agent pledging to obey all state laws and rules regarding the registration of voters;

⁴ FLA. HOUSE DEB.: 3rd Reading, Rep. Stafford (April 21, 2011, 37:35-40:09).



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4. Deliver to election officials each and every completed voter registration application that it collects "within 48 hours after the applicant completes it or the next business day if the appropriate office is closed for that 48-hour period."

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Furthermore, H.B 1355:

5. States that "registration agents" include both employees and volunteers, hence creating an enormous burden upon voter registration groups,
6. Mandates adoption of rules requiring that each "third-party voter registration organization" "account [to the State] for all state and federal registration forms used by their registration agents."
7. Requires that each third-party voter registration organization be assigned a registration number and include that number on every blank registration form provided to such "organizations," and requires that the state establish a data base to track "the voter registration forms assigned to [each] third-party voter registration organization."
8. Grants new authority to the Florida Attorney General to sue to enforce the registration restrictions or to enjoin any voter registration activity not in conformance with H.B. 1355.

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II. Restrictions on Early Voting

Section 39 of H.B. 1355 restricts the time period during which early voting is conducted for federal and state elections, and potentially restricts the number of early voting hours. Before the change, early voting was held for a full two-week period beginning on the 15th day before an election and ended on the second day before the election. This included the option for counties to conduct early voting on the Sunday just before Election Day.

Under the new law, early voting now occurs over a more limited, eight-day period, from the tenth day before an election to the third day before an election. This will eliminate the first five days of early voting (Monday through Friday of the second week before the election), and also will eliminate the possibility of having early voting during the Sunday two days before the election, a very popular day for early voting.



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III. Restrictions on Registered Voters Who Move

Section 26 of H.B. 1355 enacts new restrictions on the ability of persons who are registered to vote in Florida, and who move between counties without notifying election officials of their new address before Election Day, to change their address at their polling place in their new county and cast a regular ballot. Before the change, registered voters who move after registering to vote, and who do not notify officials of their new address, were permitted to vote a regular ballot in their new precinct so long as they complete an affirmation specified in Florida law. After the change, these individuals now are required to cast a provisional ballot.

These changes are directly aimed at the voting behavior of Florida voters with the result of making it more difficult for voters to be able to cast a ballot.

IV. Restrictive laws targeting voters with felony convictions

In March of 2011, Governor Scott made significant changes to the process for civil rights restoration, rolling back reforms passed in the last decade and adding new waiting periods for formally convicted felons to apply to have their rights restored. Under the new rule, certain convicted felons must wait five years to apply to have their voting rights restored while those convicted of a more serious crime must wait seven years and have a hearing before the Executive Board of Clemency.

Florida's felony disenfranchisement law dates back to the post-Civil War era but had been eased after the mass disenfranchisement of Floridians in 2000. In 2004, Governor Bush eliminated the previously existing five year waiting period but required an application for the restoration of rights. In 2007, Governor Crist enacted automatic restitution of rights for non-violent felons who had completed their sentences.

These new changes will exacerbate the huge backlogs of individuals who have applied to have their rights restored and turn back the clock to Florida's post-civil war era restrictions that were enacted to ensure that former slaves could never reintegrate into society.

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The "Real" Election Fraud - Analysis of Recent Election Data

Below is an excerpt from the Lawyers' Committee's 2008 Election Protection Report regarding the problems voters encountered in FL during the 2008 elections:

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A familiar feeling of cynicism blanketed Florida in the weeks leading up to November 4, even though state officials had worked to ensure a smoother election than in previous cycles.

Heading into the general election, Florida election officials pushed to implement the state's new "no match, no vote" voter registration policy by checking names of voter registration applications against flawed public databases. If the voter's name or information was inconsistent, their application would be rejected. The databases that the registration lists were checked against were notoriously unreliable. This lightning rod injected a familiar anger and frustration in Floridians still simmering from 2000. Election Protection partners, led by the Brennan Center for Justice, litigated to lessen the disenfranchising impact of the law.

During the early voting period, problems at overburdened early voting sites were dramatically lessened when Governor Charlie Crist courageously issued an executive order to extend voting hours for the week before Election Day. While this solution enabled millions of Floridians to cast a ballot early, registration, polling place and voting equipment problems still cropped up across the state on Election Day.

Registration Problems

High registration rates meant that voters were either turned away at the polls because of registration issues or told to vote by provisional ballot. Other voters found they had not been added to the rolls because their registration did not match drivers' license or social security information under Florida's no-match, no-vote law. Additionally, Election Protection received reports from voters who had registered through the Department of Motor Vehicles, but upon arriving at their



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polling place and showing ID, were told they were not registered. Overall, 37 percent of the problems Floridians reported to the Election Protection hotline involved a registration issue.

Absentee Ballots

Administrative time and resources spent on processing registrations and comparing voter lists complicated other parts of election administration. Many voters reported never receiving their absentee ballots, despite timely requests. Some came to the polls, only to be forced to vote provisionally because records showed they had requested an absentee ballot. The residents of a hospital in Broward County who had requested absentee ballots did not receive them in time to vote. In another example, a voter named Harvey D. from Coconut Creek, FL, had suffered a stroke. Neither Harvey nor his wife, who is his primary caregiver and cannot leave him alone, were able to go to their polling place on Election Day. In anticipation, they had requested absentee ballots well ahead of time. Their ballots had still not arrived when they called the hotline on November 4, disenfranchising the couple.

Polling Place Problems

Difficulties with voting machines were prevalent across the state on Election Day, and were the second biggest problem reported to the hotline. Over the course of the day, at least three dozen polling places in populous areas all across the state — Manatee, Orange, Hillsborough, Miami-Dade, Lee, Palm Beach, Pinellas, Duval, Volusia, Broward, Escambia, Lee, Leon and Sarasota Counties — reported significant problems with their optical scanning machines. This breakdown of optical scanners had a cascading effect of additional problems in many locations. When the scanners broke, voters were required to manually insert ballots into a safe box. When boxes filled up, poll workers begin stacking ballots in unsecured locations throughout polling places. This also contributed to long lines and general confusion.



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Even though stuffing ballots into bags struck many callers as odd, poll workers were actually following protocol. In other instances, poll workers did not properly carry out their duties. At one precinct in Tampa, two voters showed up at 6:55 pm to vote. Although anyone standing in line before 7 pm should have been allowed to cast a ballot, poll workers shut the doors before these Floridians could cast a ballot. An Election Protection volunteer on site stayed with them, calling the Supervisor of Elections to protest the premature poll closing. The two voters were ultimately allowed in to cast their votes.

Long Lines

As was the case all over the country, the excitement over the election had prompted unprecedented registration and turnout in Florida. During the early voting window, there were initial reports of Floridians waiting several hours to cast an early ballot – a situation partially alleviated by Governor Crist's extension of early voting hours. On Election Day, however, long lines persisted.

Hundreds of voters in highly populated areas waited in line well past 9 pm at the Emmanuel Lutheran Church in Miami, and several universities were affected as well. At the University of South Florida in Tampa, voter turnout was wildly underestimated. Nearly 1,900 students were registered to vote at a single polling location with only two poll workers. They could only process between 60 and 90 voters an hour. At the University of Florida, Gainesville, student voters waited past 9 pm to cast their ballots. At the University of Central Florida in Orlando, voters waited in lines upwards of five hours. The Orange County Elections Supervisor sent additional staff members to monitor the situation.

In an eerie sense of déjà vu, these new changes caused by H.B. 1355 will exacerbate the problems that already exist and create even more barriers that could lead to the disenfranchisement of many eligible voters. The reports discussed below from the Election Protection database illustrate how the changes in the law will compound existing problems encountered by far too many Florida voters.



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Restrictions upon 3rd Party Voter Registration Groups

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As indicated above, the Lawyers' Committee and its co-counsel are representing the National Council of la Raza (NCLR) in the current Voting Rights Act litigation regarding Florida's 2011 election law changes that is in front of the US District Court in Washington, DC. NCLR is the nation's largest Hispanic civil rights and advocacy organization dedicated to improving and expanding opportunities for the nation's 50.5 million Hispanics. To that end, a significant part of NCLR's work is dedicated to building long term, informed, participation among the Hispanic electorate nationwide and increasing the influence of Hispanic communities in the political process.

NCLR's civic engagement program currently operates in seven states, including Florida, which is its largest operation. Florida, the nation's third most Hispanic populous state, is a flagship operation for NCLR's civic engagement efforts and NCLR has operated one of the largest voter registration organizations in the state. For example, during the 2010 midterm election season, NCLR (then Democracia U.S.A.) registered a substantial percentage of Florida's new Hispanic registrants.

In 2011, NCLR imposed a moratorium on its voter registration activities in Florida due to the burdensome and unnecessary third-party registration changes enacted by the state in 2011. NCLR is now considering in what manner it may resume its registration activities while also complying with the new restrictions. NCLR has determined that it would need to devote significant additional resources to such compliance, and thus any registration activities it is able to again undertake in the areas of the state where the new restrictions are being applied would necessarily be at a lower level than what NCLR otherwise would be able to do if the restrictions had not been enacted. This, in turn, will diminish the opportunity of Florida's Hispanic citizens to register to vote.

Moreover, with regard to any voter registration activities NCLR may be able to resume, NCLR would need to also reduce the substantial quality control measures it has implemented in the past so as to be able to comply with the new 48-hour time limit for turning in voter registration applications. This, unfortunately, would result in a greater number of incomplete and inaccurate voter registration applications being delivered by NCLR to election officials.



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NCLR formerly had ten days to conduct its quality control efforts, which included contacting voter registration applicants if NCLR discovered that they did not accurately or completely fill out the voter registration application. The 48-hour deadline would significantly reduce NCLR's ability to conduct such outreach and thus would limit NCLR's ability to ensure that each registration applicant is successfully registered to vote.

Restrictions on Address Changes at the Polls

Problems with registration accounted for 37% of all problems reported by Florida voters to the Election Protection hotline in 2008 and 24% in 2010. This is consistent with what Election Protection saw nationally and a clear indication that issues stemming from our outdated system of registration pose the biggest threat to our systems of elections. These problems will be further compounded by the new Florida law. These restrictions limit a rule that has allowed many Florida voters who moved right before an election to update their registration at the polling place and cast a regular ballot. The rule allowed meaningful participation in our democracy – the opportunity to cast a ballot that counts. Instead of ensuring full participation in our democracy, the new law creates a barrier that could lead to the disenfranchisement of eligible voters.

During the 2010 election, Election Protection received reports from voters who should have been allowed to update their information and vote but were not allowed to do so. Examples include:

- A voter who moved to a different county after the registration deadline and went to vote at her new precinct. The election official refused to let her update her information and vote, and told her voting with a provisional ballot would be a waste of time.
- A voter moved from Miami-Dade to Broward County and went to vote at her new polling location. A poll worker refused to let her vote and instead sent her to another location. At the next location, she was again told that she could not update her registration and vote nor could she vote with a provisional ballot.
- A voter who, along with her mother, submitted her change of address form in April, well before the deadline. Although the voter's mother received confirmation of the update and was able to vote, the voter was not on the rolls and was not allowed to update her registration or even cast a provisional ballot at the polling place for her new address.



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The new restrictions on registration updates at the polls disproportionately impacts certain classes of voters: young and highly mobile voters, especially college age students heading to a state school in a different county, and those voters who may have to move right before an election. All eligible voters deserve an opportunity to fully exercise their fundamental right to vote. The focus of reform should be on ensuring that all who are eligible have the opportunity to exercise their right to vote, not on imposing new burdens on certain classes of voters in order to limit their meaningful participation in our democracy.

Restrictions on Early Voting

The restrictions the new law place on early voting are particularly troubling, especially considering Florida's history of long lines and confusion at the polls. Through the years, Election Protection has received countless calls from Florida voters who spent hours waiting in line, only to leave without voting due to other commitments such as work and child care duties, or elderly and disabled voters who don't have the physical ability to stand in line. A small sampling of these stories includes:

- An elderly disabled couple who went to vote in Boca Raton tried to ask voting officials if they could bypass the line or use curbside voting. Instead they were told by a police officer that they had to wait in line, which they physically could not do and left without voting.
- A voter went to vote early due to an upcoming business trip. After waiting in line for two and a half hours, he had to leave, without voting, to make his flight. His return flight was not until the Wednesday after Election Day.
- A voter called the hotline frustrated after attempting to vote early at 7am three days in a row only to find 3 hour lines that he could not wait on.
- In 2008, hundreds of voters waited in line well past 9pm at the Emmanuel Lutheran Church in Miami.
- At the University of Florida, Gainesville, voters also stood in line for over two hours after the polls were supposed to be closed.
- At the University of Central Florida in Orlando, voters waited in lines upwards of five hours.



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Early voting also helps to alleviate many of the numerous problems that occur on Election Day, such as broken machines, confusion of the law by poll workers and inefficient election administration. It gives election officials the time to fix these problems and voters the time to cure registration problems they encounter at their polling location before it is too late. We have received many calls during early voting that have given Election Protection volunteers the ability to contact election officials and fix problems encountered at polling locations. A sampling of these issues is below:

- In 2010, an active duty officer of the Navy in Pensacola was asked to provide more identification than her acceptable military ID and voter registration card. The officer was only allowed to vote after she retrieved a birth certificate, driver's license and social security card from her car.
- In 2004 in a Seminole County polling location that contained two precincts, poll workers were giving the wrong ballots to the wrong voters.
- In Palm Beach, poll workers set up 5 lines that divided the alphabet evenly leaving two lines completely backed up while the other lines remained empty. The poll workers checked voters' identification twice, which further slowed the voting process. The check-in system was so slow, that voters were forced to wait in line while the voting machines remained unused.

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 a study led by the Massachusetts Institute of Technology, four million to five million registered voters did not participate because they encountered problems with their voter registration or failed to receive absentee ballots.⁵

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

⁵ <http://www.nytimes.com/2009/03/11/us/politics/11vote.html>



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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.

The reality is that there are countless problems that voters encounter when trying to exercise their right to vote. Voters are disenfranchised due to problems with the system which the new Florida law does nothing to address. These problems include:

- In 2008, a voter called the Division of Elections to confirm that she had properly registered to vote and had the correct precinct location. When she went to the precinct was turned away because they couldn't find her on the list. She again checked her voter registration online and confirmed she was registered and had the right precinct location but was turned away yet again.
- A voter registered to vote but received a notification that she didn't include her birthdate. She filled out the request and mailed it before the October 4, 2008, deadline but received a notice that the information was not entered into the computer until October 8th making her ineligible to vote in the 2008 election.
- A voter was turned away from the polls and told he was not registered. He was able to confirm his registration once outside his polling place but was still not allowed to cast a regular or provisional ballot.
- A voter waited line for two and a half hours only to be told she wasn't registered despite having a valid voter registration card. She was only allowed to cast a provisional ballot.
- Yet another voter arrived at her polling location, the same location she has voted at for the last 10 years, only to be told they could not find her name on the rolls. An Election Protection hotline worker looked her up on the Division of Elections website and found she was registered and at the correct polling location so the voter went back to the polling location to vote. She was told to wait while a poll worker tried to contact the Supervisor of Elections but after trying for an hour without getting through, the worker gave up and turned the voter away.



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Because of these systematic problems and issues, instead of limiting the ability for voters to register and vote, Florida should be modernizing the system to provide every opportunity for Americans to register to vote, update their registration and cast meaningful ballots.

Deceptive Practices and Voter Intimidation

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, fliers were distributed and posted in a West Philadelphia, Pennsylvania, neighborhood claiming 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, a group called the "Black Democratic Trust of Texas" distributed fliers falsely warning voter in African-American neighborhoods of Houston, Texas, 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.



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Felony Disfranchisement

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.

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; 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. Only two states do not disenfranchise individuals with felony convictions while incarcerated, notable exceptions to the rule. At present, states with greater non-white prison populations are more likely to ban convicted persons from voting than states with proportionally fewer non-whites in the criminal justice system. Furthermore, African Americans are not only disproportionately disenfranchised, but are also less likely to have their voting rights restored.

In Florida, the Sentencing Project reports that for 2004 the felony disenfranchised population in Florida was equal to 1,179,687 people, or 9.0% of the state population.⁶ Of that population, 293,545 individuals were African Americans. This is tantamount to 18.8% of the 2004 African American population being disenfranchised because of felony convictions. More recent data from a report by the Florida Advisory Committee to the US Commission on Civil Rights estimates that Florida disenfranchised 200,000 voters between 1995 and 2005, and as many as 1,000,000 adults in the state might presently (2008) be banned from voting.⁷

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

⁶<http://www.sentencingproject.org/map/statedata.cfm?abbrev=FL&mapdata=t>
[ruc](#)

⁷"Ex-Felon Voting Rights in Florida. Revised Rules of Executive Clemency That Automatically Restore Civil Rights to Level-1 offenders Is the Right Policy." *Florida Advisory Committee to the United States Commission on Civil Rights*. August 2008.

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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. 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.” 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.” 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.”

These international obligations have been 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 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,



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“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))”

Fighting Back in the Courts

Role of Section 5 of the Voting Rights Act in Reviewing Changes in Florida's law

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. The state has chosen to implement these changes in counties not subject to Section 5. Therefore at present, there are two systems of voting laws in Florida with the changes being implemented in 62 of Florida's 67 counties.

Other Litigation in the States

In South Carolina, the Lawyers' Committee joined with the ACLU and its other allies again to ask 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 IDs. On December 23, 2011, the Justice Department rejected South Carolina's measure requiring photo-identification at the polling place. By rejecting South Carolina's discriminatory voter identification law, the Department of Justice has made a powerful statement about its commitment to upholding the promise of the Voting Rights Act and the U.S. Constitution.

In Ohio, as a result of complaints received by Election Protection in November 2004, the Lawyers' Committee, on behalf of the League of Women



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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 Ohio⁸, Missouri⁹, Indiana¹⁰, New Mexico¹¹ and Georgia¹². 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 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.

The Lawyers Committee will continue to protect voters against these new laws and policies, such as Florida's H.B. 1355, which discriminate against minority voters and fail to protect the rights of all voters.

Recommendations for Real Reform

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. Rather than pursuing restrictive voter laws, we urge

⁸ Harkless v. Brunner, 1:06-cv-2284 (N.D. Ohio)

⁹ Acorn v. Scott, 2:08-cv-04084 (W.D. Mo.)

¹⁰ NAACP v. Gargano, 1:09-cv-0849 (S.D. Ind.)

¹¹ Valdez v. Herrera, 1:09-cv-668 (D.N.M.)

¹² NAACP v. Kemp, 1:11-cv-1849 (N.D. Ga.)



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state legislators to modernize our election system and implement new reforms that expand the franchise for voters from all walks of life. New and longtime voters alike 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 than 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. Deceptive voter practices include the creation and distribution of resources listing the wrong date or time for the election, giving inaccurate information about voter ineligibility, or promoting false endorsements of candidates.

Current law is clearly deficient in protecting voters' rights against these onerous practices. There needs to be a clear civil action to an additional 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.

On December 14, 2011, Senators Ben Cardin (D-MD) and Charles Schumer (D-NY) introduced the new bill, *Deceptive Practices and Voter Intimidation Prevention Act of 2011*, to create tough criminal and civil penalties for those



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who use voter deception tactics¹³. The bill will allow for criminal penalties of up to \$100,000 and up to five years of imprisonment for those convicted of deceptive campaign practices¹⁶. The *Deceptive Practices* bill prohibits deceptive voting practices in federal elections, creates criminal penalties for violations, allows the Attorney General to take corrective actions, and requires the Department of Justice to report to Congress after federal elections¹⁶. This legislation sheds light on the severity of deceptive voter practices that threaten our democracy and recognizes the power of Congress to prohibit discriminatory tactics in elections as stated under the Fifteenth Amendment and the 1965 Voting Rights Act¹⁶.

The *Deceptive Practices and Voter Intimidation Prevention Act of 2011* has been endorsed by the Lawyers' Committee for Civil Rights Under Law and we urge swift passage of this bill.

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. Instead of restricting early voting as H.B. 1355 does, we urge the Florida Legislature to increase opportunities for early voting as it did prior to the 2008 Presidential Election.

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 any case automatically restored after the completion of the criminal sentence."

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

¹³ Op-ed piece by U.S. Senator Ben Cardin "Deceptive Voter Practices Cannot Be Tolerated" available at <http://cardin.senate.gov/newsroom/news/deceptive-voter-practices-cannot-be-tolerated>



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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 levels¹⁴.

Restrictions on early voting, voter registration and onerous voter ID requirements do little to secure our electoral system, yet a lot to create more barriers and problems for eligible voters. 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 state lawmakers to focus on passing legislation to that addresses real problems such as deceptive practices or our cumbersome voter registration system instead of disregarding and undermining the very rights that so many have fought and died for.

¹⁴ 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/

The Leadership Conference
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**STATEMENT OF
WADE HENDERSON, PRESIDENT & CEO
THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS**

“NEW STATE VOTING LAWS: BARRIERS TO THE BALLOT?”

**SENATE JUDICIARY SUBCOMMITTEE ON THE
CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS**

JANUARY 27, 2012

Chairman Durbin, Ranking Member Graham, and Members of the committee: I am Wade Henderson, president & CEO of The Leadership Conference on Civil and Human Rights. Thank you for the opportunity to submit testimony for the record regarding the problem of *restrictive* voting laws.

The Leadership Conference on Civil and Human Rights is a coalition charged by its diverse membership to promote and protect the civil and human rights of all persons in the United States. Founded in 1950 by A. Philip Randolph, Arnold Aronson, and Roy Wilkins, The Leadership Conference works in support of policies that further the goal of equality under law through legislative advocacy and public education. The Leadership Conference's more than 200 national organizations represent persons of color, women, children, organized labor, persons with disabilities, the elderly, gays and lesbians, and major religious groups.

The Leadership Conference is committed to building an America that is as good as its ideals – an America that affords everyone access to quality education, housing, health care, collective bargaining rights in the workplace, economic opportunity, and financial security. The right to vote is fundamental to the attainment and preservation of each of these rights. It is essential to our democracy. Indeed, it is the language of our democracy.

Thankfully, in securing the right to vote, the days of poll taxes, literacy tests, and brutal physical intimidation are behind us. But today's efforts at disfranchisement, while more subtle, are no less pernicious.

In just under ten months, Americans will be called to the polls to decide who our next president will be, determining the fate and direction of our country for years to come. The assault on our constitutional right to vote is a concerted effort to decide the outcome of the 2012 election before any ballot is cast.

Recently erected barriers to the ballot such as photo ID requirements, shortened early voting periods, limits on poll worker assistance, proof of citizenship requirements, restrictions on same day and



third-party registration, and the disenfranchisement of former felons are nothing less than an all-out assault on democracy and the progress of the last century – indeed, on the very legacy of the civil and human rights movement.

These barriers to vote are not the product of independent actions occurring coincidentally throughout the country. Supporters of these requirements spuriously claim these restrictions are a meaningful tool for fraud prevention, though instances of in-person voter fraud are extremely rare. The truth is that they are very much part of a coordinated political effort throughout the country to abolish the voting rights of millions of Americans – particularly traditionally underrepresented groups that saw an increased turnout in the 2008 elections.

In 2011 alone, 34 state legislatures introduced voter suppression bills; laws have already passed in 14 of those states and are pending in eight. Unsurprisingly, among the states with new restrictions are those with a history of disenfranchising minorities, including Texas, Tennessee, South Carolina, Mississippi and Alabama, and important swing states like Wisconsin and Florida.¹

According to a report by the Brennan Center for Justice, entitled “Voting Law Changes in 2012,”² the states that have passed such laws hold 171 Electoral College votes, two-thirds of the 270 needed to win the presidency. Further, out of the 12 battleground states in the upcoming election, five have already restricted voting rights and two others are considering new limitations. These targeted changes are estimated to restrict the voting rights of more than five million Americans, which could have a significant impact on the upcoming presidential election.

A Solution in Search of a Problem

Voter fraud is not the primary issue. It is already illegal and punishable by jail time and fines for anyone to attempt to commit voter fraud. Already existing punishment is why voter impersonation and other election crimes are so rare. It is simply not worth the risk.

Proponents of the new voting law changes claim that voter fraud is commonplace, yet multiple studies have shown that the problem is essentially nonexistent. And anecdotal evidence held up by proponents has consistently been debunked.

Central in many of these changes is the requirement of a government issued photo ID, which places additional restrictions inhibiting one’s access to the ballot. The notion that ID restrictions combat fraud, cut costs and secure elections is a fallacy. First, voter fraud is extremely rare; the only type of voter fraud that a photo ID could address would be voter impersonation – that is, when voters show up at the polls and pretend to be someone they are not. This kind of fraud simply does not exist at a significant level anywhere in this country. “It is more likely that an individual will be struck by

¹ Brennan Center for Justice, “Voting Law Changes in 2012”
http://www.brennancenter.org/content/resource/voting_law_changes_in_2012/

² *Id.*



lightning than that he will impersonate another voter at the polls,” according to a recent report on voter fraud by the Brennan Center for Justice.³

Indeed, another recent analysis of data from all 50 states and the U.S. Department of Justice found that voter impersonation – again, the only type of fraud that a photo ID can address – is exceptionally rare.⁴ Only 24 people were convicted or plead guilty to illegal voting at the federal level between 2002 and 2005.⁵ *None* of them were attempting to impersonate someone else.

The real problem to address is voter turnout. Voter turnout in presidential years has declined since 1960,⁶ and pitifully hovers below 60 percent of the eligible electorate.⁷ We should be making every effort to increase participation in our democracy, not erecting barriers to voting based on illusory problems that serve partisan interests. Yet, despite the wealth of data to the contrary, resources are being used to “correct” problems that frankly do not exist.

If these laws truly aimed to curb fraud and secure processes, they would identify ways to combat real election issues, like deceptive practices and intimidation, through public education. They could better publicize existing election laws and penalties to promote awareness. They could more widely post eligibility requirements at the voting polls for both voters and poll workers. They could start election hotlines like Georgia’s Stop Voter Fraud hotline. Finally, they could invest in updating voter registration rolls so that poll workers would have up-to-the-minute data on voter eligibility. Yet, these steps aren’t likely to be taken because most states know that voter fraud is not the issue.

Impact of Voter Suppression Laws

Florida’s new law, HB 1355, is one of the most comprehensive and significantly restrictive changes to voting laws this past year. Among other things, the law reduces the early voting period, eliminates voting the Sunday before an election, makes it more difficult to change your address at the polling place, and creates a series of new administrative procedures making it more cumbersome for individuals and volunteer organizations to register voters.

Although many historical barriers to voting—like property requirements, literacy tests, and poll taxes—are no longer constitutional, for many Americans voter registration continues to be an impediment. More than a quarter of voting-age Americans are not registered and thus cannot vote. In

³ Justin Levitt, “The Truth About Voter Fraud,” The Brennan Center for Justice at New York University School of Law, 4, at <http://www.truthaboutfraud.org/pdf/TruthAboutVoterFraud.pdf>.

⁴ 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,” 4, <http://www.advancementproject.org/sites/default/files/publications/Picture%20ID6%20low.pdf>

(citing Lorraine C. Minnite, *The Myth of Voter Fraud*, Cornell Univ. Press (2010), showing that allegations of widespread voter impersonation fraud at the polls are not supported by empirical

⁵ *Id.*

⁶ <http://www.fairvote.org/voter-turnout>

⁷ www.infoplease.com



2008, 2.13 million voters registered in Florida, at least 8.24 percent or 176,000 of them did so through registration drives. This number is even more compelling when analyzed by race.

A Census Bureau report reveals that in 2004, 17.4 percent of African-Americans and 18.9 percent of Hispanic voters in Florida registered through private registration drives, compared to only 6.6 percent of non-Hispanic whites.⁸ Likewise, in 2008, we see a similar trend, with 12.7 percent of black voters and 12.1 percent of Hispanic registered voters registered through drives compared to only 6.3 percent of non-Hispanic white registered voters in Florida.⁹ Furthermore, among those who said they voted in Florida in 2008, 6.3 percent of white voters were registered through drives, versus 11.5 percent of black voters and 11.5 percent of Hispanic voters.¹⁰

As the data suggests, voter registration drives conducted by nonpartisan, nonprofit organizations have dramatically increased voter registration rates among groups that have traditionally faced the greatest barriers to voting, including low-income, minority, and elderly. Consequently, HB 1355's dramatic impact on third-party registrations is poised to have a significant impact on one of the state's key mechanisms in achieving minority participation and access to the ballot.

However, as a result of the restrictive changes in the law, including shortening the time period for submission of voter cards through drives by 80 percent (from 10 days to 48 hours), third-party registration drives have been dramatically curtailed in the state and may come to a complete halt. Many non-partisan organizations like the League of Women Voters of Florida and Rock the Vote have indefinitely suspended all voter registration efforts in the state for fear incurring hefty fines that would be assessed for mistakenly not complying with the panoply of administrative regulations now in place. Deidre McNabb, president of the Florida League of Women Voters, explained the burden the new law placed on her volunteers. "When we looked at the laws, we felt that this would put our thousands of volunteers across the state who have registered voters for 70 years in Florida at a grave disadvantage. We did not feel that we as an organization could ask our volunteers to undergo that kind of vague, restrictive and punitive restriction which the legislature has tried to impose," McNabb said.¹¹

The bill leads to absurd results. By requiring third-party groups to submit voter registration forms to the state within just 48 hours or risk fines, the bill would dampen the enthusiasm of volunteers and teachers around the state who are committed to encouraging participation in our democracy. The

⁸ U.S. Census Bureau, Current Population Survey, November 2004. The national figures in 2004 were: 7.8% of non-Hispanic whites; 12.7% of blacks; and 12.9% of Hispanics. See Table 14, <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2004/tables.html>.

⁹ U.S. Census Bureau, Current Population Survey 2008, available at <http://www.census.gov/apsd/techdoc/cps/cpsnov08.pdf>. All data from the CPS on methods of voter registration is self-reported by survey respondents. The corresponding national figures in 2008 were: 5.4% of non-Hispanic whites registered at private drives; 11.1% of African-Americans; and 9.6% of Hispanics. See Table 14, <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2008/tables.html>.

¹⁰ U.S. Census Bureau, Current Population Survey 2008, available at <http://www.census.gov/apsd/techdoc/cps/cpsnov08.pdf>.

¹¹ http://tpmmuckraker.talkingpointsmemo.com/2011/07/florida_league_of_women_voters_drops_registration.php



experiences of two Florida teachers further illustrate the challenges that new third-party registration requirements pose.

The Daytona Beach News-Journal recently reported that as a result of HB 1355, New Smyrna Beach high school teacher Jill Cicciarelli is under investigation by the state for pre-registering high school students to vote without first registering with the state, for which she could be fined up to \$1000.¹²

Also of concern is the story of another educator, Dawn Quarles, an advanced placement government teacher in Santa Rosa County, who is facing similar charges. As reported by *the Associate Press*, "Ms. Quarles admitted in the past she had not gotten forms in to the Secretary of State within the 10 day window, but had made sure she had done so this time, only to find out the rule had been changed to 48 hours." Quarles said 48 hours was not enough time to mail the forms to the Santa Rosa County supervisor's office. "That's ridiculous, that's crazy," Quarles said "I don't know about it, so how can I abide by it?"¹³

For many young people and first-time voters, high school is their entry into civic engagement. But with teachers facing "voter fraud" charges, high school-aged youth will most likely not be registered to vote in 2012 in Florida. Moreover, the restraints to third-party voter drives will have a deleterious impact on minority turnout at the polls.

According to U.S. Census Bureau data from the 2004-2008 election cycles, African Americans and Hispanics rely more than white voters on third-party registration, and are more than twice as likely to register to vote through private drives as whites. Further, minority reliance on such drives is greater in Florida than anywhere else in the country.

Costs of other Restrictive Changes

One significant change is the shortened early voting period, which has been reduced from 14 days to 8 days, and the elimination of voting on the last Sunday before the election. In recent years early voting has surged, with more than a dozen states launching or expanding early voting in their state, according to the National Council of State Legislatures. Further, data compiled by the *Associated Press* and Edison Research reveal that in the 2008 general election, 34 percent of voters nationwide cast ballots before Election Day, up from 22.2 percent in 2004.

In Florida, early voting has had similar success and is widely utilized in the African-American community. According to the National Association for the Advancement of Colored People, more

¹² <http://www.news-journalonline.com/news/local/southeast-volusia/2011/10/23/new-florida-election-law-stirs-up-controversy.html>

¹³ <http://www2.tbo.com/news/politics/2011/nov/>



than 32 percent of those who voted early on that last Sunday before Election Day were African American and nearly 24 percent were Latino. In the 2008 general election 54 percent of African-American voters cast their ballots early and made up nearly one-third of the statewide voter turnout the Sunday before the election.

However, supporters of HB 1355, and others laws like it, tout the changes as being necessary to curb fraud, save money and ensure a more orderly process. However, they are unable to provide one single indicia of evidence to support these claims. In fact, there is evidence to the contrary, revealing that reforms put in place after 2000 have largely been successful. According to the Florida Department of State, fraud is minimal; only 31 cases of alleged voter fraud have been referred to the Department of Law Enforcement in the past three years.¹⁴

New regressive voting laws are thus targeting communities that have traditionally struggled for ballot access – and that have fought long and hard for the access they have – and setting back the clock on their progress and their rights.

Conclusion

Fortunately, there is a glimmer of hope. Throughout the country advocates have worked diligently to educate and mobilize constituents to combat these pernicious restrictions. In Florida, the League of Women Voters and the ACLU have filed a lawsuit challenging the constitutionality of HB 1355. In addition, legislation will be introduced this session to counter many of the restrictive provisions of the law. These are just a few examples of the ways Americans are fighting back against laws designed to suppress their constitutional right to vote.

It is important to note, in some states, governors have protected the rights of their citizens by vetoing corrosive voter ID laws. Yet many others have fallen prey to the rhetoric – or orchestrated and perpetuated the rhetoric themselves – in an attempt to disenfranchise thousands of voters across the country for political gain. Rhetoric like that of Nevada Governor Brian Sandoval that “the right to vote is a privilege” – a contradiction in terms if I have ever heard one – cannot be tolerated in a democracy founded on equality.¹⁵ Explanations from New Hampshire House Speaker, Bill O’Brien, that college students are “foolish” and just “vote their feelings” and so should not be able to cast a ballot have no place in the 21st Century.¹⁶ Unfortunately, it is this type of rhetoric that has dominated the conversation.

It should be the duty of our policymakers to remove the barriers to participation for all citizens, not to erect new ones under the guise of fixing a problem that doesn’t actually exist. Removing barriers involves modernizing the voting system with automated registration, online access to records, and accessible voting machines that would allow more than **65 million eligible Americans to**

¹⁴ http://www.nytimes.com/2011/05/06/us/politics/06voting.html?_r=1

1/1/teacher-says-no-way-to-comply-with-floridas-voting-ar-299783



participate. Investing in a uniform, simplified process for voting would eliminate unnecessary bureaucratic processes, save states money, and save election officials time. Right now state legislators are committed to doing the opposite. Requiring photo ID, limiting early voting days, restricting third-party registration and other impositions on the right to vote will not preserve our democracy. It will only serve to exclude many Americans from participating in the important decisions that face us all.

Thank you for your leadership on this critical issue.

**Statement of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee
Hearing On
“New State Voting Laws II: Protecting the Right to Vote in the Sunshine State”
Before the Subcommittee on the Constitution,
Civil Rights and Human Rights
January 27, 2012**

Today the Senate Judiciary Committee holds the second hearing in a series that began last fall. This timely hearing, entitled “New State Voting Laws II: Protecting the Right to Vote in the Sunshine State,” focuses on a state that sadly has been no stranger to voter suppression. Florida’s history of voting rights violations led five Florida counties to be deemed “covered jurisdictions” under Section 5 the Voting Rights Act. Under that historic and important civil rights law, those counties must receive the Department of Justice’s clearance before making changes in their voting laws or go to court to receive permission. Just last year, Florida enacted HB 1355, a law designed to severely restrict voter registration drives, slash the early voting period by nearly half, and stripped voters of the opportunity to vote the Sunday before election day. The president of the League of Women Voters of Florida has identified this as a return “to Jim Crow-style tactics of disenfranchising voters.” I agree.

Unfortunately, Florida is not alone in enacting voter disenfranchisement laws. Restrictive voting laws are spreading across the country like wildfire. The recent method of choice has been strict voter ID laws. In fact, according to the National Conference of State Legislatures, since 2001, nearly 1,000 voter ID bills have been introduced in 46 states. Only three states -- including my home state of Vermont -- do not have a voter ID law and did not consider voter ID legislation last year.

Many Americans associate any barriers to voting with a dark time in our Nation’s history. We will never forget the courageous and resilient Americans who were attacked by dogs, blasted with water hoses, or beaten by mobs simply for attempting to register to vote. We remember a time when stubborn and recalcitrant state officials used discriminatory devices such as poll taxes, grandfather clauses, and literacy tests to exclude American citizens from their democracy. We cannot backslide on the progress we have made protecting every American’s right to vote.

In 2006, members of Congress stood together on the Capitol steps to reaffirm our commitment to achieving full democratic participation by reauthorizing the Voting Rights Act. This Committee played a key role in reinvigorating and reauthorizing that landmark law. After nearly 20 hearings in the House and Senate Judiciary Committees, we found that modern day barriers to voting continue to persist in our country. The legislation reauthorizing Section 5 of the Voting Rights Act passed by both the Senate and House overwhelmingly, and was signed into law by President Bush, who also supported its constitutionality.

Earlier this week, the state of Texas sued the United States in an effort to “fast-track” the enforcement of the state’s new voter ID law. Texas has the burden of proving their voter ID law is not discriminatory, something South Carolina, another state covered under Section 5, was unable to do. But rather than cooperating and providing the necessary and complete information, Texas is suing the Justice Department and challenging the constitutionality of Section 5. In

doing so, Texas is making a deliberate effort to undermine and reject the nearly unanimous conclusions of the democratic branch of government responsible under the Constitution for making sure that one person, one vote is a reality.

We have made great progress in our national quest for a more inclusive democracy. We must understand that today's voting restrictions are not only harmful but run contrary to our Constitution's text and history. I thank the chairman of the Subcommittee on the Constitution, Civil Rights and Human Rights for holding this important hearing in the Hillsborough County Courthouse and the witnesses for their testimony.

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Statement from the FSA:

Students are citizens and voters of the State of Florida, and as such, demand accessibility and fairness with regards to Florida's election laws. The Florida Student Association recognizes that Florida's students and younger generations are not involved in the selection of our state leaders. This is incredibly important given that higher education has become, and continues to become, less and less of a priority in the state's budgeting process. In order for students to be adequately represented, we have to have greater access and involvement in the selection of our representatives. In particular, the FSA strongly supports SB 516 (Senator Nan Rich), which extends early voting access and establishes universities as early voting sites. HB 1079 (Rep. Joe Gibbons) is the companion bill in the State House. In addition, the FSA supports HB 1189 (Rep. Mark Pafford), which would repeal voting barriers within HB 1355 and is necessary in order for SB 516 to permit early voting access and early voting sites at colleges and universities. SB 1636 (Sen. Nan Rich) is the companion bill in the Florida Senate.

Regards,

Michael Long

Student Body President, New College of Florida

Chairman, Florida Student Association

Member, Florida Board of Governors



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TESTIMONY PRESENTED TO: UNITED STATES SENATE JUDICIARY SUB-COMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND HUMAN RIGHTS

FROM: Ann McFall
Supervisor of Elections, Volusia County, Florida

I have been a lifelong resident of Volusia County, Florida graduating from Seabreeze High School in Daytona Beach and Stetson University in Deland. I am the former owner of McFall & Associates Accounting and Tax Service. I have served as an elected official for 22 years; as a school board member, a county council member and, currently, as Supervisor of Elections. I am a member of the Florida State Association of Supervisors of Elections, having served on the Board of Directors and the legislative committee. In my 22 years of public service I feel uncomfortable calling attention to my personal beliefs and ideals. But, in 2011 the Florida Legislature passed sweeping legislation and the Governor signed off on the legislation to the Florida Election Laws causing me to reassess any hesitancy in expressing my opinion. Most of the 63 Sections of HB 1355 were scrivener corrections. But, other changes are considered by a lot of professional elections officials and community groups to be so onerous that it is bound to cause confusion, lack of interest in elections, and lower turnout than Florida has ever experienced. I am one of those officials. There are 4 areas of concern that stand out. Those are: changes to early voting; changes to 3rd party voter registration; address changes at the polls; and selection of the date of the primary in 2012.

Early voting

HB 1355 made several changes to early voting. Some of the highlights are:

- All early voting sites in a county are no longer required to open on the same days for the same amount of time.
- Early voting shall begin on the 10th day (changed from the 15th day) before an election that contains state or federal races and end on the 3rd day (changed from the 2nd day) before the election, and
- Shall be provided for no less than 6 hours and no more than 12 hours per day.
- The Supervisor may provide early voting for elections that are not held in conjunction with a state or federal election.

Effects of these changes are significant. Although there was no consultation with Supervisors of Elections or any cost benefit analysis done, the legislature seemed to believe that it will save local Departments of Elections money in having early voting for fewer days. In reality it will cost my Department more money. My data base of competent well trained workers for early voting includes only so many workers. If 12 hour days is the hours decided, some workers will have to arrive at my office 1 ½ hours from the opening of the early voting site, stay until the last voter has voted, and come back to my office after closing and balancing therefore causing a 15 hour

day for 8 days. With a regular 40 hour work week as the norm, some of the workers will put in 100 hour work week, causing more overtime than regular time.

In my personal opinion a change to F.S. 101.657 that should have been made and was not was flexibility should have been given to the Supervisor of Elections to choose early voting sites from a broader choice. Currently early voting can be held only at the Department of Elections main office, a satellite office that has been open at least 1 year prior to the election, a public library, or a city hall. What is missing are community centers, college campuses, county buildings, parks, YMCA's, storefronts, malls, churches, etc. Volusia County has close to 30 potential sites if the law became more flexible. The questions that beg to be asked: If the Supervisor of Elections is permitted by law to choose where polling sites may be on Election Day, why does she not have the authority to choose early voting sites? Who better to know her county and constituents?

3rd party voter registration

- A third-party voter registration organization means any person, entity, or organization that solicits for collection) or collects any voter registration.
- A 3PVRO must designate a registered agent on Form DS-DE 119. The person must be authorized to transact business in the state, be authorized to accept legal service of process on behalf of 3PVRO and sign form DS-DE 119.
- The Division must approve the registration and assign an ID # before a 3PVRO can conduct voter registration activities
- The 3PVRO must file DS-DE 120 with the State Division of Elections within 10 days.
- Responsibilities of a 3PVRO include:
 - Within 48 hours or before book closing, whichever occurs first submit all applications to DOE/SOE, including those that are incomplete.
 - Serve as a fiduciary for the applications.
 - Shall print the date and time that the applicant completed the application on a conspicuous space on the bottom portion on the reverse side of the application.
 - Keep its registration and agents' information updated within 10 days of any change.
 - File monthly reports on Form DS-DE 123 which must be submitted by the 10th of each month even if no activity during the period.
- Processing of Voter Registration Application from an organization by the Division and Supervisor of Elections:
 - For each non-blank registration application that an organization delivers, a voter registration official shall record the date and time of delivery on the bottom portion of the reverse side of the application.
 - The division or the supervisor of elections shall make voter registration forms available.
 - Each supervisor of elections shall provide to the division information on voter registration forms assigned to and received from 3PVRO. Each supervisor shall

report to the Division on Form DS-DE 124 by noon of the following business day the number of registration applications provided to and received from each organization the previous day.

Form DS-DE 124 must be submitted as an attachment in pdf format in an email or by facsimile.

Supervisors of elections or their staff shall report any untimely filed voter registration application submitted by an organization by sending the Division an explanatory statement in an e mail and attaching documents which reflect the untimely submission.

- Possible penalties include:
 - \$50 per application received more than 48 hours after applicant turned in the form (Increase to \$250 if act is willful).
 - \$100 per application collected by 3Pvro before book closing and received by DOE/SOE after book closing (Increase to \$500 if act is willful).
 - \$500 per application collected by 3Pvro which is not submitted to the DOE/SOE (Increases to \$1000 if act is willful).
- Violations may be referred to the Attorney General's office.

Changes in the voter registration process are considered by many to be frustrating and unenforceable. It creates a bureaucracy that forces elections officials to attempt to legally circumvent the law by deputizing school officials or increasing staff in order to hold more voter registration drives as opposed to making it easier for community groups to hold those drives. This became apparent to me when my office received an envelope with approximately 50 completed applications from a New Smyrna Beach High School teacher who oversaw a voter registration drive of high school seniors at the beginning of the year. She waited a couple of weeks (unknowingly breaking the law) in order to make sure all applications had been completed. Because of this, I was forced to submit her name as being out of compliance with the new law. Two months later, I was forced to report a well known community activist as being out of compliance due to handing in 4 applications late. She was at a church function on a Friday evening, assisted 4 people in filling out the applications, and delivered them to my office on the Tuesday immediately following the function. She assumed that the 48 hour restriction began on the Monday that the Department was open when it actually began on Friday evening. The fraud that is repeatedly used as a reason for this part of HB 1355 is a misnomer. January 1, 2006 the State went live with the Florida Voter Registration Database. This was a major undertaking in the name of preventing voter fraud, duplication of applications, etc. It works. On the other hand, nothing in the 3rd party registration organization restrictions in HB 1355 will help prevent fraud. I am convinced of that.

Address changes at the polls

Previous to 2011 address changes from one county to another were permitted to be completed at any early voting site or at the correct precinct on Election Day. Changes to Florida Statute 101.045 now state: "Except for an active uniformed services voter or a member of his

or her family, an elector whose change of address is from outside the county may not change his or her legal residence at the polling place and vote a regular ballot; however, such elector is entitled to vote a provisional ballot.

As a follow up to this law change, the Secretary of State sent out Directive 2012-01 which states: "In the context of a voter who votes a provisional ballot due to an out-of-county address change, section 101.048(2) (a), Florida Statutes, would require the canvassing board to contact the supervisor of elections' office in the voter's prior county of residence to determine whether the person had already cast a ballot in the election. Therefore, supervisors of elections must be prepared to contact other supervisors of elections' offices immediately following an election and throughout the period for canvassing provisional ballots. Upon being contacted by other supervisors of elections inquiring whether the person casting a provisional ballot had already voted in the former county, supervisors of elections also must be prepared to check the precinct registers within their counties. I hereby direct that supervisors of elections cooperate with each other in this provisional ballot verification process and timely respond with accurate information concerning a voter who is the subject of another supervisor of elections' provisional ballot verification request."

In another area of the election law, F.S. 97.072 the law has changed to allow an out of county address change to be made over the phone. Specifically, the law now states: "If the address change is within the state and notice is provided to the supervisor of elections of the county where the elector has moved, the elector may do so by contacting the supervisor of elections via telephone or electronic means.

In summary, a person who is moving from one county to another in Florida can stand outside of an early voting site or their correct polling place, make an address change over the phone, and go in and vote a regular ballot. But, if the same voter chooses to enter the polling place, complete an address change, he must vote a provisional ballot.

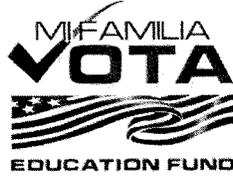
Volusia County has 5 colleges/universities located in the county; Stetson, Bethune Cookman University, Embry Riddle, Daytona State College, and a UCF satellite campus. A majority of address changes in previous elections were from students who live somewhere else in the State but attend post secondary schools in Volusia County and choose to vote in Volusia County. In fact, the most active college campus in Volusia County is Bethune Cookman University. The university has a march from the campus to the Daytona Beach early voting site for every major election. Unfortunately, there are address change issues with the majority of the 2000 students who march due to dormitory changes, apartment changes, freshmen changing addresses from their home to the college campus, etc. The Department of Elections is prepared to process double the provisional ballots that are usually received, and by law, must be complete by the Friday immediately following the election.

Primary election date

F.S. 100.061 has changed the primary election date for 2012 to 12 weeks prior to the general election as opposed to 10 weeks prior to the general election. The August 14, 2012 election is a week before most universities open for the fall semester and two weeks before Labor Day. This will undoubtedly lock out students as well as senior citizens who come to Florida in the fall. In addition, in a year of apportionment there is a good possibility that reapportionment will not be complete before candidate qualifying begins on June 4, 2012.

I believe I have a positive relationship with the Volusia delegation. But, there were no calls asking how this legislation would affect Volusia County from the delegation. It was almost as if the deal was done. If the State Legislature truly wanted feedback on how these changes would affect Departments of Elections state wide, dialog would have been asked for and welcomed. There would have been a cost benefit analysis done or surveys of Supervisors of Elections to see what impact it would have on day to day operations. The silence was deafening.

I can assure everyone that I am committed to getting the message across that the new laws are not needed, certainly under the premise that it will prevent fraud from occurring. I thank the committee for coming to Florida to hold this public meeting.



January 27, 2012

Chairman Durbin, distinguished members of the United States Senate Judiciary Committee, I want to first say thank you for your courage in holding this field hearing in Tampa, Florida.

My name is Jose Balasquide. I am representing Mi Familia Vota Education Fund. We are a non-partisan, non-profit organization and our mission is to increase Latino civic participation through Citizenship, Voter Registration, Voter Education, Voter Participation and Civic Engagement post election day.

In Florida and around the country, new restrictive laws are being implemented that constitute a direct assault on the voting rights of ordinary Americans and particularly on our most vulnerable.

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I have been a resident of the great state of Florida since 1993. I learned at an early age what it meant to be a civically responsible person, by the example of my mother. My mother Zulma Velez Estrada is an extraordinarily dynamic woman who has always been concerned about her community. She taught me the values of democracy and civic engagement by living a life dedicated to bringing improvement upon the community in which we live in.

I saw my mother work arduously on the Puerto Rico Federal Affairs Administration *Que Nada Nos Detenga* voter registration campaign, reaching out to low propensity Latino voters along the I-4 corridor and registering them to vote. Her passion was contagious, her leadership inspiring and her efforts were tireless. She taught me well and planted the seeds of civic engagement in my heart at a young age. During the subsequent years, I followed in her steps. I became involved in voter registration campaigns, community organizing, the restoration of the civil rights of ex-felons, educational campaigns and I also work at the Florida State Senate where I learned about the legislative process, its duties and responsibilities.

Today, I have the honor to serve as the Florida State Director of an amazing organization, Mi Familia Vota Education Fund. Mi Familia Vota EF is a national 501(c)(3) organization that unites Latino, immigrant, and allied communities to promote social and economic justice through increased civic participation. MFVEF works with the diverse Latino population to promote citizenship, increase voter registration and voter participation.

Today the citizens of our great state of Florida and the civic organizations that have dedicated as part of their core mission to help its people become more active in the democratic process are facing a draconian threat; a very lethal weapon against our constitutional rights; in effect a reversal of our individual rights to freely participate in the process of elections.

The provisions of HB 1355 that we believe violate Section 5 are:

1. Reducing the number of days for early voting from 14 days to eight days - from the 10th to the 3rd day before the election. Fla. Stat. § 101.657(1)(d) (HB 1355, Sec. 39);
2. Requiring third-party voter registration organizations to submit voter registration applications within 48 hours of receipt instead of 10 days as provided by existing law, and imposing a fine of \$50 for each failure to comply with the deadline, and imposing fines of up to \$1,000 for failing to comply with other provisions. Fla. Stat. § 97.0575(3)(a) (HB 1355, Sec. 4);
3. Disallowing voters who move from one Florida County to another to make an address change at the polls on the day of an election and vote a regular ballot, except for active military voters and their family members. Fla. Stat. § 101.045(2)(d) (HB 1355, Sec. 26);
4. Reducing the shelf-life of citizen initiative petition signatures proposing constitutional amendments from four years to two years. Fla. Stat. § 100.371(3) (HB 1355, Sec. 23)

HB-1355 is a threat specifically against the freedom of speech, against our voice that resonates through our vote, the cornerstone of the America we all know and love. This voter suppression act is a cynical set of rules that, if implemented, can result in thousands of Latino voters being disenfranchised.

The proposed changes will impose significant and undue burdens on third-party voter registration organizations, such as my organization, Mi Familia Vota Education Fund, that seek to register racial and language minorities. In the case of the Latino community in Florida, there are approximately half a million voting age Latino citizens who are not registered to vote. Our job to register these voters is made extremely difficult by these new rules.

If the argument is to reduce voter fraud, the reduction from ten to two days to turn-in registrations is counterproductive. In the past our quality control and verification methods include a check of all registrations, inspecting them to make sure the forms include all required information and doing spot checks where registrants are verified through phone, mail and even door knocks. Squeezing our quality control methods into a 48-hour turn-around period would increase the likelihood for errant registrations to get through unnoticed.

Based on nationwide statistics, in 2008, more than one-third of voters who registered through third-party drives were racial minorities. And according to the League of Women Voters, African American and Hispanic voters register with third-party groups at twice the rate of other voters. See "Voting laws Sunday punch," The Herald-Tribune, June 15, 2011. Minority voters in Florida, as in the rest of the country, have benefitted from community-based registration drives.

The new rules will prevent many voters who move from one Florida County to another to make an address change at the polls on the day of an election and vote a regular ballot - as has been the policy in Florida for decades. According to a 2008 Pew Research Center survey on Social and Demographic Trends, in the preceding five years 48% of Latinos have moved, compared to just 27% of whites. Since Latinos tend to be more mobile than whites, the restrictions on making an address change at the polls on the day of an election and voting a regular ballot will have an adverse racial impact. With statewide elections growing so close there is a lot at stake when it comes to restricting groups from the ballot box. The new laws have the intended purpose of restricting access to the ballot box to those most vulnerable in our society.

HB-1355 is a step in the wrong direction. While in California law makers are making it easier for American citizens to participate in our democratic process by enacting electronic voter registration, Florida's lawmakers are going the opposite direction and, if unchecked, they will continue to keep more and more people from the polls, destroying the binding contract we Americans make with ourselves and with each other, the democratic process as defined by our American Constitution. Disenfranchising voters at the polls and suppressing voter registration efforts via bureaucracy and fines is the short-term goal for this group of legislators. It's a dirty tactic aimed at limiting the growing influence of a new electorate that is diverse in nature and reflective of what makes this a great nation.

On behalf of Mi Familia Vota Education Fund, I am asking the United States Senate Judiciary Committee and the United States Department of Justice to oppose in full power any discriminatory laws that will disenfranchise Latino citizens and other underrepresented groups of voters. I further request that you enforce Florida's compliance with the Voting Rights Act.

Thank you for your time. May God bless us all.

Jose Balasquide
Florida State Director
Mi Familia Vota Education Fund



NCLR
NATIONAL COUNCIL OF LA RAZA

**NEW FLORIDA ELECTIONS LAW NEGATIVELY IMPACTS
HISPANIC VOTER PARTICIPATION**

Presented at

“New State Voting Laws II: Protecting the Right to Vote in the Sunshine State”

Submitted to
Senate Judiciary Committee

Submitted by
Eric Rodriguez
Vice-President, National Council of La Raza

January 27, 2011

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The National Council of La Raza (NCLR) is the largest national Hispanic civil rights and advocacy organization in the United States, dedicated to improving and expanding opportunities for the nation's 50.5 million Hispanics. To that end, a significant part of our work is dedicated to building long-term, informed participation among the Latino electorate nationwide and increasing the influence of the Hispanic community in the political process. To achieve this, our practical efforts in civic engagement focus on naturalization, voter registration, voter education, and mobilization.

NCLR's civic engagement program currently operates in Florida (our largest operation), Nevada, Colorado, New Jersey, Pennsylvania, California, and Texas, and will expand into North Carolina later on in the year. Florida, the nation's third most Hispanic populous state, is a flagship operation for this project, and NCLR's program is one of the largest voter registration efforts in the state.

In May of last year, Florida Governor Rick Scott signed into law HB 1355, a sweeping electoral reform bill that seeks to roll back decades of work to ensure that all Americans are afforded an equal opportunity to vote. Because of Florida's unfortunate history of racial discrimination in its voting practices, electoral laws passed in the state that affect five specified counties—Collier, Hardee, Hendry, Hillsborough, and Monroe—must be reviewed by the Department of Justice or a federal court to ensure that they do not violate the 1965 Voting Rights Act. Currently, the most controversial provisions of this new law are under legal review by a panel of federal district court judges in Washington, DC and are the subject of the January 27, 2012 hearing.

We believe that these provisions strike at the core of our most basic and treasured American values, erecting unnecessary barriers to voter participation and disproportionately impacting minority voters—an effort tantamount to voter suppression. Therefore, NCLR, along with the League of Women Voters of Florida, intervened in federal court to oppose these new restrictions.

The provisions currently under review aim to:

1. Drastically reduce the number of days for early voting, eliminating the first five days of early voting and the Sunday prior to Election Day
2. Require third-party voter registration organizations (like NCLR) to submit voter registration applications within 48 hours of receipt, imposes fines for failing to comply with that deadline, and imposes other restrictions on voter registration activities
3. Prevent registered voters who have changed their address from another Florida county from notifying election officials of the move on Election Day and voting with a regular ballot; instead, these voters would only be allowed to cast a provisional ballot

Proponents of this law argue that its purpose is to stem voter fraud in Florida, yet the figures belie their argument. Florida has prosecuted few cases of voting fraud in recent years. Many complaints filed regarding voting inconsistencies relate to absentee ballots, an area that, interestingly, the new law provides additional flexibility for rather than increased



scrutiny. Overall, there is a lack of evidence to support the reasons claimed by the law's proponents for these voting changes, and there is substantial concern that their actual targets include the state's minority voters.

The reduction in early voting days particularly affects Black and Hispanic voters. For example, the flexibility provided by early voting has allowed working families to do their civic duty while still meeting work and family obligations. Eliminating early voting on the Sunday prior to Election Day also harms Hispanics and Blacks who are often mobilized by their churches to vote after services.

The new laws will place additional burdens on millions of Floridians. The state has suffered the brunt of the nation's foreclosure crisis, and Latino families have been disproportionately affected. Many have lost their homes since the last election they voted in, and according to the new law, if they have not filed a change of address prior to Election Day and moved between counties in Florida, they will only be allowed to cast a provisional ballot. This provision will no doubt also affect Latino college students since they tend to be more mobile and change addresses more frequently, as well as elderly Latinos who may have transitioned to a family home or assisted living facility.

The work of third-party registration groups in Florida is invaluable and has benefitted the Hispanic community by providing easy access and cultural and language sensitivity to the voter registration process. Latino voters often register to vote with third-party groups working within the community; the new measures will certainly impede the work of organizations like NCLR, the League of Women Voters of Florida, and the Boy Scouts of America. Stringent requirements and shortened turnaround timelines will place undue burden—both financially and in terms of staff capacity—on nonprofit groups that are responsible for registering a significant percentage of voters. Unfortunately, this will likely lead many third-party voter registration groups to cease operations in Florida.

In addition, the shortened turn around period of 48 hours might ultimately cause an increase, rather than a decrease, in overall inconsistencies and invalid registrations as the quality control process will have to operate within a much shorter timeframe for groups already struggling to keep up their voter registration efforts during a fiscally challenging time.

Our hope is that the federal court will see through the false arguments to the dangerous legal precedent that will be established if these provisions are allowed to stand, thereby emboldening similar, discriminatory efforts in other states across the nation. As Census figures demonstrate, the Hispanic population is not just experiencing tremendous general population growth, but a ballooning of the number of Hispanics who are eligible to vote, from 13.2 million in 2000, to 21.3 million in 2010. This growth is expected to continue exponentially, considering that each month, 50,000 Latinos turn 18 and become eligible to vote. We should be working toward incorporating Latinos into the political process and encouraging them to help shape a better future for our country, rather than finding ways to alienate or disenfranchise them from that process. This country, built upon the cornerstone of democracy and the political process, cannot allow an intolerant few to erase

NCLR
NATIONAL COUNCIL OF LA RAZA

decades of hard-won civil rights progress. If America is to prosper, then it must renew efforts to protect the rights of all Americans, not erode the rights of the most vulnerable.



**TESTIMONY OF BEVERLYE COLSON NEAL
BEFORE THE SENATE JUDICIARY SUBCOMMITTEE ON THE
CONSTITUTION, CIVIL RIGHTS AND HUMAN**

GOOD AFTERNOON SENATOR DURBIN AND MEMBERS OF THE COMMITTEE. MY NAME IS BEVERLYE COLSON NEAL, CURRENTLY FLORIDA DIRECTOR FOR THE NATIONAL CONGRESS OF BLACK WOMEN (NCBW). I WANT TO THANK YOU FOR CONVENING THIS HEARING BECAUSE IT IS SO IMPORTANT TO AFRICAN AMERICANS TO BE ALLOWED TO VOTE WITHOUT DISRUPTION.

NCBW IS A 501(C) 3 ORGANIZATION WHOSE MISSION IS TO EMPOWER AFRICAN AMERICAN WOMEN AND THEIR FAMILIES, WHICH MAKES IT PERTINENT THAT I HAVE BEEN AFFORDED THE OPPORTUNITY FOR ME TO SPEAK BEFORE YOU TODAY, TO ADVOCATE FOR AFRICAN AMERICAN WOMEN VOTERS IN FLORIDA.

CURRENTLY, THERE ARE 982,497 AFRICAN AMERICAN WOMEN REGISTERED TO VOTE IN FLORIDA AND THEIR ABILITY TO VOTE ON ELECTION DAY IS IMPORTANT. WE ARE HERE TODAY TO PROTECT THEIR RIGHT TO BE ABLE TO VOTE WITHOUT ANY DISRUPTION.

I WOULD LIKE TO PROVIDE A LITTLE HISTORY AS IT RELATES TO EARLY VOTING. IN 2001, THE NAACP FILED A LAWSUIT AGAINST THE SECRETARY OF STATE, KATHERINE HARRIS AND THE STATE OF FLORIDA, ON BEHALF OF ITS MEMBERS AND BLACK VOTERS, WHOSE RIGHT TO VOTE IN THE GENERAL ELECTION ON NOVEMBER 7, 2000 WAS UNLAWFULLY DENIED.

IN 2002, DURING MY CAPACITY AS THE EXECUTIVE DIRECTOR OF THE FLORIDA STATE CONFERENCE OF THE NAACP AND LAWYERS FOR THE NAACP MET WITH THE SUPERVISOR OF ELECTIONS FOR VOLUSIA COUNTY TO RESOLVE POINTS OF THE LAWSUIT, IT WAS DURING THAT MEETING THAT THE NAACP PROPOSED THE IDEA OF EARLY VOTING. THE ONLY FORM OF EARLY VOTING THAT WAS AVAILABLE

AT THAT TIME WAS ABSENTEE VOTING. THE NAACP PROPOSED THAT WE SET UP AN EARLY VOTING STATION AT THE JOHN H. DICKERSON CENTER IN DAYTONA BEACH, ON THE SATURDAY PRIOR TO THE ELECTION. THE PURPOSE OF THE EARLY VOTING WAS TO ALLOW REGISTERED VOTERS TO BE ABLE TO VOTE BEFORE ELECTION DAY, SO THAT THERE WOULD NOT BE THE SAME PROBLEMS AS WERE IN 2000, LIKE LONG LINES, PEOPLE NOT BEING FOUND ON THE ROLLS AND OTHER BARRIERS THAT KEPT THEM FROM BEING ABLE TO VOTE. IT WAS OUR INTENTION THAT BY ADDRESSING THESE CHALLENGES THROUGH AN EARLY VOTE PROCESS THEY, MEANING THE VOTERS, WOULD BE AHEAD OF THE GAME.

THE SUPERVISOR OF ELECTION IN VOLUSIA COUNTY AGREED, BY USING A PROVISION IN THE STATE LAW THAT ALLOWED HER TO SET UP SATALITE OFFICES. BECAUSE RESOURCES WERE SCARCE, SHE ALSO ALLOWED THE VOLUSIA COUNTY BRANCH OF THE NAACP AND ITS MEMBERS TO ASSIST WITH THE EARLY VOTING ON THAT SATURDAY IN DAYTONA BEACH. THE NAACP WAS ABLE TO GET OTHER COUNTY SUPERVISORS (IN JACKSONVILLE, MIAMI-DADE, AND ORANGE COUNTIES) TO ESTABLISH EARLY VOTING IN THOSE COUNTIES AS WELL. THE PILOTING OF THIS EARLY VOTE PROCESS, PROVED TO BE SUCESSFUL AND WAS SUBSEQUENTLY ADOPTED INTO FLORIDA LAW IN TIME FOR THE 2004 ELECTION.

EARLY VOTING IS A PROCESS THAT HAS PERMITTED MORE AFRICAN AMERICANS TO PARTICIPATE FREE OF HARASSMENT. THE PROVISION OF HB-1355 THAT CUT BACK EARLY VOTING FROM 14 DAYS TO 8 DAYS, WILL SURELY HAVE AN IMPACT ON RESTRICTING ACCESS TO THE BALLOT. THE HISTORY OF EARLY VOTING WILL SHOW THAT AFRICAN AMERICANS BENEFITED FROM EARLY VOTING. THE NUMBERS FOR THOSE WHO VOTED EARLY WERE HIGH. WE CLEARLY DON'T NEED THE CLOCK TO BE TURNED BACK.

CHURCHES ARE INSTRUMENTAL DURING THE EARLY VOTING PERIOD, BECAUSE THEY MOBILIZE THE MEMBERS OF THEIR

CONGREGATIONS AND TAKE THEM TO THE POLLS THE SUNDAY BEFORE ELCTION DAY. PASTORS WHO PROMOTED CIVIC ENGAGEMENT THROUGH THE ALL SOULS TO THE POLLS PROGRAM SERVED TO ENCOURAGE THEIR PARISHIONERS TO GO TO THE POLLS AND CAST THEIR VOTE AFTER SUNDAY SERVICES. THIS AFFORDED THOSE MEMBERS THE OPPORTUNITY TO VOTE. HB-1355 CANCELED EARLY VOTING ON THE SUNDAY BEFORE ELECTION DAY.

THE OBSTACLES THAT HAVE BEEN PLACED ON THE CITIZENS SERVE AS OBSTACLES TO A GROUP OF THE MOST FRAGILE VOTERS. I ASK THAT YOU CONSIDER THE RIGHTS OF THE MANY FAMILIES THAT ARE AFFECTED BY THE LAWS PASSED BY THE POLITICIANS THAT ARE ELECTED TO SERVE THEM.

THE NEW VOTING REGISTRATION RESTRICTIONS THAT HAVE BEEN PLACED ON THIRD PARTY REGISTRANTS IS VERY RESTRICTIVE AND UNREALISTIC. I AM A REGISTERED AGENT FOR THE ORANGE COUNTY BRANCH NAACP AND THE RESTRICTIONS ARE PROHIBITING THE COALITION PARTNERS FROM BEING ABLE TO CONDUCT VOTER REGISTRATION WITHOUT FEAR OF BEING PENALIZED. THE BRANCH CONDUCTED VOTER REGISTRATION DURING THE MLK DAY ACTIVITIES ON THE CELEBRATION WEEKEND, SOME OF THE STUDENTS TURNED THE VOTER REGISTRATIONS IN TO ME LATER IN THE WEEK (TUESDAY) AND WHEN I TOOK THEM TO THE SUPERVISOR OF ELECTIONS, I WAS TOLD THAT SOME OF THEM WERE PAST THE 48 HOURS, IT TOLD THEM THAT I WAS NOT AWARE THE OFFICE WAS OPEN ON MONDAY AND THAT WVE HAD ENOUGH TIME TO TURN THEM IN, SO I TOOK THOS VOTER REGISTRATIONS BACK TO GET THE YOUTH TO COMPLETE NEW VOTER REGISTRATIONS, THEY TOLD ME THAT I COULD NOT TAKE THEM BACK ONCE I HAD BROUGHT THEM TO THE OFFICE, BUT AFTER PRESENTING MY ARGUMENT, I WAS ALLOW TO TAKE THE VOTER REGISTRATIONS THAT WOULD HAVE COST ME A PENALTY. THIS IS REALLY A BURDEN BECAUSE YOU HAVE TO NOTATE THE TIME YOU COMPLETED THE REGISTRATIONS AND DOCUMENT THE DATE. WE HAVE STUDENTS, WHO ARE

MEMBERS OF THE ORANGE COUNTY YOUTH COUNCIL TO ASSIST WITH VOTER REGISTRATION AND THESE SPECIFIC DETAILS WILL HINDER THEM FROM BEING ABLE TO CARRY OUT THEIR CIVIC RESPONSIBILITY. THE VOTER REGISTRATION LIMITATIONS WITH SUCH A SHORT WINDOW OF TURN AROUND IS REALLY NOT FAIR AND IT BURDENSOME. THE 48 HOURS TIME LIMIT NEED TO BE REMOVED AND GIVEN A MORE REASONABLE TIME FRAME.

**U.S. Senate Judiciary Subcommittee on the Constitution,
Civil Rights and Human Rights**

*Field Hearing: "New State Voting Laws II: Protecting the Right to Vote in the
Sunshine State"*

January 27, 2012

Senator Bill Nelson's prepared statement

Mr. Chairman:

While America remains the greatest nation in history, it's true our country's path to democracy hasn't been without struggles. Minorities and women had to fight for years to have voting privileges – the constitutional right that is to be the subject of our hearing today.

We should note that this is the first time this subcommittee has convened outside of Washington, D.C., and it's appropriate that we meet here in Florida - a state that showed the world how important it is to ensure everyone's right to vote and to have their vote counted. And yet it's a state that only recently passed a new law that might jeopardize that right.

What's sad is, we're not alone. Legislatures in more than a dozen states, where extremists seemed to have gained control, passed laws last year that place controversial and unnecessary hurdles between the voting booth and our citizens – especially young voters, seniors and minorities.

In fact, these new laws could make it harder for more than five-million eligible voters to cast their ballot in this year's presidential election. As unbelievable as that seems, it's according to the widely respected Brennan Center for Justice at New York University School of Law, which recently completed the first, comprehensive study of the new laws.

So today we're here to examine, among other things, how one of these election laws made its way through the Florida Legislature and was quickly signed by the governor - despite widespread public outcry.

This law reduces the number of early-voting days, including canceling the Sunday right before the Tuesday election. It also makes voting harder for people who have recently moved to another county and have an address change, like college students. And it subjects voter-registration groups to penalties and fines for mistakes. It's so burdensome that the League of Women Voters was forced to abandon its registration drives in Florida after 72 years.

The Miami Herald has called passage of this law part of a "disturbing trend."

The Orlando Sentinel has said the law "amounts to ... weakening democracy."

And Florida Today called it an “assault on the most cherished of American rights.”

I would have to agree. It’s why I asked for this hearing.

Mr. Chairman, I want to thank you and Sen. Leahy for the Judiciary Committee’s interest, and I wish to commend you for conducting this investigation – and for looking beyond partisan political differences to the rights of every citizen. Our goal is, and should always be, to ensure the citizens have every means of exercising the power our Constitution says belongs to them. It’s a privilege all Americans have demanded throughout the history of our nation.

In 1872, after being arrested for casting what was then an illegal vote in a presidential election, Susan B. Anthony called it a “downright mockery to talk to women of their enjoyment of the blessings of liberty, while they [were] denied the use of the only means of securing [those blessings] ... the ballot.”

Nearly a hundred years after that our country still had in place poll taxes and literacy tests aimed at blocking African Americans from voting.

Dr. Martin Luther King Jr. warned us back then that “all types of conniving methods” could be used to keep people from becoming registered voters. The civil rights leader said, “The denial of this sacred right is a tragic betrayal of the highest mandates of our democratic traditions – it is democracy turned upside down.”

So with a healthy dose of skepticism, let’s consider what has happened to voting rights in our country over just the past year. Let us try to determine whether some new “conniving methods” are being used to deny some Americans the only means of securing the blessings of liberty – the ballot.

Thank you, Mr. Chairman



**Testimony of Bill Newton, Executive Director,
Florida Consumer Action Network (FCAN)**

**FCAN's experience helping register 18,000 new voters in 2010 and how
new laws affect our voter registration plans for 2012.**

Field Hearing of the Senate Judiciary Committee's Subcommittee on the
Constitution, Civil Rights, and Human Rights January 27, 2012

FCAN's Mission and Voter Registration History

FCAN's mission is "The Florida Consumer Action Network is a grassroots organization which empowers citizens to influence public policy by organizing and educating in areas where consumer voices are underrepresented." We believe that civic participation by voting is one of the very best ways that citizens can be empowered. We believe that voter registration is as essential and central element of our mission and it is an activity we have engaged in since the organization was founded in 1984.

Our largest VR drive was in 2004, when we assisted 87,000 new voters to register through our offices in Tampa, St. Petersburg, Bradenton, Sarasota, Tallahassee, Orlando, and Jacksonville. We had very few problems because of our emphasis on quality control, and we had good relationships with supervisors of elections in each of the counties where we worked. There were no legal problems of any kind and election supervisors relied on the information we provided them along with the registrations.

In 2010, we ran a registration program in Orlando under the new, more restrictive laws in place at that time, which are still in place in the "pre-clearance" counties. Again, there were no significant problems with the program, although one voter application was referred to the state's attorney (flagged by us) because of suspicion of identity theft. That proved not to be the case and there were no charges.

The 2010 VR Experience

Because of the experiences of other organizations in 2004 and 2008, we knew we had to be very careful in 2010. We assumed we would be under close scrutiny, and we knew any problem could be magnified out of proportion in the media. That's politics.

In 2010, our program had an extensive Quality Control (QC) program in order to avoid problems and comply with new voter registration laws. We alerted the state to drives we were running and reported our voter registration totals to the Florida Department of State. The QC department was

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set up completely separate from the canvassing department. Canvassers were not even allowed through the door into the QC area. Our QC callers verified the forms being turned in by canvassers. They called the new registrants and made sure that they filled out the form and that the data was correct. We focused on new hires, and once a canvasser had established that they were doing the job correctly, we were able to reduce the percentage of their cards called. This proved effective.

By looking over every single card turned in, managers were quickly able to identify a canvasser who had decided the job was too hard and was taking short cuts. Depending on the infraction, they were warned or fired. The crew manager warned new canvassers that their work would be closely checked, and their co-workers confirmed that. As a result, most canvassers either did their jobs, or decided the work was just too hard, and quit. It was outdoor work in July, August, and September, some of the hottest months. But we are able to offer people meaningful work and they believe in our cause.

The Orange County Supervisor of elections at first did not use the information we provided with the cards we turned in. Our QC team flagged problematic cards and separated them out and even ranked them according to the severity of the problem. After a week or two, the Supervisor's office realized that our information was a valuable resource to them, and began using it. This improved the process, saved them money, and got more people registered because their office could more easily address problems.

Of course, hiring canvassers and team leaders was the critical first step in making sure there were no problems. We could not afford full background checks with the budget available to us (they could cost a minimum of \$45 each) so we used available on-line resources to look for problems. We could check public records for free and determine if an applicant had had legal problems in nearby counties. We could not check all counties or other states, but we did the best we could.

In summary, 18,000 new minority or low-income voters were added to the rolls in 2010 with few problems, and no fines or legal actions. Many participated in that year's election, and we hope many will participate in 2012.

2012 - Dealing with the new law

FCAN believes strongly that our mission directs us to help new minority and low-income voters to register, those who would otherwise be underrepresented in our civic processes. We believe the Legislature that passed HB 1355 was deliberately trying to prevent third party groups like FCAN from assisting new voters, but we must follow our mission. We believe the Legislature is motivated by politics, and not out of any concern for fraud, which has never, to our knowledge, occurred to any meaningful degree in Florida, if at all. In Florida, people who want to defraud the public usually do it through Medicare or auto insurance. The state is known for those crimes



because they are apparently quite lucrative. In contrast, there is no financial incentive for voter fraud. Campaigns find it far easier and far less risky to buy TV ads. The evidence is clear.

Because we feel so strongly about this work, we are determined to press ahead with voter registration drives as long as we are able to do so. That is, until we are arrested for registering someone to vote, or until the courts order us to stop. We now see voter registration as a kind of civil disobedience, perhaps similar to how people felt in the days of civil rights battles here. It is incredible that we must still take such risks simply so citizens can exercise their most basic right, but that is what we have to do.

The unlimited grounds for civil action in the new law makes us vulnerable to lawsuits from anyone, anywhere, for any reason. We would have to defend each and every one of those challenges in court. We can usually find a pro bono lawyer, but we have no legal staff, and the sheer number of possible challenges would quickly exhaust pro bono resources. If we are rendered defenseless, it would probably only take days for a judge somewhere to be persuaded that we should be stopped, and our canvassers restrained by law enforcement.

Even if the threat of legal action in HB 1355 is removed by the courts, FCAN still must be concerned with turning in forms within 48 hours, registering all canvassers with the state, and following other reporting requirements. The biggest problem would be meeting the 48 hour deadline, which would be doable, but which would prevent us from doing quality control. I believe that the Legislature's intent was to stop us from doing the QC, because that is how we avoid problems, and the problems are what draw media and legal attention. We still believe we can work in compliance with the restrictions, although it has never been done.

Our plan is to try to raise money for more detailed background checks, which would mean less resources could be devoted to actual voter registration - no doubt a victory for our opponents. Then, we will conduct most of the QC effort after the cards are turned in, going through the same process as 2010 except that we will have to inform the supervisor of elections of any problems we identify after the supervisor already has the cards. Hopefully, the information will still be useful to them. We will still look at all cards that our canvassers turn in and attempt to verify as quickly as possible, but a thorough program can't be done in 48 hours. Really, only basic processing of the cards can be accomplished before they are turned in.

There is the further problem under the law of accounting for each and every card. This will take additional time and expense, with, in my opinion, minimal results. It is true that we have heard of partisan VR efforts "losing" cards they did not prefer, but FCAN will be doing a non-partisan effort with a goal of simply assisting as many minority and low income new voters as possible. We help anyone we encounter. Our funders are also non-partisan and would strenuously oppose any partisanship or appearance of partisanship.



If fact, we will take extra care to see that our voters do actually get on the rolls. We attempt to database the new voters and compare our lists to the voter roll to make sure everyone appears on the rolls. If there is a discrepancy, we look into it, and attempt to correct the problem. We do not want to waste all the effort we put into voter registration.

Summary

FCAN's mission compels the organization to do non-partisan voter registration drives for low income and minority citizens. In the past, we have been successful in helping to register large numbers of new voters without problems. In 2012, we are determined to do voter registration drives unless we are literally stopped by the government. Unfortunately, 2012 may be a year in which voter registration becomes a form of civil disobedience. The new law, which we think is intended to disenfranchise low income and minority voters, may open up new avenues of legal action which may exhaust our resources in the courts. We believe we can work around new restrictions, but it will reduce the number of registrations and create more expense for FCAN and the supervisors of elections. FCAN urges the committee to take action against these new laws, which we believe are intended to suppress voting among certain groups for political reasons.



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STATEMENT OF

THE NATIONAL BAR ASSOCIATION

Submitted to:

The Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

For the Voting Forum:

New State Voting Laws II: Protecting the Right to Vote in the Sunshine State

On

January 27, 2012

NATIONAL BAR ASSOCIATION, 1225 11th Street, N.W., Washington, DC 20001 • Tel: 202-842-3900 • Fax: 202-289-6170
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87th ANNUAL CONVENTION • July 14 -19, 2012 • Las Vegas, NV

Submitted by the National Bar Association
Submitted before the
Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights
For the Voting Forum: New State Voting Laws II:
Protecting the Right to Vote in the Sunshine State

Introduction

The National Bar Association ("NBA") is the oldest and largest organization of African American attorneys and judges in the world representing more than 44,000 lawyers, judges, legal scholars and law students domestically and abroad. While the legal profession and the needs of our constituency have greatly evolved, the NBA remains committed to the objectives it established at its formation:

"to advance the science of jurisprudence; improve the administration of justice; preserve the independence of the judiciary and to uphold the honor and integrity of the legal profession; to promote professional and social intercourse among the members of the American and the international bars; to promote legislation that will improve the economic condition of all American citizens, regardless of race, sex or creed in their efforts to secure a free and untrammled use of the franchise guaranteed by the Constitution of the United States; and to protect the civil and political rights of the citizens and residents of the United States."

Voting is a fundamental right, and a cornerstone of our democracy and the NBA thanks Senator Dick Durbin for convening this important forum to examine the alarming consequences of Florida's law, H.B. 1355, which restricts early voting and overly burdens third-party groups in their efforts to help register people to vote. Sadly, this legislation functions to create impediments to exercising this fundamental right. We appreciate this opportunity to comment upon the negative effect this law will have upon the right to vote and the disparate impact it will have upon the voting rights of historically disenfranchised citizens.

As a Presidential Election year, 2012 will serve as a crucial year in the fight to protect voter's rights. The impediments put in place by the enactment of H.B. 1355 are of the same spirit as the obstacles being put in place by state legislatures nationwide. This past year, state governments across the country have proposed and enacted an array of new laws and policies making it harder to vote. As a major legal partner in the Election Protection Coalition, the NBA established its own Election Protection Task Force within the Bar to work closely with the Lawyers' Committee for Civil Rights Under Law along with other organizations in this battle to protect the rights of voters. As we have done in past election, our members will work across the country and lead on the ground efforts and inform the public on new election laws, participate in legal field deployments on Election Day, serve as poll watchers, and hotline call center volunteers on or before Election Day.

Restrictions on Early Voting

Pursuant to the provisions of H.B. 1355, the time period during which early voting is conducted, is restricted for both federal and state elections. In the past, early voting lasted for a full two-

week period, beginning on the 15th day before an election and ending on two days before the election. The new law, however, restricts early voting to a more limited, eight-day, period and will eliminate the provisions for early voting during the Sunday before the election.

Restricting early voting opportunities will, regrettably, have a significant negative effect on both the African-American and Hispanic voting communities. Election data for several counties in Florida, in fact, indicate that in both the 2008 and 2010 general elections, African-American voters disproportionately relied more on early voting more than their white counterparts.¹ In addition, the data also demonstrates that black voters disproportionately voted more during weekend hours than during weekday hours.

One particular concern is the law's restriction preventing voting on the Sunday before the election. This restriction will have a tremendous impact upon historically disenfranchised voters, which the Civil Rights laws are specifically designed to protect. Places of worship, historically, have, in fact, rallied their members to travel from their churches to their voting sites. This practice, specifically, had a significant impact in the 2008 general election. Statistical evidence also shows that both African-Americans and Hispanics participated in, and benefited from, voting drives of this nature in proportions far greater than whites. Indeed, 33.2 percent of those who voted early on the Sunday before election day, during Florida's 2008 general election, were black and 23.6 percent were Hispanic, whereas blacks only constituted 13.4 percent of all early voters statewide (for all early voting days) and Hispanics constituted 11.6 percent.²³

Burdensome Restrictions on Individual Citizens and Citizen Groups' Ability to Conduct Voter Registration Outreach

The new restrictions enacted under H.B. 1355 unnecessarily burden the ability of individual citizens and citizen groups to conduct voter registration outreach. The enacted changes will 1) require all third-party voter registration organizations to register with and provide the names of all volunteers to the state; 2) all third-party voter registration organizations must submit a sworn statement from each registration agent; 3) all third-party voter registration organizations must deliver to election officials each and every completed voter registration application that it collects within 48 hours after the applicant completes it or the next business day if the appropriate office is closed for that 48-hour period; and 4) the Florida Attorney General is granted new authority to sue to enforce the registration restrictions or to enjoin any voter registration activity which fails to conform with H.B. 1355.

¹ 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.

² Data on the number of persons casting early-voting ballots were obtained from Florida Division of Elections website, <https://doc.dos.state.fl.us/fvrscountyballotreports/FVRSAvailableFiles.aspx>.

³ 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.

The alarming impact of restrictions like these is that they are accompanied by a dramatic decline in third-party voter registration activity, such as, the approximate 25 percent drop in Florida's voter registration rates since 2006.⁴ Florida's recent history of implementing restrictive rules for voter registration drives began in 2005, when its first major wave of restrictions emerged, just one year after ACORN's success in gathering enough signatures to place a citizen initiative on the ballot to increase Florida's minimum wage. Since that time civic groups have delivered several lawsuits challenging the constitutionality of these restrictions with some success. In May of 2011, however, despite broad opposition from civic and minority rights groups, H.B. 1355 was signed into law. Shortly after its enactment, the detrimental effects of its restrictions were realized when the all-volunteer Florida League of Women Voters, the Boy Scouts, student groups, civic organizations and others who undertake the critical task of helping citizens get registered to vote, announced that they would discontinue their voter registration activities in the state.⁵ The Florida League of Women Voters explained that the new law "imposes an undue burden on groups such as ours that work to register voters," and that "we cannot and will not place thousands of volunteers at risk, subjecting them to a process in which one late form could result in their facing financial and civil penalties."⁶

In Florida, U.S. Census Bureau data from the 2004 and 2008 election cycles show that both African-Americans and Hispanics relied on third-party registration drives more than white voters, and that minority reliance on such drives is greater in Florida than elsewhere in the country. In fact, African-American and Hispanic citizens in Florida are more than twice as likely as whites to register to vote through private drives. In 2004, while 6.6 percent of non-Hispanic whites in Florida indicated they registered through private drives, 17.4 percent of African-Americans and 18.9 percent of Hispanic voters in Florida registered in this manner.⁷ Similarly, in 2008, 6.3 percent of non-Hispanic white registered voters in Florida were registered through drives versus 12.7 percent of black voters and 12.1 percent of Hispanic registered voters,⁸ and 6.3 percent of white voters were registered through drives, versus 11.5 percent of black voters

⁴ Florida Division of Elections, Voter Registration Statistics, <http://election.dos.state.fl.us/NVRA/reports.shtml>; Voter Registration Year To Date Report, October 2006: <http://election.dos.state.fl.us/voter-registration/archives/2006/October/YTDTTotal.pdf>; Voter Registration Year To Date Report, October 2010: <http://election.dos.state.fl.us/voter-registration/archives/2010/October/YTDTTotal.pdf>.

⁵ League of Women Voters of Collier County, available at <http://www.lwvcolliercounty.org/> (last visited September 3, 2011).

⁶ *Id.*

⁷ U.S. Census Bureau, Current Population Survey, November 2004. The national figures in 2004 were: 7.8% of non-Hispanic whites; 12.7% of blacks; and 12.9% of Hispanics. See Table 14, <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2004/tables.html>.

⁸ U.S. Census Bureau, Current Population Survey 2008, available at <http://www.census.gov/apsd/techdoc/cps/cpsnov08.pdf>. All data from the CPS on methods of voter registration is self-reported by survey respondents. The corresponding national figures in 2008 were: 5.4% of non-Hispanic whites registered at private drives; 11.1% of African-Americans; and 9.6% of Hispanics. See Table 14, <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2008/tables.html>.

and 11.5 percent of Hispanic voters during the same year.⁹

Before the enactment of H.B. 1355, African-American voters began to achieve equity in voter registration rates with their white counterparts, and Hispanic voters benefitting from increased voter registration. These improvements were in large part a result of focused efforts by third-party voter registration groups to register new and underrepresented classes of voters.

Notwithstanding, current voter registration rates indicate that, despite these improvements, Hispanic voters continue to be underrepresented in terms of voter registration. In short, H.B. 1355's restrictions have essentially thwarted the much needed efforts of groups such as the League of Women Voters, the Boy Scouts, student groups, civic organizations and others who undertake the critical task of helping citizens get registered to vote.¹⁰

Conclusion

Our country's history is beleaguered with restrictive voting laws that have been used to keep women, students, and people of color from the ballot box. In 2012 we should be committed to protecting the rights of all people to vote, rather than establishing more roadblocks.

The NBA greatly appreciates the opportunity to testify and the Committee's continued oversight and concern for the integrity of the electoral process. We are eager to continue working with the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights in protecting the right to vote for all American citizens.

⁹ U.S. Census Bureau, Current Population Survey 2008, available at <http://www.census.gov/aprd/techdoc/cps/cpsnov08.pdf>.

¹⁰ Official statement from League of Women Voters of Florida president Deirdre Macnab (May 26, 2011).



Florida College System Student Government Association

Statement for the Record
Submitted to the Senate Judiciary Committee's Subcommittee on the
Constitution, Civil Rights, and Human Rights
United States Senate
Washington, D.C.

Submitted by Sarah Pemberton
President, Florida College System Student Government Association
January 23, 2012

Introduction

Thank you Chairman Durbin, Ranking Member Graham, and distinguished members of the Subcommittee. The Florida College System Student Government Association (FCSSGA) is pleased to have the opportunity to provide the Subcommittee with comments for the record in connection with the Subcommittee's hearing entitled, "New State Voting Laws II: Protecting The Right To Vote in the Sunshine State."

A top priority of FCSSGA is to ensure that the students of the Florida College System are actively engaged in their civic duties. One of the hallmarks of this engagement is voting. HB 1355, which became law on May 19, 2011, severely limits the access to voting for students and community members across the Sunshine State. In response to this legislation, FCSSGA has adopted a legislative issue calling for HB 1355 to be repealed and supporting legislation that would expand and protect the right to vote. As a part of our lobbying efforts, we support the new SB 516, which would allow the use of college campuses as early voting locations, and the adoption of same-day voter registration in Florida.

Further, FCSSGA believes that the right to vote is fundamental to our style of government. Laws that limit access to voting do nothing but curb enthusiasm for the democratic process. As a result of this law several classes of people will not be afforded the opportunity to fulfill

their civic duty and exercise their civil right. Consequently, FCSSGA strongly urges the committee when evaluating claims that this law makes it harder for tens of thousands of elderly, disabled, minority, young, rural, and low income Floridians to register and exercise their right to vote to err on the side of the American Values.

The Florida College System Student Government Association

FCSSGA, formally known as the Florida Junior/Community Colleges Student Government Association (FJCCSGA), was founded in the spring of 1958 in St. Petersburg, Florida. The organization began under the premise of facilitating better communication between its member colleges while emphasizing communication and leadership development. The vision for the organization was, "to unify the member colleges in order to best attend to the appropriate concerns of the students of the Florida Community College system and serve as a vehicle to communicate these concerns to the Florida Legislative Body." In its initial stages, FCSSGA's college membership consisted of Pensacola State College, Gulf Coast State College, Chipola State College, Palm Beach State College, and St. Petersburg College.

FCSSGA has now grown to encompass twenty-eight state colleges that represent nearly 1.3-million college students' statewide. Through the expansion of its membership FCSSGA has gained the opportunity to sit and vote on the Florida College System Activities Association and report to The Council of Presidents. Of our membership, FCSSGA boasts a membership that has nurtured state and national legislators, college and university presidents, corporate CEO's respected physicians, and leaders in virtually every field. FCSSGA holds in high esteem, its staunch history of aggressively representing the student perspective and will continue to advocate on behalf of the concerns that our students face while continuing to strive for better communications and unity among its member colleges.

Out of the expansion of the organization also came the Legislative and fall conferences in which a preliminary issues packet is disseminated to and voted on by the member colleges. The preliminary issues packet entails the issues and concerns that the membership has submitted to our FCSSGA State Executive Board. Once the executive board vets the issues, the delegates from each of the state colleges in Florida vote on them. During FCSSGA's Fall Conference 410, students were present with 221 students designated as voting delegates

Early Voting

Campus life for many of the students in the Florida College System can be characterized by "CCC" or a Car to Class to Car experience. The demographic of our student base is predominately working class people who are attending college to further their business endeavors. Additionally, the students who frequent the halls of our twenty-eight state colleges have lives that require the balancing of schoolwork, often times a full-time job, and family life.

HB 1355 includes a provision that cuts early voter days from 14 to 8, discontinues Sunday voting access, and cuts the number of hours that an Early Voting location must be open by half. These new provisions embody more than just restriction to voter access, it represents a legalized and concerted effort to further discount numerous classes of people from the democratic process. These new provisions will hit the students of the Florida College System hard because the lives of the students within that system are hectic and very busy. The result will be fewer students at the polls.

One example of the type of student who will be impacted by the law is Jane. Jane is a 28-year-old full time student in the Bachelors of Paralegal Studies Program at Saint Petersburg College. In addition to being a full time student, she holds a full time job. A typical day for her is to work from 9:00am to 5:00pm and then class from 7:00pm to 9:40pm. The time between work and school is spent commuting and preparing for class. Like many Floridians with a schedule similar to Jane's, voting during regular hours on Election is almost certainly out of the question.

Jane is working toward this degree to make herself a more valuable asset in the working community. Her class schedule, work responsibilities, and commute will leave her little time during the shortened voting period to perform her civic duty. With a weekly schedule that overextends her, the opportunity for Jane and many of the students like her to exercise their civil rights falls on the weekend, and often on Sunday.

Provisional Ballots

The Florida College System has a unique provision in place that allows students who attend a state or community college to seamlessly transfer to a University in the State of Florida with a full transfer of all credits taken. This provision is known as 2+2 articulation. This agreement between state colleges and universities is an incentive for

students to attend state college before attending university. The Florida College System's annual report cited that 51.3% of state college students transferred and comprised the upper division student body of the State University System.¹ One of the side effects of this agreement is that students often change their county of residence after completing their degree at a state college to attend a university in the state.

A provision in HB 1355 amends F.S. §101.045 to provide that a voter may no longer change their address at a polling place by filling out an affirmation or voter registration form and vote on a regular ballot. Rather, the voter must vote on what is known as a provisional ballot. These provisional ballots are not guaranteed to be counted in the election. In 2008, 51% of provisional ballots were not counted. It is no secret that students are among the most underrepresented classes of people at the polls. This provision presents an obstacle to voter access among this class. Students who were participating in the democratic process are less likely to participate knowing that their vote has a 51% chance of not counting. Additionally, the election results in which 51% of provisional ballots are not counted cannot be an accurate reflection of the voice of the people.

Third-Party Voter Registration

One of the numerous provisions HB 1355 requires that a third-party voter registration organization must name a registered agent in the state and submit required information to the Division of Elections². In the event that this provision is not met, the third-party will have heavy fines levied against them. As a result of this provision, many college Student Government Association groups have stopped voter registration drives, an activity that has been a trademark of the organization. Additionally, third-party organizations that would come to college campuses to register students to vote have stopped coming to campuses. Organizations such as Rock the Vote, The League of Women Voters, the Boy Scouts, the National Council of La Raza, and many smaller organizations have either limited or stopped their voter registration drives. It is important to note, HB 1355 became law in 2011 and we have not had an election year since its passage. As a result, we have not seen the full implications of this law in any aspect but especially in considering the implications of third-party voter registration groups.

¹ See The Florida College System, Zoom, *FCS Graduates Transfer and Perform Successfully in the SUS*, 2011-06., Available at <http://www.fldoe.org/cc/OSAS/Evaluations/pdf/Zoom2011-06.pdf>.

² See F.S. §97.0575

For many students civic engagement starts with their time in college and specifically their interactions with voter registration and advocacy groups on campus. Because of HB 1355, we have already seen a decline in the presence of voter registration groups on campus. Many of these groups are simply unable to meet these new stringent for administrative requirements and they do not have the money to risk fines. This is especially true for student organizations. The ramifications of this law will be far reaching. Students who would normally discover the political process through their time in college will not be engaged the way they have been in years past. We will see a decline in the number of students who are registered to vote, who will as a result, not fulfill their civic duty.

State and Local Primaries

Another provision of HB 1355 calls for the date of state and local primaries to be moved from 10 weeks prior to the general election to 12 weeks prior to the general election.³ On its face this seems like a harmless change. However, this change would make the primary the 14th of August. This date is a week before classes begin in higher education. As many students do not return to the college campus until classes begin this provision will prevent them from voting because they will not be in the county in which they are registered to vote. This is especially true for the students in Florida's University System. While students in the Florida College System are commuters and will not be directly impacted by this during their tenure at a state college they will be affected by this change when they transfer to the Florida University System. This provision will effectively prevent an entire class of people from voting in the primary election.

Advocacy

A large part of what FCSSGA focuses on is student advocacy. We strive to engage our student body in local, state, and national politics. We understand that spotting a problem is easy, doing something to affect change is not. Part of how we accomplish this task is to provide opportunities and support for the student body to advocate on the resolutions we adopt. The two main avenues we utilize to provide these opportunities are by providing support for campus-based initiatives, and by organizing rallies and lobbying our state representatives and senators to support repeal of portions of HB 1355. On Tuesday, February 2, we are holding a rally and press conference

³ See F.S. § 100.061

in Tallahassee featuring students from across the state that want to speak out against HB 1355.

Campus based initiatives are the backbone of how we advocate on behalf of our students. Student Government Association's from college campus to college campus vary in how they get the word out. The number one way is through calling and writing to our legislators on the issues. An example of campus-based initiatives is the work that Palm Beach State College is doing. They have utilized print media sources to advocate on the issue. Additionally, they have contacted their legislators to help advocate for SB 516.

The rally in Tallahassee is an opportunity for this organization's strength in numbers to shine. In recent years, we have organized hundreds of college students from around the state to show our legislators that we are informed about the issues relevant to us, passionate about change, and not to be ignored. In addition to a rallying with other students and hosting press conferences to inform the general public, we meet with legislators in the capitol and discuss not only the problems, but engage in a dialogue to find solutions.

We understand that problem spotting is easy, so we looked to find a solution to the inherent problems with HB 1355. That solution came in the form of SB 516. HB 1355 is a large piece of legislation that did not just create problems by restricting access to voting but it also had many administrative components. As a result, SB 516 focuses on combating many of the provisions that are restrictive to voting access. SB 516 mitigates the damage in the area of early voting. Under this new piece of legislation, there would be more available places for early voting. Additionally, the number of early voting days and hours would be extended by this legislation. This is a small but vital step in counteracting the harm of HB 1355.

Conclusion

The students of FCSSGA appreciate the Committee's work in protecting every American's right to vote. Thank you again for this opportunity to testify. I would be pleased to answer your questions.

WRITTEN TESTIMONY OF
MARK FERRULO
EXECUTIVE DIRECTOR OF PROGRESS FLORIDA
for the
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS
Unites States Senate
Field Hearing: "New State Voting Laws II: Protecting The Right To Vote in the
Sunshine State"
January 27, 2012

Progress Florida is a non-profit, statewide organization that works to empower citizens in their community to take action on important societal issues and promote a more robust democracy.

Please find attached, for submission into the official record of this hearing, a petition signed by 11,289 Floridians in opposition to HB 1355 – the "Voter Suppression Act of 2011."

A study released last fall by the Brennan Center for Justice at New York University estimates that nationwide the new voter suppression laws, including Florida's, could discourage more than 5 million eligible voters from casting ballots in 2012. We're already seeing this impact in Florida.

The attached petitions, directed to the leadership of the Florida legislature, were collected in November 2011 when it first came to light that Florida teachers were being investigated and facing fines for non-compliance of arbitrary and onerous new "third party" voter registration requirements imposed by HB 1355.

The chilling effect that HB 1355 has already had on teachers helping eligible high school students register to vote is illustrative of the overall negative impact this law has had on the involvement of specific demographic groups in the voting process including young people and minorities.

As an organization representing thousands of concerned, civically minded Floridians across the state, we urge the Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights to take all actions in its jurisdiction to protect the right to vote in the Sunshine State, and undo this affront to democracy.



STOP THE ATTACK ON OUR DEMOCRACY

House Speaker Cannon and Senate President Haridopolos,

Surely, threatening teachers with \$1,000 fines for registering high school students to vote couldn't have been your intention when you passed the 2011 Voter Suppression Act (HB1355).

Florida teachers are under attack from every side, facing layoffs, pay cuts and ever dwindling budgets. Sadly, these dedicated professionals have grown accustomed to paying for school supplies out of their own pockets but threatening them with fines for encouraging civic engagement is an affront to all Floridians.

We, the undersigned, call on you to take immediate corrective action to ensure Florida teachers are never threatened, fined or punished for encouraging our young people to become active participants in our democracy and exercising their fundamental right to vote. We urge you to repeal HB1355, the Voter Suppression Act of 2011.

Signed,



New State Voting Laws II: Protecting The Right To Vote in the Sunshine State

Field Hearing of the Senate Judiciary Committee
 Subcommittee on the Constitution, Civil Rights, and Human Rights
 January 27, 2012
 Tampa, Florida

Project Vote and Voting for America appreciate this opportunity to submit testimony in connection with today's important hearing in Florida. Project Vote is a national nonpartisan, nonprofit organization that promotes voting in historically underrepresented communities. Through its research, advocacy, and direct legal services, Project Vote works to ensure that these constituencies are fully able to participate in American civic life by registering and voting. Voting for America, an affiliate of Project Vote, is a nonprofit, nonpartisan 501(c)(3) organization dedicated to building an American electorate that truly represents the diversity of the American people. Voting for America provides local community partners with the tools, training, and support to conduct successful nonpartisan voter registration drives and help increase the number of registered voters in underrepresented communities across the country. Voting for America joins in submitting this testimony.

Both Project Vote and Voting for America have been active in opposing the Florida voting law enacted last year, popularly known as HB 1355, from the time of its introduction in the spring of 2011. Our testimony against the bill at that time, later comments submitted to the Department of Justice in the (aborted) preclearance process, and participation, both as parties and as attorneys for other clients, in two lawsuits challenging the law are matters of public record. For the purposes of this hearing, however, we restrict our testimony to the severe and deleterious effects that HB 1355 will have on the rights of community-based groups, sometimes called "third parties," to conduct voter registration. Since 1994, Project Vote has been a recognized authority on the voter registration process, conducting trainings and advising community groups across the country on how to build the most productive and reliable systems for helping literally tens of thousands of eligible applicants to join the voter rolls. This experience and expertise underpins our concerns about the "on the ground" impact of HB 1355, even apart from the legal issues raised elsewhere.

I. The Importance of Community-Based Registration Drives

The passage of the National Voter Registration Act (NVRA) in 1993 raised the profile of registration drives, but they had been going on long before. Certainly, the League of Women

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Voters had been active for decades. But the NVRA articulated the recognition that registration had become a choke point in the election process, preventing the level of participation Congress desired in our civic life. Instead of expecting people to come to board of election headquarters, the NVRA brought registration to them. Registering at the DMV, for example, has now become commonplace. Less well known (and less universally enforced) is the opportunity afforded by the NVRA to register at certain public agencies serving low income and disabled citizens. In addition, the NVRA created a simple registration form, easily submitted by mail, and encouraged community-based registration drives to make registration more accessible to populations that had been harder to reach.

As a result, voter registration drives have assumed increasing importance in the life of every election cycle and are particularly relied upon by racial minorities seeking to register. The 2010 Current Population Survey indicates that minority citizens in Florida were approximately twice as likely to register to vote through drives as were white voters: 16.2% of African Americans and 15.5% of Hispanics, as opposed to 8.6% of whites. The data from both the 2004 and 2008 election cycles indicate similar patterns: African-American and Hispanic citizens are about twice as likely to register to vote through drives as white voters. In 2004, while 6.6 percent of non-Hispanic whites in Florida indicated they registered through private drives, 17.4 percent of African-Americans and 18.9 percent of Hispanic voters reported doing so. In 2008, 6.3 percent of non-Hispanic white registered voters in Florida were registered through drives versus 12.7 percent of black voters and 12.1 percent of Hispanic registered voters. Among those who said they actually voted in Florida in 2008, 6.3 percent of white voters were registered through drives, whereas 11.5 percent of black voters and 11.5 percent of Hispanic voters were.

2. Provisions of HB 1355

The new Florida law includes several provisions that directly impinge upon the ability of voter registration drives to fulfill their work carefully and efficiently. These include:

- The 48-hour deadline for submission of forms after signing;
- The filing and paperwork requirements for both the organization sponsoring the drive and its individual agents;
- The requirement that the drive account for all forms distributed to it;
- The provision that forms be marked so as to identify the organization conducting the drive;
- And finally, the schedule of fines and penalties for even an inadvertent infraction of the rules, including the threat of an injunction that can be sought by the partisan Secretary of State to shut down the drive altogether.

To cite but one example of a problematic requirement under the new law, an implementing regulation provides that “delivery” of an application by mail is timely if the postmark date is legible and indicates that it is within two days of the execution of the application. However, even with a legible postmark, given that the law imposes a 48-hour (not a two-day) deadline, it is unclear how this rule can be effectively implemented. If the postmark is *not* legible, the date of *receipt* will determine whether the form is timely or not—a rule that is a straightforward violation of the NVRA provision that the date of mailing determines timeliness. This is just one

particular instance of the many unlawful, unworkable, and arbitrary provisions of the law.

3. Burdens on Organizations Conducting Voter Registration Drives

After long experience in the field, Project Vote and Voting for America have developed protocols and “best practices” for the conduct of voter registration drives, which they use to train and guide partner organizations in the field. These include detailed suggestions for staff structure and duties, physical plant and security, and procedures for quality control. The provisions of HB 1355 directly conflict with many of these best practices. As a result, voter registration drives will be more costly, less efficient, and more error-prone. The restrictions of HB 1355 will have the additional unintended consequence of making election officials’ jobs harder.

Most importantly, the 48-hour deadline for turning in forms prevents any meaningful quality control process before the forms are submitted. We recommend (and *require* of our field partners) a multi-step process whereby the application is reviewed by several levels of staff, both visually and by follow-up phone calls, before it is sent or delivered to the election office. Needless to say, this process takes several days, particularly given the importance of contacting the applicant by telephone for confirmation or further information. Our quality control process also makes the job of election officials a lot easier by flagging incomplete or suspicious paperwork for them, and either contacting the applicant, when we are authorized, to complete it, or alerting the county election office that there is a problem.

There are several other provisions of the law that are equally burdensome. Since “canvassers,” those who interact directly with the applicants in the field, are often volunteers or part-time hourly workers, the threat of monetary penalties for even one accidental infraction will inevitably have an impact on their willingness to engage in voter registration activities. Further, the need to file organizational paperwork in advance obviously curtails any spontaneity in conducting a voter registration drive; similarly, the need for individual canvassers to fill out paperwork for the state before they can participate means they cannot engage in such an activity without advance planning. Through several of its onerous provisions, the law imposes ongoing, continuous filing obligations that squelch participation and force staff and volunteers into choosing between providing voting registration assistance and doing unnecessary clerical work.

The filing requirements of HB 1355 are burdensome for any organization without a large professional staff. Groups that routinely conduct voter registration drives in low-income communities are generally low-budget operations themselves, without legions of lawyers on staff who are accustomed to reviewing complicated legal compliance issues. The law is even more burdensome to the many groups whose primary mission *isn't* voter registration but who periodically launch drives, often staffed by volunteers, when a particular election issue *affects* their primary mission, such as low-cost housing or environmental justice groups. Compliance with the complex new rules will involve many staff and volunteer hours, effectively deterring the participation of civic groups in the voter registration process. The scarce resources of these organizations will necessarily be diverted into compliance with the law and its myriad requirements, rather than assisting their constituents with voter registration.

The law also provides that a voter registration drive must “account for” every application form that has been distributed to it. A mother of an 18-year old who interacts with a canvasser at a county fair would be unable to take a form home to her son because the drive would have no way of knowing what happened to it—if she forgets to give it to him, or if he decides to throw it in the trash, the drive is responsible! Similarly, a registration drive at a Sunday church service would be impossible under the law unless someone sat there and counted to be sure every application is given back. This is an absurd rule with absurd implications. It makes voter registration a trap for the unwary, not an uplifting event in the life of an American citizen.

The coding and labeling of voter registration forms distributed to drives will also have a chilling effect on their interaction with the public. If an applicant receives the assistance of a canvasser from an advocacy organization, for instance, her application will now be coded to identify that organization—with whom she may have had no contact before or since--and becomes a public record. No legitimate purpose is served by publicly tying the application to the advocacy organization, and yet that is exactly what this law does.

4. The Role of the Senate Judiciary Committee

By convening this field hearing in Florida, the Subcommittee on the Constitution, Civil Rights, and Human Rights implicitly recognizes that a state law can have a far-reaching impact upon federally guaranteed rights, and that this impact should be examined. For this, we are grateful. Over the past six years, Florida’s legislature has been enacting ever more onerous restrictions on its citizens’ right to register and vote. The state has been challenged in court repeatedly. With respect to HB 1355 alone, there have already been at least three legal actions involving the statute, with more likely in the future. Irrespective of what happens in the courts, however, the Judiciary Committee has the authority and the responsibility to take testimony on the repercussions of the state law and to consider federal legislation if appropriate. We hope that the Subcommittee’s ongoing inquiry into the dangerous and growing national trend of state laws that restrict or deny the right to vote will be a wake-up call to those—both citizens and lawmakers alike--who want to protect this cherished right.

Project Vote and Voting for America appreciate the Subcommittee’s efforts and stand ready to provide whatever assistance you may require.

Written Testimony of
Ion V. Sancho
Leon County Supervisor of Elections
Submitted to the
Judiciary Committee
Constitution, Civil Rights, and Human Rights Subcommittee
United States Senate
Tampa, Florida Field Hearing
January 17, 2012

To the Honorable members of the United States Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights, and especially the Honorable Chairman Dick Durbin, who called this field trip for the purpose of examining legislation passed last year by the Florida Legislature, I earnestly thank you for the opportunity to provide this written testimony. While my testimony focuses on the Florida Legislation, with over thirty states making similar electoral changes it is difficult, if not impossible, to believe these electoral changes are not part of some organized effort implemented to affect the outcome of the 2012 presidential election. This belief is reinforced when one examines the ham fisted way the proponents rammed this election bill through the process and by identifying those who will be impacted if these changes are not reversed.

I am the Leon County Supervisor of Elections, and an elected official. I have been re-elected to five four year terms since my initial election in 1998, and am currently serving on the Board of Directors of the Florida State Association of Supervisor of Elections (FSASE). I am one of only three supervisors of elections in Florida, out of sixty seven, registered to vote without a party affiliation. As a

senior member of the FSASE (only four of the sixty- seven supervisors have a longer tenure), I can tell the members of this committee that these laws, passed during Florida's last legislative session are not only completely unnecessary, they threaten to undue the carefully crafted bi-partisan reforms signed into law by former governor Jeb Bush in 2001. These laws are doing damage to Florida's electorate, many of whom remain traumatized by the infamous Florida 2000 election.

I will limit my focus today to two provisions contained in the elections bill; the reduction to in-person early voting from 15 to eight days, and requiring all registered voters to cast provisional ballots instead of regular ballots if they had moved from one county to another and not updated their address before voting.

The two main arguments made by the majority party were simple and straightforward. Florida Senator Miguel Diaz de la Portilla, sponsor of the early voting reduction from 15 days to 8 in the Florida Senate, told the Senate Rules Committee on April 15, 2011, that in early voting in Miami-Dade "there is a trickle of two or three people a day at a very high cost to keep those public libraries and polls open". This statement is patently false. In the 2008 general election this "trickle" was 2.6 million voters or 31% of the entire voting electorate. I was at this hearing and tried to be recognized to correct the misinformation but was not allowed to address the Committee.

This effort to prevent public testimony presenting accurate data on early voting was repeated at the Senate Budget Committee on April 26th, the last opportunity to provide public testimony before the bill went to the Senate floor. Thirty nine individuals filed to speak on the bill. I had called the Committee staff earlier that morning and they confirmed the Committee could meet until 1:00 p.m. At 11:42 a.m. the bill came up for debate. That's when Senator John Thrasher, former Chairman of the State Republican party got out of his seat and whispered something to the Chairman. As the Senator went back to his seat the Chair announced the Committee would adjourn at a time certain, 11:45 a.m. One member of the public was allowed to speak. He spoke in opposition to the bill and the Chair adjourned the meeting.

Floridians had come from all over the state to testify on this bill. The president of the FSASE had driven the five hours from Pensacola to testify. Such is the way the majority party operates in Tallahassee today.

What was not entered into the record that day would have shown that early voting is no mere convenience to the voters in Florida; it is a necessity in every urban part of our state. This is because unlike many states in this country Florida today has no statutory requirement ensuring there are enough voting machines and precincts to handle the state's voting population on election day. Today there are actually fewer precincts in the state of Florida than there were in 2000, despite double digit growth in our voting population in the last decade.

That's why Secretary of State Kurt Browning, in his testimony presented to the Florida Senate Ethics and Elections Committee on February 4, 2009, reviewing the 2008 general election, argued in favor of an expansion of early voting in Florida, stating early voting "smoothes the election process; it's a safety valve for election day. Trying to put 8.4 million voters through a 12 hour day (Florida polls are open from 7 a.m. to 7 p.m.) is not feasible anymore. " I agree with Secretary Browning. Reducing early voting to eight days will severely constrict "the safety valve" and result in much longer lines at the polls on election day in 2012, particularly in Florida's urban areas.

Near record turnout is my prediction for this November's election in Florida. We may be left trying to accommodate the million voters who voted in the first week of early voting in 2008 on top of the 1.6 million voters who voted early in the second week, and with only 4 additional hours added to those days, it will be a physical impossibility.

The final change I wish to discuss is the requirement upon election officials to require all voters who move into one county from another to cast a provisional ballot if they go to vote before changing their address. In Florida we call these voters "move in" voters, and since 1973 Florida has allowed voters to make address changes at the polls when they go to vote. The reason we were told for changing this almost 40 year practice was to prevent voter fraud.

These provisions I speak of were not in any way requested by the state's supervisors of elections. The main reason for this is we know there is no voter

fraud in Florida to speak of. The Florida Department of Law Enforcement, the state's police force, reports that there were 31 investigations of voter fraud in Florida from 2006 through 2010. These resulted in two convictions and one arrest. During that same period 22,556,208 eligible voters cast their ballots. Let's put this number in proper perspective. Today in Florida, a Floridian is sixteen times more likely to be struck by lightning than to find voter fraud in our elections!

This is no exaggeration, and the reasons why we have so little fraud are twofold. First, after the terrible embarrassment Florida suffered in the 2000 election, election officials were determined never to go through such an experience again. Florida has developed and deployed the finest state-wide voter registration and database system in the nation today. The Florida Voter Registration System (FVRS) cost approximately 23 million dollars to construct and costs over two million dollars a year to operate. This is a live time database that simultaneously links all 67 Florida counties to the state and to each other. The FVRS not only connects election officials, it connects with our driver's license agencies, the Department of Corrections, the Department of Vital Statistics as well as other governmental databases. All of this takes place under our version of "no match, no vote", i.e. the eligibility of a voter is determined **before** they are added to the voter rolls.

Secondly, Florida is currently one of only eight states to require ID to vote in person. Not only do we have an elaborate check at the front end of the voter registration process, we follow that up through the final step in the voting process – requiring proof through picture ID that the voter who presents him or herself to us is that eligible voter. No state in the nation can say it does more to ensure a safe and secure vote than Florida.

The FVRS was designed and built to allow election officials to continue to make address changes at the polls or in-person early voting as that had been our practice. As part of it's functionality, when a move in voter goes to an early voting site in Leon County we enter the FVRS database and move the voter into our the county. By doing this our pollworker can now see all of the voter's records from his former county and can verify the voter has not already voted, either by absentee ballot or in-person early voting. Illogical as it sounds, by forcing the voter to cast a

provisional ballot local election officials are now prohibited from using the very tools, built at a cost of over 23 millions dollars to do this very job.

But this action by the majority party in Florida goes far beyond simply being unjustified or fiscally irresponsible - it threatens to cripple the very electoral system they purport to protect. First, because completing a provisional ballot is a very time consumptive and labor intensive process, both to the voter and to the local election official at the polls or early voting sites. Currently Florida law provides we verify provisional ballots within 48 hours of the election. In Leon county our staff can process and check about 350 provisional ballots a day or about 700 provisional ballots. Looking back at our records in 2008, another 1000 plus voters would have fallen in this category, far beyond our ability to process in the time allotted.

This is not simply a matter of hiring part time workers to complete this task. These investigations require staff to be trained in the complexities of the not only the FVRS database, but understand every aspect of the voter registration process in order to find a voter that may have been lost, misfiled or wrongly categorized. This effort requires the use of our fulltime technical and professional staff, workers who now have to be shifted from other election critical tasks ensuring the election was conducted accurately and lawfully.

Secondly, these ballots were required by the Help America Vote Act of 2002 (HAVA), and nationally are called fail safe ballots. They ensure that a voter may vote and have that vote counted even if the jurisdiction has erroneously removed the voter from the voting rolls, as was the case in the Florida 2000 election when flawed felons lists distributed for use by the Florida Division of Elections prevented over 22,000 legal voters from voting on election day. To increase the use of this type of ballot purposely perverts the history of why provisional ballots were introduced in Florida in the first place.

It's clear to me after watching the proponents of this bill argue it will save the counties money which it won't - it actually cost the urban counties more, (in Leon County alone the additional cost is \$112,000) and prevent fraud, which it won't - it may actually increase fraud as more voters may have to vote by absentee ballot - historically the preferred method for fraudulent voting in the U.S. and only major

case of voting fraud found in Florida (the 1996 Miami Dade commission race seat three) the proponents were completely ignorant about how the FVRS functions or how a 15 day early voting period allows for our large voter population to be accommodated. Mickey Mouse never registered to vote in Florida as Representative Dennis Baxley, the floor leader for the House majority on this bill erroneously claimed on Politicsnation (MSNBC). Mickey Mouse would have had to present his valid Florida Drivers license or the last four digits of his social security to accomplish this.

This lack of accurate information about the actual voting process in Florida, compounded by the legislative refusal to seek the input from Florida' supervisors of elections prior to introducing their proposals suggest that these electoral changes in Florida were driven by another, more partisan agenda. This becomes clearer as we identify who might be affected by this onerous legislation.

The young, the minorities, the elderly, the disabled, the poorer among us, those who live in the urban parts of the state; these are the citizens of Florida impacted by this legislation. I will leave it to the demographers to fully describe these impacts, and close with this statement. I swore an oath to protect and defend the Constitution of the United States Of America upon taking office 23 years ago, and I am proud and thankful there is a national federal government to ensure that the citizens of Florida are not denied access to their most basic civil right - the right to vote!



**Impacts of Florida HB 1355
on the
Voting Rights of Floridians with Disabilities
Statement for the Record by Barry M. Shalinsky,
PAVA Program Director, Disability Rights Florida
Submitted to US Senate Judiciary Committee,
Subcommittee on the Constitution, Civil Rights and Human Rights
January 20, 2012**

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We would like to thank you for your interest in protecting the voting rights of people with disabilities in Florida. We appreciate the opportunity to present this statement for the record regarding recent changes to Florida's election laws.

Disability Rights Florida is the Protection and Advocacy (P&A) system for persons with disabilities in Florida, designated as such since 1987. We are a state-wide non-profit corporation funded and mandated under eight different federal programs to protect the rights of persons with disabilities. Our principal offices are located in Tallahassee, Tampa and Hollywood. We seek to advance the quality of life, dignity, equality, self-determination, and freedom of choice of people with disabilities through collaboration, education and advocacy, as well as legal and legislative strategies.

The Help America Vote Act (HAVA), 42 U.S.C. 15301, was signed into law by President George W. Bush on October 29, 2002. An integral part of HAVA was the creation of the Protection and Advocacy for Voting Access (PAVA) program, 42 U.S.C. 15461. HAVA acknowledges the unique obstacles faced by individuals with disabilities in access to voting, and in 2003, Congress authorized funding for the PAVA program under Section 291. PAVA funds are used to implement the P&As' broad HAVA mandate "to ensure full participation in the [entire] electoral process for individuals with disabilities, including registering to vote, casting a vote and accessing polling places."

Disability Rights Florida is the state's designated PAVA grantee. We employ a multi-faceted strategy for encouraging and facilitating participation in the electoral process by individuals with disabilities, pursuant to our PAVA mandate. We work with election officials, individuals with disabilities, disability advocacy organizations and service providers to promote access and participation. If the ultimate goal is for the individual with a disability to cast a well-informed ballot in an accessible voting location on accessible voting equipment, the first vital step is for that person to successfully register to vote in advance of the registration deadline. As a statewide advocacy organization, Disability Rights Florida has never been a direct voter registration entity. We do distribute, but do not collect or receive voter registration forms, and have encouraged others who provide direct community based services to assist with registering the individuals who they serve.

VOTER REGISTRATION

As the Committee is well aware, HB 1355 was passed by the Florida Legislature and signed into law on May 19, 2011 by Governor Rick Scott. This legislation places new restrictions on individuals and groups wishing to engage in third-party voter registration efforts. s. 97.0575 (Fla. Stat. 2011).

As recognized by Congress in passing HAVA, persons with disabilities face a series of barriers to registration that are not faced by some other prospective voters.

Although some of these barriers may be ancillary to the central subject matter of the Committee's deliberations, we will address them, because it is not possible to understand the full impact of HB 1355's restrictions on voter registration without viewing them within the larger context. It is important to note that the so-called "disability community" is in fact several communities, and that barriers to electoral participation are specific to an individual's disability as well as his or her other personal circumstances.

Individuals who have dexterity disabilities, who lack arms or hands, who have cognitive or intellectual disabilities or who are vision impaired, may have difficulty with filling out, signing and/or submitting voter registration forms. Florida's law on notarization of documents makes provisions for individuals with disabilities to receive assistance with reading documents and signing them by mark. Florida's voting laws have no such provisions for assistance with regard to registration documents.

Once a person with a disability is registered to vote, he or she may request and receive assistance with voting at the polling place, from a person of her/his choosing. But if the person with a disability seeks assistance with voter registration from that very same individual, for example, a sibling, grandparent, grandchild, aunt, uncle, cousin, in-law, step-child, step-parent, foster parent, guardian, friend, neighbor, service provider or other trusted individual from whom he or she could receive voting assistance at the polling place under Florida law, the person providing registration assistance would be subject to the requirements and penalties of Florida law as a "third-party voter registration organization." Under a literal reading of the law, any trusted person who does nothing more than accept a completed registration application to assist with mailing it, would be required to register with the state as a third-party voter registration organization. The only persons exempt from these requirements are official agency voter registration personnel, or a potential registrant's spouse, child or parent.

Just to be clear, HB 1355 does not change the definition of "third-party voter registration organization." The term is defined in Florida Statutes 97.021(37). Under that section, family members (other than a spouse, child or parent), friends and neighbors, service providers and other trusted individuals as described above, were considered third-party voter registration organizations prior to the adoption of HB 1355. However, the prior version of the third-party registration statute provided: "The failure to submit the information required [to register as a third-party voter registration organization] does not subject the third-party voter registration organization to any civil or criminal penalties for such failure, and the failure to submit such information is not a basis for denying such third-party voter registration organization with copies of voter registration application forms." In other words, failure to register as a third-party voter registration organization did not *per se* subject any individual or organization to civil or criminal penalties;

penalties were triggered by the failure to submit voter registration documents within ten days of receipt. This provision is now absent from the current version of Florida Statutes 97.0575. There is a new section in the statute that was not present in the previous version, providing: "If the Secretary of State reasonably believes that a person has committed a violation of this section, the secretary may refer the matter to the Attorney General for enforcement. The Attorney General may institute a civil action for a violation of this section or to prevent a violation of this section. An action for relief may include a permanent or temporary injunction, a restraining order, or any other appropriate order." This, combined with other stricter requirements and penalties, such as the 48 hour deadline for submitting completed voter registration applications, creates a chilling effect on those who might otherwise provide assistance with registration.

Individuals with disabilities who use the services of an adult day training center, drop-in-center, mental health club house, waiver support coordinator, Florida Assertive Community Treatment (FACT) Team, Lighthouse for the Blind, homeless shelter or other community based service provider, are now less likely to receive assistance with voter registration. Disability Rights Florida has sent letters to several hundred of these service providers during each of the last four election cycles asking them to assist those persons who use their services to register and vote. Going forward our organization will not be able to send these letters without informing the recipients of the new requirements and penalties of the third-party registration law. We have every reason to believe such assistance will decrease. Anecdotally, we have already heard from some service providers who have assisted their clients with registering to vote, that they are concerned about continuing doing so. Drop-in-centers exist in Florida for the purpose of providing support to individuals who are in recovery from psychiatric disabilities. There are 30-35 drop-in-centers in the state. Drop-in-centers educate their members about their civil rights, including the importance of registering to vote and voting if eligible. Many drop-in-centers maintain a supply of voter registration forms and have historically assisted individuals in registering to vote. We recently heard from the director of a drop-in-center with 150-200 members located in a large metropolitan area. The membership of this drop-in-center is 85% Black, 10% White and 5% Hispanic/Latino. Given the changes to the law that took place in 2011, the director is now very reluctant to assist people who want to register to vote. The director has explored registering as a third-party voter registration organization, but has found the process difficult.

Among persons with disabilities who wish to vote, those who permanently or temporarily live in institutions, such as nursing homes, group homes, assisted living facilities, residential treatment facilities, hospitals, hospice facilities, county jails, crisis stabilization units, boarding schools or other residential facilities are at the greatest risk of being unable to vote. This is because persons living in institutional

settings are typically dependent upon assistance from facility staff or trusted individuals to be able to exercise their rights when they are either physically or legally unable to move freely in the community. Recognizing this reality, Disability Rights Florida has sent mailings to over 5,000 such facilities during each of the last four general election cycles, urging them to offer assistance to their residents who might wish to register and vote. While we received no direct response from the overwhelming majority of letters sent, in every election cycle, we did receive requests for information or assistance from administrators or staff from dozens of institutions. Moreover, we know that many others we did not hear from directly, were taking heed of our encouragement. When our staff conducts facility monitoring visits under one of our other P&A program grants, it is not uncommon for us to see one of our "right to vote" posters from prior mailings hanging on a bulletin board. We also know the information was getting out based on the calls we received from prospective voters in these facilities in the weeks leading up to an election, and on Election Day. From our extensive work with institutions, we know that facility employees are typically very busy just taking care of the day to day challenges of their jobs caring for their residents' health and safety. Under the best of circumstances, some facility owners, administrators and staff may be more or less inclined than others to assist their residents with registering and voting. Given the new restrictions and penalties on third-party registration organizations, we can anticipate that facility staff will be much less inclined to provide assistance than in the past. As with the other service providers, our organization can no longer encourage them to do so without informing them fully of the risks. Thus, one of the more successful aspects of our PAVA effort is being undercut by HB 1355, and the most at risk individuals will not receive the voter registration assistance that they need.

It is commonly accepted that civic participation and voting are lifelong habits that are most likely practiced if started early in life. For this reason, Disability Rights Florida has long advocated that civic education and voter registration should be part of every Individualized Education Plan for transition age students under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C. 1400, *et seq.* Although IDEA requires states to provide a free and appropriate public education for some students with disabilities for as long as age 22, Florida does not appear to regard public school districts that provide special education services to students with disabilities as covered entities under its implementation of the National Voter Registration Act (NVRA), commonly known as Motor Voter, 42 U.S.C. 1973gg, or under the state laws that define and implement it for persons with disabilities, Florida Statutes 97.021(41) and 97.058. Neither do these programs appear to be covered by Florida Statutes 97.0583 as "qualifying educational institutions." As such, any teacher who wishes to assist her/his students to register to vote is also subject to the requirements of being a third-party registration organization. Earlier

this year, there was a well-publicized case of high school teacher being turned in for violating the new registration provisions of HB 1355, requiring completed voter registration applications to be submitted within 48 hours. The teacher's actions would have been permissible under the prior version of the law. In response to this incident, the Secretary of State has implemented new rules and procedures permitting each school district to register as a third-party voter registration organization. However, there is no requirement for a school district to participate. Under Florida law, voter registration applications are available from agents of the Fish and Wildlife Conservation Commission, but not from public schools.

As outlined above, HB 1355 creates serious disincentives for families, friends and trusted individuals, facility staff, service providers and even school teachers to assist individuals with disabilities who wish to register to vote. This is particularly troubling in light of Florida's dismal performance in recent years of its obligations to persons with disabilities under NVRA and companion state laws. NVRA and state laws require agencies that serve persons with disabilities to offer voter registration opportunities to their program applicants. According to data from the Florida Secretary of State, from 2005 through the first eleven months of 2011, offices and programs that serve people with disabilities reported registering a total of 1920 voters during that seven year period, for an annualized average of a mere 278 voters.* By contrast, during 2004, those offices registered 1976 voters, more during that one year alone than for the next seven years combined. During the seven year period from 1998 to 2004, Florida offices and programs serving people with disabilities registered 15,640 voters, for an annual average of 2,234. During the first three years of the program, Florida offices and programs serving people with disabilities registered 12,047 voters, for an annual average of 4,016. Perhaps it would be appropriate for the committee to investigate why voter registration of persons with disabilities under NVRA during the seven most recent years is less than 12.5% of what it was during the previous seven years. Whatever the reasons for this drastic reduction, clearly the State of Florida is not doing its job in registering voters with disabilities, and by enacting HB 1355, the state is making it much more difficult for others to assist.

EARLY VOTING

Florida has provided a reasonably permissive early voting system for several years. This encourages more opportunities for participation by all voters, including voters with disabilities. HB 1355 shortened the overall calendar period for early voting by six days.

* Calculated by dividing 1920 registrants by 83 months to compute a monthly average of 23.1+ registrations, multiplied times 12 months for an annualized average of 277.5+ voters with disabilities registered.

Disability Rights Florida philosophically supports expanding the range of choices and options of persons with disabilities in all facets of life, including voting rights. For this reason, as well as the practical reasons which follow, we have long promoted early voting for individuals with disabilities, and support the expansion of early voting opportunities.

Early voting has several advantages for voters with disabilities. The first is accessibility. With nearly 5500 Election Day polling sites in use in Florida, there are unfortunately still many that are only marginally accessible at best. Florida law is clear on the point that any registered voter who casts a ballot on Election Day must do so at his or her designated polling place. Any voter who attempts to cast a ballot at any other polling place will be required to vote by provisional ballot, and that provisional ballot will ultimately not be counted. If a voter with a disability arrives at his or her designated polling place on Election Day and finds it to be inaccessible, the only option for casting a vote that will be counted is to go to the Supervisor of Elections office and cast an absentee ballot. Because many voters with disabilities have transportation challenges, this is not a workable solution. Over the years, Disability Rights Florida has surveyed and re-surveyed over 90% of the sites used for early voting in Florida, and has found about two-thirds to be fully accessible. Most of the accessibility problems found at the other one-third of sites have been ones that are easily correctable through removal of obstacles such as low hanging branches in the path of travel, or through better signage. If accessibility problems are found at an early voting site, particularly toward the beginning of the early voting period, there is an opportunity to correct the problem and the voter can return another day, or use another early voting site within the county. On Election Day, such solutions are not an option.

Another advantage of early voting for voters with disabilities is a more accommodating atmosphere at many locations. For some voters who are elders or who have disabilities that affect mobility or stamina, long lines on Election Day can be a barrier. At early voting sites, particularly toward the beginning of the early voting period, this is likely to be less of a problem, with the notable exception of a few of Florida's largest counties where long lines can sometimes be a problem even during early voting. Once inside the polling place, voters with some cognitive, intellectual and physical disabilities, or those who use accessible equipment, might find that it takes them longer to vote than other individuals. There is less perceived pressure on the voter to vote quickly at a polling site with more polling booths that is less crowded at early voting. Anecdotally, we have found that election workers who work for several days at an early voting site often display a better sense of disability etiquette than those who are working only one day at an Election Day polling site. During every election cycle, we have received complaints of accessible equipment either not working properly or not being set up at all on Election Day. This has been much less of a concern at early voting sites, and again, if a problem

is discovered toward the beginning of the early voting period, there is an opportunity to correct the problem and the voter can return another day, or use another early voting site within the county. On Election Day, the voter can only complain and wait.

For many voters with disabilities, there are other barriers to voting. Disability Rights Florida has conducted dozens of interviews with residents of limited mental health assisted living facilities in recent months, and there has been a recurring theme of individuals complaining of not having proper identification. Most of these individuals live on a monthly personal needs allowance of \$54 for clothing, personal effects, transportation and entertainment. It can take several months of focused and deliberate saving to come up with the \$25 necessary for a state ID, plus transportation to get to the DMV office. Individuals in better financial circumstances still have transportation or other issues making it difficult to get an ID. If a voter shows up at the polling place on Election Day without proper identification, she/he will be required to cast a provisional ballot that ultimately will not count. If that person goes to an early voting site, particularly toward the beginning of the early voting period, she/he will have the time to obtain proper identification and return to the site to cast a vote which will count.

These are just a few examples of why early voting can be so advantageous for voters with disabilities. The common element is that if the individual discovers that it does not work to vote at that site on that day, there is an opportunity to address the barrier and return to vote on another day. For most individuals in most situations, this is much more difficult, if not impossible on Election Day.

Data from the Secretary of State shows that early voting has been popular in Florida. In the 2010 general election, over 20% of all votes were cast at early voting sites. In the 2008 general election, nearly 32% of all votes were cast at early voting sites. It is significant to note that a higher percentage of valid ballots are cast and counted from early voting. For every general election from 2004 to 2010, data from the Secretary of State indicates a lower percentage of undervotes and overvotes for early voting than for either Election Day voting or absentee voting. Therefore, in addition to the other advantages of early voting, and perhaps because of them, early voters are statistically more likely to have valid votes counted. Unfortunately, there is no easily retrievable data regarding the prevalence of provisional ballots at early voting versus Election Day voting, but it stands to reason that it would be less, since early voters can vote at any site in their county, while Election Day voters must vote at their designated polling place. Failure to do so will result in them being forced to use a provisional ballot.

Because of the many advantages of early voting, it is troubling that HB 1355 shortens the early voting period by several days. Shortening the period of early voting decreases some of the advantages noted above. For example, if a voter with

a disability (or any voter for that matter) discovers that an ID has expired, she or he will now have fewer days to remedy the situation and return to the polling place with a valid ID. With transportation being a significant barrier for many persons with disabilities, fewer days of early voting means less opportunity to arrange transportation. No doubt, the changes will likely result in longer lines and longer waiting, along with more perceived pressure on some voters to vote quickly.

Disability Rights Florida supports making early voting more expansive, not more restrictive. We support restoring early voting days, as well as giving Supervisors of Elections the discretion to use more types of community facilities as early voting sites. The current requirements limiting Supervisors to using their offices, public libraries and city halls as early voting sites means that the most accessible, convenient and suitable locations in a particular community might be unavailable as early voting options. The Supervisors know their communities and their community resources. They should be empowered to utilize those resources to benefit voters with disabilities, and all voters.

CHANGE OF ADDRESS

HB 1355 changes the procedures and requirements for a voter to change his or her address. Florida Statutes 97.1031 eliminates the requirement for voters to use specified forms for changing their addresses. They can now do so by phone or electronic means, as long as required information is provided. But Florida Statutes 101.045 eliminates the ability of in-state voters to change their address on Election Day at the designated polling place for their new residences. Such changes are now permitted only within the same county, and anyone filling out an Election Day change of address from another county is now required to cast a provisional ballot.

Clearly, any change which makes it easier for persons with disabilities to change their registration addresses is a welcome change. This is especially true in light of the changes to third-party registration noted above, which will result in less voter registration forms being available in places where persons with disabilities live or receive services. Eliminating the need to use a voter registration form for change of address is significant. The other change could have an adverse impact on some individuals. People with disabilities do not always have direct control over their living situations. For example, an assisted living facility in northern Broward County was closed in January, 2012. By the time residents were relocated, it was too late to change their registration address for the upcoming Presidential preference primary. Any of the individuals who were relocated to Palm Beach County would have to vote by provisional ballot, and voting by absentee ballot would be virtually impossible.

CONCLUSION

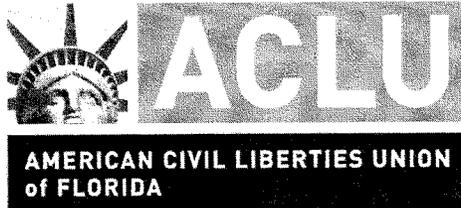
HB 1355 makes many significant changes to Florida election law, affecting all Floridians, including those with disabilities. Several of the changes improve the efficiency of election administration and enhance the rights of voters, such as expanding the methods by which a registered voter can change their address. Unfortunately, the changes to third-party voter registration and early voting are likely to have adverse impacts on persons with disabilities and their ability to register and vote. Perhaps these impacts were unintended, but they are nevertheless real. We appreciate the Senate Judiciary Committee's concern for the voting rights of the citizens with disabilities in Florida, and hope the information we have provided is helpful. Please feel free to contact me if I can provide additional information.

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Barry M. Shalinsky has a long history of involvement in disability law and policy, as well as election law and civic participation. Shalinsky received his B.A. in History and Political Science, and his J.D. from the University of Kansas. He is Disability Rights Florida's Self-Determination Team Manager and has also served as PAVA Program Director since the inception of PAVA in 2003. He is the longest serving member of the National Disability Rights Network's Voting Working Group, which assists NDRN with its training and technical assistance to the nation's protection and advocacy systems for persons with disabilities. He also serves as the Florida point person for disability voting issues for the National Election Protection hotline. He authored the publication "Voting in Florida, A Guide for Citizens with Disabilities" which was published by Disability Rights Florida and the Florida Developmental Disabilities Council in 2008, and updated in 2010.

Prior to coming to Disability Rights Florida in 2001, Shalinsky worked at the Social Security Administration, the Equal Employment Opportunity Commission, the Kansas Department of Health and Environment and in private legal practice. While in Kansas, Shalinsky managed political campaigns and served as a precinct committeeman and member of the state committee for his political party.

In Tampa, Shalinsky was invited to advise the Hillsborough County Supervisor of Elections regarding the purchase of accessible voting equipment. He serves as an officer of his local civic association, and as chair of the Tampa Heights Riverfront Community Redevelopment Citizens Advisory Committee.



Written Statement

of

Howard L. Simon, Ph.D.

Executive Director,
American Civil Liberties Union of Florida

For a Field Hearing on

“New State Voting Laws II: Protecting The Right to Vote in the Sunshine State”

Submitted to the

**Subcommittee on the Constitution, Civil Rights and Human Rights
U.S. Senate Committee on the Judiciary**

January 27, 2012
Tampa, Florida

Introduction

The American Civil Liberties Union (ACLU), an organization of over half a million members, countless additional supporters and activists, and fifty-three affiliates nationwide, commends the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights for focusing public attention on Florida – one of the states that have recently enacted laws, which have severely restricted the fundamental right to vote for millions of Americans.

The ACLU of Florida, headquartered in Miami with regional offices in Tampa, Pensacola and Jacksonville, is a local affiliate of the American Civil Liberties Union (ACLU). Chartered in 1965, the ACLU of Florida operates with 18 volunteer-run chapters and 15,000 members and supporters across the state of Florida. I have served as Executive Director of the Florida ACLU Affiliate since 1997. (I served as Executive Director of ACLU's Michigan Affiliate for 23 years prior to my appoint as Florida Director.) I oversee the affiliate's legal, public education, and legislative lobbying programs. During my tenure, the ACLU of Florida has been extensively engaged in addressing the need for electoral reforms, including successful efforts to end paperless electronic voting and continuing efforts to end Florida's policy permanently disfranchising people who have been previously convicted of felonies. We are pleased to submit this written statement for the record on this hearing, addressing the serious problem of Florida's new voting restrictions.

It is often said that the right to vote is the most fundamental right of a citizen in a democracy – a right, and not a privilege extended by government.

To some this may sound like trite, quaint and outmoded philosophical rhetoric, but it is worth repeating – if only to remind ourselves that there are significant policy consequences that stem from the appreciation that voting is a right of a citizen and that the burden is on government to respect that right. For one thing, since voting is a right, government officials have the obligation to facilitate the exercise of that right by making citizen access to the ballot box as easy and as convenient as possible, consistent with good election management.

Overview of Voter Suppression Tactics

Florida has an extensive history of suppression of the right to vote. This has included voter suppression tactics from the era of Jim Crow; changes to voting laws and procedures that were put in place to address the problems that were exposed in Florida during the 2000 Election; and legislation enacted by the 2011 Legislature.

Florida's current and historic voter suppression measures have included the following tactics:

- **Voting laws, procedures and policies:** In the 2011 Legislative Session, as the most recent example, the Legislature enacted House Bill 1355, a comprehensive change to Florida election law – affecting approximately 80 different provisions of the state's election laws. Four of those provisions are now pending as the State seeks preclearance under the Voting Rights Act in the federal district court in the District of Columbia.
- **Lifetime disfranchisement:** At its 1868 Constitutional Convention, the State of Florida – following its failed sojourn with the Confederacy – significantly expanded its constitutionally

mandated system of lifetime disfranchisement for those convicted of an extensively expanded list of felonies. This change was made in order to dilute the votes of the freed slaves.¹

Florida is one of only four states to require lifetime disfranchisement upon conviction for a felony (Virginia, Kentucky, Iowa, and Florida). In Florida, restoration of civil and voting rights is possible only by appealing to the clemency power of the Governor and members of his Cabinet, sitting as the Board of Executive Clemency (BOEC).

The numbers paint a picture of the significance of Florida's disfranchisement system. Nearly one million Florida citizens – who account for nearly one in five disfranchised citizens in the country – have been disfranchised for life, with the opportunity to recover their right to vote only through the difficult clemency process which has resulted in very few grants of rights restoration.²

- **Gerrymandering:** In its Congressional and Legislative districts, Florida has been one of the most gerrymandered states – until the November 2010 Election when Florida voters amended their Constitution. These 2010 amendments required the redistricting process to take place in accordance with rules that prohibit redistricting to favor or disfavor an incumbent or political party; that prohibit, consistent with the Voting Rights Act, denying racial and language minorities an equal opportunity to elect candidates of their choice; and that require districts to be contiguous, compact, and where feasible to use existing city, county and geographical boundaries.

These new constitutional provisions have been challenged by two members of Congress³. The case is currently pending in the U.S. Court of Appeals for the 11th Circuit. It is noteworthy that the Florida House of Representatives has joined as an intervening plaintiff in the challenge to the constitutionality of these anti-gerrymandering provisions.

For purposes of this testimony, we will be focusing on the changes in voting laws enacted by the Legislature in 2011.

Voting changes enacted in 2011 in House Bill 1355

House Bill 1355 (HB 1355) was an omnibus elections bill that contained 80 changes to Florida elections laws. It was passed by the Legislature during the 2011 legislative, signed by Gov. Rick Scott and became law – in 62 of Florida's 67 counties – on May 19, 2011.

The provisions of the law include placing new reporting requirements on third-party voter registration organizations, which subject volunteer-based groups to fines if they do not turn in completed voter registration forms within 48 hours. The law requires groups that register voters to sign up with the

¹ See Plaintiffs' Expert Report from Professor Jerrell H. Shofner, Ph.D., *Johnson v. Bush*, 2001WL34842925 (S.D. Fla. 2001) (No. 00-CV-3542); see also Jerrell H. Shofner, *Nor Is It Over Yet; Florida in the Era of Reconstruction, 1863-1877* (1974).

² See, e.g., Christopher Uggen and Jeff Manza, *Locked Out: Felon Disenfranchisement and American Democracy* 86-94 (2006).

³ *Diaz-Balart v. Browning*, No. 11-14554-EE (11th Cir. filed Sept. 29, 2011).

state and list officers and the names and addresses of all members who will be registering voters. It requires anyone who is registering voters to swear an oath to uphold state election laws. The law also shortens the number of days allowed for early voting from 14 to 8. The law prohibits voters who live outside the county in which they are registered from changing their address at the polls and requires that these voters cast a provisional ballot. The law also reduces the validity of a citizen's signature on a petition to amend the State's Constitution from four years to two.

As discussed below, four of the provisions of HB 1355 (voter registration restriction, shortening of early voting, same-day address change, and the validity of a petition signature) are currently before the federal district court in the District of Columbia.

In this statement, we will comment on three of the four provisions currently under review.

Section 4 – Restrictions on Voter Registration Efforts

Section 4 of HB 1355 amends Florida Statutes § 97.057(3)(d) to require third party voter registration organizations to submit voter registration applications to the Division of Elections or the office of a county Supervisor of Elections within 48 hours of completion, or face penalties of \$50 per application for each day late or a maximum fine of \$1,000. Previously, organizations engaged in voter registration were allowed 10 days to submit voter registration applications.

In addition, because Florida law makes any violation of the Election Code, including this law, a first-degree misdemeanor, conviction for a violation of the new voter registration provisions could result in a term of imprisonment as long as one year.

In amending this Section, the Legislature also imposed new onerous and intimidating restrictions on volunteer-based organizations that engage in registering new voters. Where the previous law encouraged, but did not require third party voter registration organizations to register with the state, the new law requires a volunteer voter registration organization to not only register, but to submit the names and addresses of each member of the organization who will be engaging in voter registration. Each of these volunteers must also sign a statement, and each voter registration form obtained from the County Supervisor of Elections must prominently display the name of the third party voter registration organization.

Each third-party voter registration organization must also submit a sworn statement from each "registration agent" (in most cases, volunteers) in which the agent affirms that he or she "will obey all state laws and rules regarding the registration of voters." The statement must be made on the State's Form DS-DE 120, which lists the felony penalties for "false registration," though what constitutes that crime is not covered on the form.

The rationale for this change given by the Florida Secretary of State is Orwellian. "The change," the Secretary wrote in an October 11, 2011 press release, "helps ensure the voter registration process is expedited in a reasonable amount of time *for the benefit of the new voter and the voter registration organization.*" (Emphasis added) The truth is that the practical effect of these changes is to discourage volunteerism and cripple the program of third party voter registration organizations.

HB 1355 moves Florida precisely in the wrong direction. Volunteerism in encouraging the people of Florida to fully participate in our democracy should be applauded, encouraged and supported, and

there is urgent reason not to hamper efforts to increase voter participation. The U.S. Census Bureau reported that, as of 2008, the African-American voter registration rate in Florida was 53.6% and the Hispanic voter registration rate was 47.4%. Overall, the voter registration rate for all Floridians was only 62.4%.⁴

Volunteer voter registration efforts need to be encouraged, not discouraged. A law that punishes school teachers, for example, for encouraging their students to become fully-engaged citizens by completing voter registration applications is rightly seen around the country as absurd.⁵

The Legislature's rationale for the changes to the law governing third party voter registration activities – what little rationale was offered – was so thin and the official rationale from state election officials so concocted (specifically, that these changes are for the benefit of the new voter and the voter registration organization), there is a legitimate concern that the true purpose of this provision was to hamper efforts by volunteer-based organizations to register new voters.

Section 26 – Requiring Voters to Cast a Provisional Ballot

Section 26 of HB 1355 amends Florida Statutes § 101.045(2)(b) to eliminate the right of a voter who is legally registered to vote in the state of Florida and who has moved from one county to another to update his/her address at the polling place on Election Day and cast a regular ballot. This change will require otherwise eligible registered voters to cast a provisional ballot, rather than a regular ballot.

It was the long-standing practice in Florida that if a person moved from one county to another and needed to update their address at the polls on Election Day, the individual was permitted to do so by swearing an affirmation as to his/her new address.

In such cases, the State's ability to administer elections free of fraud was enhanced by the State's post-2000 investment of millions of dollars in the Florida Voter Registration System (FVRS) database, which has been used to confirm the voter's registration and enable the voter to cast a regular ballot.

The Administration's rationale advanced for this change was an alleged need, asserted presented without evidence, "to combat voter fraud by preventing voters from casting a vote in multiple counties," as the Florida Secretary of State put it in his October 11, 2011 press release,⁶ or, due to the absence of any evidence of voter fraud, to prevent "potential fraud," as the Governor acknowledged when he signed the measure into law.

⁴ U.S. Census Bureau, *Reported Voting and Registration of the Voting-Age Population, by Sex, Race and Hispanic Origin, for States: November 2008* (Table 4b), www.census.gov/hhes/www/socdemo/voting/publications/p20/2008/tables.html (last revised Nov. 9, 2010).

⁵ *New Florida election law stirs up controversy*, DAYTONA BEACH NEWS-JOURNAL, Oct. 23, 2011, available at <http://www.news-journalonline.com/news/local/southeast-volusia/2011/10/23/new-florida-election-law-stirs-up-controversy.html>; Bill Gamblin, *Pace teacher might face \$1,000 fine for voter registration violation*, SANTA ROSA PRESS GAZETTE, Nov. 4, 2011, available at <http://www.srpressgazette.com/articles/teacher-14312-pace-voter.html>.

⁶ See, e.g., Press Release, Florida Department of State, Secretary Browning Renews Request for Preclearance Ruling, Amends Complaint to Challenge Constitutionality of Preclearance Coverage Formula (Oct. 11, 2011), available at <http://www.dos.state.fl.us/news/communications/pressrelease/pressRelease.aspx?id=542> [hereinafter *Sec. Browning Press Release*].

The Legislature's rationale also failed to identify any proven need for tighter controls of elections. The chief sponsor of House Bill 1355, Rep. Dennis K. Baxley, noted that: "We're not going to wait for fraud."⁷ When pressed to justify the changes HB 1355 would make to registration procedures, members of the Legislature referred to an alleged 31 cases of voter fraud – over some unspecified period of time. On December 7, 2011, Rep. Baxley repeated the allegation the he and other Florida Legislators made (e.g., Rep. Eric Eisnaugle⁸) that "Mickey Mouse registered to vote" in Florida in 2008.⁹ Those making the allegation, in apparent justification of the new restrictions on voter registration, failed to acknowledge that the prank was unsuccessful, that Orange County elections officials rejected the application – so Mickey was never officially registered to vote – and that this was detected and prevented under the State's pre-HB 1355 existing voter rules and procedures.¹⁰

Given the flimsy evidence of any need for changes in processing of address changes, and the availability the State's Voter Registration System (FVRS) database to confirm that a person is a registered voter and whether a person has voted, there is legitimate question whether the change in voting laws had a purpose other than to combat fraud or potential fraud.

This truth is that this provision – without sufficient justification – jeopardizes the right of voters to be assured that their vote will be counted.

Requiring more Floridians to cast provisional ballots jeopardizes the right to vote because:

- Florida uses an accelerated certification deadline that reduces the time available to count provisional ballots;
- Elections offices are not uniformly staffed from one county to another, and offices have differing capacity to count provisional ballots;
- HB 1355 will have a disproportionate impact on certain counties that experience high mobility because, for example, they are the location of large state universities; and
- State law requires that an entire provisional ballot be discarded if cast in the wrong precinct.

In 2009, the Pew Charitable Trusts conducted a nationwide state-by-state analysis of the more than 2 million provisional ballots submitted in the 2008 Election. Pew reported that nationally, 70.65% of those provisional ballots were counted, but that only 48.59% were counted in Florida.¹¹

⁷ Rep. Dennis Baxley, Remarks on MSNBC's PoliticsNation (Dec. 7, 2011) (transcript available at http://www.msnbc.msn.com/id/45601057/ns/msnbc_tv-politicsnation/t/politicsnation-wednesday-december/) [hereinafter *Baxley Remarks*].

⁸ Floor Debate, Florida House of Representatives, April 21, 2011 (video and partial transcript available at <http://www.politifact.com/florida/statements/2011/apr/26/eric-eisnaugle/mickey-mouse-was-registered-vote-florida-republica/>).

⁹ *Baxley Remarks*, *supra* note 7.

¹⁰ *Mickey Mouse was registered to vote in Florida, Republican House member claims*, TAMPA BAY TIMES/MIAMI HERALD, (APRIL 26, 2011), available at <http://www.politifact.com/florida/statements/2011/apr/26/eric-eisnaugle/mickey-mouse-was-registered-vote-florida-republica/> [hereinafter *PolitiFact Mickey Mouse Statement*].

¹¹ Pew Center on the States, *Provisional Ballots: An Imperfect Solution* (July 2009).

Even Florida election officials acknowledge that in the 2010 Election, statewide, 74.27% were counted – in other words, one in four provisional ballots were not counted.¹²

Further, the Pew Center noted that, in 2008, as many as fifty thousand provisional ballots cast in Florida were discarded because they were cast at the wrong precinct by voters who “may have been provided with incorrect precinct information in advance or redirected to the wrong precinct on Election Day due to administrative errors in the registration system.”¹³

Discounting the 2009 Pew Center study, the Florida Secretary of State continues to minimize the seriousness of the loss of a citizen’s vote. As recently as January 16th, Secretary Kurt Browning was quoted in *The Miami Herald/Tampa Bay Times* stating: “No one wants the vote to count more than I. But I want someone to show me the numbers where provisional ballots are not being counted.”¹⁴

Section 39 – Reducing the number of early voting days

HB 1355’s Section 39 amends Florida Statutes §101.657(1)(d) to reduce the number of early voting days from 14 to 8, and to give County Supervisors of Elections discretion over early voting hours, changing from a mandatory 8 hours per day to a discretionary range of 6 to 12 hours per day. By converting early voting to a partially discretionary practice, this provision makes it possible for the total number of early voting hours in a county to be reduced from 96 to 48 hours – and for inconsistent practices to arise from county to county within Florida.

Section 39 also eliminates the first week of early voting, and bans early voting on the Sunday before Election Day.

The administration’s rationale for these changes is less than forthright. The Secretary of State’s October 11th press release states that this Section “increases the maximum number of voting hours in a day from eight to 12 hours a day,”¹⁵ without acknowledging that the number of hours will be at the discretion of each County Supervisor. Nor does the Secretary acknowledge that the change eliminates early voting on the Sunday before Election Day, perhaps the most important voting day for African-American voters, in no small part due to the “Souls to the Polls” program organized by many African-American churches.

http://www.pewcenteronthestates.org/uploadedFiles/ELEC_ProvBallot_Brief_0709.pdf [hereinafter *Pew Provisional Ballots Report*]

¹² Department of State Division of Elections, November 2010 General Election: Provisional Ballots, <http://doe.dos.state.fl.us/reports/pdf/2010ProvisionalBallots.pdf>.

¹³ *Pew Provisional Ballots Report*, *supra* note 11, at 4.

¹⁴ Steve Bousquet, *Election law oddity will leave Hillsborough and Pinellas operating under different rules*, TAMPA BAY TIMES, Jan. 15, 2012, at 1B.

¹⁵ *Sec. Browning Press Release*, *supra* note 6.

The Legislature's rationale was equally strained. The rationale offered by the Senate's chief sponsor of HB 1355, Sen. Miguel Diaz de la Portilla, was that this provision aims to increase cost effectiveness, and was necessitated by under usage of early voting. During an April 15, 2011 meeting of the Rules Committee, he claimed that, "Generally, early voting in Miami-Dade County has not been very efficient. What you see more often than not is that there is a trickle of two or three people a day at a very high cost to keep those public libraries and polls open. ... We felt it was an efficiency measure."¹⁶

This is a claim that *The Miami Herald/Tampa Bay Times PolitiFact* rated as "False." In 2008, 2.6 million Floridians (approximately 31.25% of all votes cast) voted in-person at early voting locations.¹⁷ Early voting options are used most often by people of color, and their withdrawal is likely to have a disproportionate chilling impact on African Americans and other historically disfranchised voters. A study by the *Orlando Sentinel*¹⁸ reported that, in 2008, a majority of Florida's African-American voters - nearly 54% - cast their ballots during early voting.

The impact of this change is to make voting less convenient for all Floridians, especially working people who have difficulty obtaining transportation to polling places or taking time off from work to vote and Florida's African-American voters. The reduction in early voting also exacerbates long lines at the polls on Election Day which discourage people from voting.

The Status of Litigation Challenging the State's Voter Suppression Measures

Since the 2000 Election and the influential role that our organization played in ensuring that Florida officials addressed a succession of problems with voting technology, leading to the adoption of a blended system of optical scan and electronic voting uniformly throughout the state, the ACLU's recent efforts to protect the right to vote, to prevent a person's vote from being diluted and to ensure that a citizen's vote is counted have included the following actions:

- **Preclearance review by DOJ:** Florida's Legislature enacted, and Governor Scott signed, HB 1355 in 2011. Breaking with the longstanding practice of awaiting preclearance by DOJ before implementing a new voting law anywhere in the State, Secretary Browning ordered the law into effect in 62 Florida counties not subject to Section 5 of the Voting Rights Act's preclearance requirements. As DOJ undertook review of Florida's preclearance application, a number of organizations including the ACLU of Florida submitted comment letters urging the Department to object to four controversial provisions of HB 1355.¹⁹

¹⁶ Senate Rules Committee, April 15, 2011; see also *PolitiFact Mickey Mouse Statement*, supra note 10.

¹⁷ Florida Department of Elections, *County Absentee and Early Voting Reports*, <http://doe.dos.state.fl.us/fvrscountyballotreports/FVRSAAvailableFiles.aspx> (last visited Jan. 16, 2011).

¹⁸ Aaron Deslatte and Vicki McClure, *Battle for Florida: Blacks Turn Out in Drove, but Few Young People Have Voted*, ORLANDO SENTINEL, October 30, 2008, available at http://articles.orlandosentinel.com/2008-10-30/news/earlyvote30_1_early-voting-voters-in-florida-black-voters.

¹⁹ The ACLU of Florida, representing a number of individuals, filed a Section 5 challenge, arguing that the implementation of HB 1355 in 62 counties was having an adverse effect on voters in the five covered jurisdictions. *Sullivan v. Scott*, No. 4:11-cv-10047-KMM (S.D. Fla. filed June 3, 2011). That lawsuit was dismissed on procedural grounds of standing and ripeness.

- Reducing the number of days for early voting from fourteen days to eight days - from the 10th to the 3rd day before the election. Fla. Stat. §101.657(1)(d) (HB 1355, Sec. 39);
 - Requiring third-party voter registration organizations to submit voter registration applications within 48 hours of receipt instead of ten days as provided by existing law, and imposing a fine of \$50 for each failure to comply with the deadline, and imposing fines of up to \$1,000 for failing to comply with other provisions. Fla. Stat. §97.057 (3)(d) (HB 1355, Sec. 4);
 - Disallowing voters who move from one Florida county to another to make an address change at the polls on the day of an election and vote a regular ballot. This change does not apply to active military voters and their family members. Fla. Stat. §101.045(2)(b) (HB 1355, Sec. 26); and
 - Reducing the shelf-life of signatures on citizen initiative petitions proposing constitutional amendments from four years to two years. Fla. Stat. §100.371(3) (HB 1355, Sec. 23).
- Preclearance review by the federal court: Just prior to the sixty day deadline within which DOJ was required to respond to Florida's application, the State withdrew these provisions from DOJ consideration²⁰ and filed an action seeking preclearance in federal district court in the District of Columbia.²¹ A number of individuals and organizations intervened as defendants to challenge HB 1355 under the Voting Rights Act. The ACLU Foundation of Florida, along with Project Vote, intervened to represent two County Supervisors of Elections, the Florida AFL-CIO, Project Vote and several individuals in this litigation. Discovery is underway with a briefing schedule set to conclude in April 2012. A decision by the court is expected before the November 2012 elections, although the losing side could seek review by the U. S. Supreme Court.
 - Restrictions on voter registration activities: A substantive challenge to the newly enacted third party voter registration restrictions that are part of HB 1355 was filed in federal district court in Tallahassee.²² This suit seeks to prevent enforcement of the new provision and the implementing regulations that impair the efforts of plaintiffs and other individuals and community-based groups to encourage civic engagement and democratic participation. The plaintiffs are represented by the Brennan Center for Justice at New York University School of Law, American Civil Liberties Union Foundation of Florida, Paul, Weiss, Rifkind, Wharton & Garrison LLP, and Coffey Burlington. A motion for preliminary injunction has been filed and a hearing scheduled for March 1, 2012.
 - Gerrymandering: Shortly after the constitutional amendments on redistricting were approved by nearly 63% of Florida's voters, then-Governor Crist submitted the legislation to the Department of Justice ("DOJ") for preclearance. After taking office, however, Governor Scott

²⁰ The DOJ pre-cleared all other provisions of the Act.

²¹ *State of Florida v. United States of America*, No. 1:11-cv-01428-CKK-MG-ESH (D.D.C. filed Aug. 1, 2011).

²² *The League of Women Voters, v. Browning*, No. 4:11-cv-00628-RH-WCS (N.D. Fla. filed Dec. 15, 2011).

quietly withdrew the amendments from DOJ consideration. A lawsuit was filed in federal district court in Miami to compel the Governor and Secretary of State Browning to submit the amendments for preclearance.²³ The ACLU Foundation of Florida and the ACLU's Voting Rights Project were part of the legal team in that challenge. Ultimately the Florida House of Representatives and the Florida Senate re-submitted the amendments for DOJ consideration, and the lawsuit was dismissed. DOJ pre-cleared the amendments and they are now in effect.²⁴

Lifetime Disfranchisement

In April 2007, the BOEC during the administration of former Governor Charlie Crist made modest changes to the Rules of Executive Clemency. A distinction was drawn between those who were convicted of a non-violent felony and who would be eligible for "automatic" clemency upon completion of all terms and conditions of their sentence, and those convicted of violent and other more serious felonies whose application for clemency would require a hearing before the BOEC.

On March 9, 2011, in one of the first acts of the Rick Scott Administration, the BOEC repealed the Crist Rules and replaced them with, among many other changes, the requirement of a five year or seven year waiting period – depending upon whether the offense was non-violent or a more serious offense – to petition for the Restoration of Civil Rights in order to register to vote.

On April 25, 2011, The American Civil Liberties Union of Florida and the ACLU's National Voting Rights Project wrote to the Chief of the Voting Section of the Department of Justice's Civil Rights Section urging that the Department require Florida officials to submit the revised rule changes for preclearance in accordance with the Voting Rights Act.

No response has been received from the Department.

Recommendations for the Federal Government

We urge Congress to take appropriate action that will increase the percentage of our citizens who are registered to vote, and who exercise the franchise. Congress should also take action to discourage and prevent policies that interfere or discourage the exercise of the right to vote, including policies that dilute the power of the vote or jeopardize whether a citizen's vote will be counted.

Congress should take the following actions:

1. Require more uniformity in federal voting policies and procedures to reduce confusion regarding practices that are determinative of whether individuals are allowed to vote, and whether their votes are counted. We applaud Congress' efforts in the Help America Vote Act to create uniform standards, but more is required. For example, in federal elections, legislation

²³ *The League of Women Voters of Florida, et al., v. Scott*, No. 11-cv-10006-KMM (S.D. Fla. filed Feb. 3, 2011).

²⁴ U.S. Representatives Mario Diaz-Balart and Corrine Brown challenged the federal redistricting amendment within hours after the 2010 election. *Diaz-Balart v. Browning*, No. 10-CV-23968-UU (S.D. Fla.). The Florida House of Representatives intervened as a plaintiff and the ACLU of Florida and others intervened as defendants. The amendment was upheld by the district court. The Florida House and the Representatives appealed the decision to the Eleventh Circuit. Oral argument was held on January 10, 2012.

should address such practices as the length and timing of early voting periods (for those states that provide early voting), circumstances under which provisional ballots may be required, and procedures for determining when to count provisional ballots.

For example, Congress should consider how to protect the right of an eligible voter to cast a ballot in Presidential and Congressional elections when state law requires that the entire ballot of the eligible voter be discarded because the ballot was cast in the wrong precinct.

Uniform federal voting procedures would go a significant way towards eliminating the potential problem of unequal treatment. If the U.S. Supreme Court's decision in *Bush v. Gore*²⁵ stands for anything beyond its application to the facts of the 2000 Presidential Election, it stands for the proposition that equal protection under the law is violated if a state's voting policies and procedures treat voters in federal elections differently from county to county within a state.

2. Congress should urge the Department of Justice to require Florida officials to submit the March 2011 amended Rules of Executive Clemency that affected the Restoration of Civil (and voting) Rights to the preclearance process in accordance with the Voting Rights Act.
3. Congress should enact federal legislation to restore the right to vote in federal elections for those who have been disfranchised because of a prior criminal conviction and who are no longer incarcerated. Sen. Ben Cardin of Maryland and Rep. John Conyers of Michigan have introduced such legislation, the Democracy Restoration Act (S. 2017/H.R. 2212, 112th Congress), which would restore voting rights in federal elections to the millions of Americans who are living in the community, but continue to be denied their ability to fully participate in civic life because of a past criminal conviction. This legislation is generations overdue, and should be speedily enacted. We thank Senators Durbin and Whitehouse for being co-sponsors of this important bill.
4. Congress should encourage the Department of Justice to consider litigation under Section 2 of the Voting Rights Act against the State of Florida, to challenge provisions of House Bill 1355 that will disadvantage racial and language minorities anywhere in the State of Florida, and against any other states that adopt voting provisions that have similar effect.

The Department should consider the history of changes in voting technology, laws and policies that have failed to protect the right to vote for all Floridians. Many of these changes enacted since the embarrassing exposure of our inadequacies and ineptitudes in the administration of the 2000 election -- of which House Bill 1355 is but the latest chapter -- have had the disproportionate effect, and perhaps in some cases the purpose, of abridging the right to vote of Florida's racial and language minority community.

These voting changes include the following:

- the employment of failed voting technology,
- the states' response to the need for recounts in close or disputed elections by making it more difficult to conduct a recount and even banning recounts,

²⁵ 531 U.S. 98 (2000).

- making it more difficult to register to vote through restrictions on third party voter registration organizations,
 - shortening the deadline for certification which makes it more difficult to conduct recounts and count provisional ballots,
 - efforts to use flawed purges of voting rolls based on flawed lists of “felons,”
 - lost and missing votes,
 - polling places opening late or being moved at the last minute.
5. Congress must continue to provide the Department of Justice and other federal entities with the resources and support they need in order to enforce the laws that guarantee Americans broad and nondiscriminatory access to the ballot and ensure that a citizen’s vote will be counted.

Conclusion

In order for the United States to continue as one of the world’s leading democracies, it must ensure all eligible citizens are able to register and cast their ballots. Elected officials should be seeking ways to encourage more voters, not making it more difficult for voters to register and to cast their ballots. Measures that repress voting are a dangerous and misguided step backward in our ongoing quest for a more democratic society. We commend this Subcommittee’s attention to the impact of Florida’s new restrictive state voting laws.

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JANUARY 27, 2012

**SENATE JUDICIARY SUB-COMMITTEE ON
CONSTITUTIONAL, CIVIL AND HUMAN RIGHTS**

BRUCE ARMISTEAD SMATHERS

1

Senate Judiciary Sub-Committee on Constitutional, Civil and Human Rights

My name is Bruce Smathers. I was born on October 3, 1943 in Miami, Florida.

It is an honor to appear before Senate Judiciary Sub-Committee on the Constitutional, Civil and Human Rights to express my views on the Florida election law passed by the Florida Legislature and signed by the Governor in 2011, CS/CS/HB1355, (hereinafter referred to as HB 1355).

Let me first state that the opinions I express are my own and are true to the best of my knowledge. While I attempt to identify sources for my comments both by reference in the text and otherwise, I may sometimes fail to fully accomplish this and let me express my apologies to the Committee beforehand, and commit that I will identify those sources, where appropriate at the request of the committee.

The first question I should answer, is why a retired ex-public servant, who served as a state Senator and then as Florida's Secretary of State almost three and a half decades ago, is coming out and speaking out on these new election laws?

The simple answer is that I am offended by what is happening and I cannot sit idly by as the Constitutional and civic right of qualified Americans is eroded by this type of partisan legislation. That it is occurring in my native state, Florida, makes it doubly offensive.

With a family history of public service that goes back at least four generations, I feel the effort of the Florida Legislature and the Governor to tilt the elections for pure partisan purposes by suppressing the registration and voting opportunities of groups likely to vote Democratic is to me, not only deplorable but detestable.

The right to vote for all qualified Americans is a basic Constitutional and civic right. It is the strength of our democratic system. Without it, all of our other treasured rights, whether it is freedom of religion, freedom of speech or freedom of association will eventually evaporate. Our enjoyment of private property rights, freedom from undue government interference and our rights to the due process of the law, all ultimately exist because of the fundamental right of every qualified American citizen to vote.

As a Vietnam veteran, I am acutely aware that over the last century tens of thousands of Americans have died overseas to not only protect our democratic right to vote, but to provide that opportunity to millions of people around the world. Hundreds of American citizens, many of them nameless, have died fighting for those same civil rights within our own states.

We have just finished a war in Iraq in which thousands of our best and brightest died, tens of thousands more have been wounded and between one and two trillion dollars of our national treasure has been expended in an effort to provide the right to vote to the people of Iraq. Yet, after all that sacrifice, our brave men and women who return home, find, that at least in Florida, their state leaders have engaged in an effort to erode that basic right of voting to unknown thousands, and probably tens of thousands of qualified citizens within Florida.

Many of those who bravely served in American forces over-seas were Americans of African-American or Hispanic descent. They return to Florida, to find their state government actively attempting to suppress the registration as well as restrict voting opportunities of members of their own heritage. While the Florida Legislature pays lip service to honoring our military veterans overseas, they make a mockery of this tribute by attempting to suppress registration and voting opportunities of minorities who sons and daughters, husbands and wives, parents and relatives served and sometimes paid the ultimate sacrifice to provide full voting rights in foreign lands.

I am not only offended, but as a former state senator and former Secretary of State I am ultimately ashamed by these actions by our elected representatives and our Governor in Tallahassee.

I also come before you as a native Floridian, claiming birthright as a fourth generation Floridian and a fourth generation public official, although the latter extends beyond Florida.

One great grandfather arrived in this very community, Tampa, over one hundred and thirty five years ago on Christmas Day in 1876, when there were only 700 citizens in this area. One of his accomplishments in this community was to merge two weekly newspapers into the first daily newspaper in the Tampa Bay area, *The Tampa Times*.

While I was born in Miami, Florida, I entered the Florida Legislature as a state senator from Jacksonville Florida in 1972. I subsequently was elected Secretary of State of the State of Florida in 1976. As Secretary of State, I served as Florida's Chief Elections Officer from 1975 until my resignation in 1978.

During my tenure as Secretary of State, we passed a major reform of the Florida Election laws, under the direction of the Director of Elections, the honorable Mary Singleton, the first Afro-American to serve in that position and the first African-American elected to the Florida Legislature from north Florida since Reconstruction.

CS/CS/HB 1355 (referred to as "HB 1355") is the subject of this committee's hearings. In its 88 pages, a vast majority of its provisions have a positive or at least defensible primarily ministerial impact on elections. They have been approved by the U.S. Department of Justice. However, it

is my opinion there are specific provisions in this legislation that reflect the greatest attack on registration and voting opportunity and thus voting rights of qualified citizens in recent memory. As such, I believe the legislation passed by the Florida legislature in 2011 should be referred to as the **“Registration and Voting Suppression Act of 2011”**.

As stated before, as Secretary of State, I was privileged to initiate a major reform of Florida’s election laws in 1977 which received bipartisan support. I bring this to the committee’s attention because several significant differences exist between the origin and passage of our 1977 election law reform and the election law passed in 2011.

Given the limited nature of my presentation, I have incorporated my statements as to the origin and passage of HB 1355 and our 1977 election reform in **Appendix No. 1**.

Because of the method of HB 1355’s origination and passage, I believe that your Committee would be on solid grounds to find that the 2011 act was not a “reform to improve the electoral processes, protect the registrants registration, provide integrity to the electoral process or fight fraud” as claimed by its sponsors.

If the justifications for HB1355 proposed by the Legislature and Governor were true, this bill would have attracted bi-partisan support from both Republicans and Democrats in both chambers, the full support of the Supervisors of Elections and their Association, as well as widespread support among community organizations involved in the electoral process and favorable support from the media statewide. Both Republicans and Democrats, at least on a local level, volunteer organizations and the vast majority of Floridians including the media want to improve the electoral process, want to enhance the integrity of our elections and want to prevent fraud and electoral abuse.

Unfortunately, **HB 1355 was and is seen as a highly partisan attempt to tilt the electoral process in favor of the Republican Party** by suppressing volunteer voter registration efforts and reducing registration and voting opportunities of groups that tend to vote Democratic. This judgment was affirmed by widespread criticism of the bill by practically all of the state’s major newspapers, as well as widespread criticism by non-partisan volunteer groups such as the League of Women Voters and others.

I am limiting my comments to just three provisions of HB 1355:

- Issue 1** The reduction of early voting days from 14 days to eight days and the elimination of the Sunday before the Tuesday election as an early voting day.

- Issue 2** The creation of an overly complex and burdensome system of third party voter registration organizations; the reduction of time to return voting registration forms from 10 days to 48 hours; the recording of the registration by time segments as small as a minute; the imposition of civil penalties for even technical violations of these complex procedures; the mandating of signing oaths by all voter registration volunteers; and the threat of felony charges against voter registration volunteers.
- Issue 3** The restriction of the custom of qualified voters from another county registering and voting by voting machines on election day and the requirement of a paper provisional ballot for those voters.

I contacted several Supervisors of Elections, from both Democratic and Republican affiliations. I expressed to them that this was just on a confidential basis, and in light of the positions as elected officials, I would not refer them either by their name or their county. Not all of them wanted to express an opinion. They primarily view themselves as non-partisan administrators of the election laws who do not want to get involved in partisan policy disputes nor argue controversial policy, particularly when it is supported by the Governor and the Secretary of State, who is effectively their administrative leader and boss. Still, the overwhelming majority of them to whom I spoke and were willing to comment, shared with me that they do not support these new controversial provisions and changes to the election law.

However, I would say most importantly,

None of the Supervisors of elections were aware of any widespread or even significant voter fraud in their counties to justify the changes passed by the Florida Legislature.

Issue 1

All favored a fourteen day period early voting day period for the General Election that made the election run smoother and eliminated problems in voting ... One Republican Supervisor of Elections noted that they had just settled a law suit that cost his county \$2million dollars, and that early voting helped avoid such problems by avoiding crowding and extended waits at the polls and providing time to resolve voting disputes before they erupt into lawsuits.

All said that the changes to the early voting procedures would cost them and thus their counties (and thus the taxpayers) more money because among other changes, they would have to hire employees for overtime work and pay them time and a half instead of their regular wages.

None supported eliminating the Sunday before the Tuesday elections as an early voting day.

These supervisors of elections as well as the Florida Association of Supervisors of Elections actually requested more flexibility in location of early voting sites from the Legislature, thus expanding and improving the system of smooth and efficient elections. The Legislature which ignored this request, instead of expanding early voting opportunities, reduced early voting opportunities while increasing the costs of early balloting.

The Florida State Association of Supervisor of Elections opposed this specific change by saying:

“While this may be workable with respect to primary elections, *not having a 15 day time frame for the General Election could result in crowding and confusion at early voting sites and on election Day at the precincts. Maintaining 15 days for the General Election is imperative to a smooth General Election in the state.” (my emphasis)*

(Note: “FSASE written report (“FSASE Report”) starting “The Florida State Association of Supervisors of Elections has the following objections and concerns with CS/CS/CS SB 2086” dated April 25, 2011)

While the FSASE Report relates to CS/CS/CS SB 2086, this Senate bill was the companion bill to HB 1355 and its provisions were similar if not identical to HB1355.

Issue 2

None voiced support for the most controversial procedures and the penalties enacted for voter registration under provision FS 97.0575 – Third-party voter registration, specifically the reduction of the time to turn a ballot in and from 10 days to 48 hours as well as the imposition of punitive civil fines for inadvertent technical violations of the procedure.

Most importantly, none were aware of widespread fraud or significant fraud in their counties to justify this law and the burden it places on volunteer voter registration efforts. Most were somewhat concerned and confused as to how these laws would be implemented.

The Brennan Center Report states that **“Between 2009 and 2011, there was no controversy in Florida involving voter registration to suggest why the state legislature took up the subject of restricting voter registration drives.”**

Issue 3

None voiced support for the new changes that prohibited voters from other counties from voting by machine on the same day, after proper identification was presented and signing the required oath of eligibility. All that commented felt that the requiring of paper provisional ballots would create a major administrative burden and expense on their offices (and I would add ... the county taxpayers)

None of supervisors of elections were aware of widespread fraud or significant fraud in their counties in registering and voting by machine that would justify this new provision of the law.

The Florida State Association of Supervisors of Elections stated the provision "...will result in tens of thousands of additional provisional ballots ... (which) will significantly delay election results." Most importantly, relatively to the specious claim that the legislation was necessary to prohibit double voting, the Association stated there were "No reports of widespread abuse or double voting" justifying this radical change from prior practice.

(Note – See FSASE Report above)

In addition to the lack of need for these stringent new voter registration requirements and procedures, the Committee should look to what is the adverse effect on voting, and particularly what the adverse effect on minority voting is going to be.

The Brennan Center reports "In 2008, **2.13 million voters registered in Florida.**" (my emphasis) (BRENNAN CENTER FOR JUSTICE – Voting Law changes in 2012, Brennan Center for Justice at New York University School of Law © 2011 / ("Brennan Report")) If one broke that figure down by the populations (taken from U.S. Census figures) of the six largest counties that contain over 50% of Florida's population. While not reflective of the actual figures which I do not have, this pure mathematical estimate of voter registration figures in 2008 in those six counties would be calculated as thus:

Miami – Dade	282,000 registrations
Broward	198,000 registrations
Palm Beach	149,000 registrations
Hillsborough	139,000 registrations
Orange	129,000 registrations
Pinellas	103,000 registrations
Duval	97,000 registrations.

How many of these registrations occurred because of the voter registration efforts of private groups such as the local Republican and Democratic parties, the League of Women voters, La Raza, the NAACP, or teachers or student groups is difficult to estimate. However, even using conservative estimates applied to these mathematical estimates, the suppressing of traditional volunteer voter registration efforts by **HB 1355**, will not only adversely effect, but **potentially eliminate tens of thousands of registrations and thus votes in each of these counties** in the coming elections.

National Census data reflect that Hispanic and African-American voters are approximately twice as likely to register to vote through a volunteer registration drive than white voters, thus showing the disproportional impact that this will have on minority voters.

I believe the Florida Legislature was aware of this massive and disproportionate impact on minorities of suppressing volunteer voter registration drives would cause. Thus, the only conclusion given the lack of widespread double voting and voter fraud, is that the Florida Legislature passed FS. 95.075 to accomplish the suppression of volunteer voting registration drives, and thus suppress minority voting in Florida.

In a phone conversation last year with The Brennan Center, in response to my question, they commented that in reviewing the transcripts of the testimony in the Florida Legislative hearings on HB 1355, they found no credible testimony of claims of fraud that would justify the draconian changes as outlined above to Florida's election laws.

Likewise, I believe your Committee will find that there were no new incidences of widespread fraud or threats of fraud sufficient to justify the draconian change of the election laws passed by the Florida Legislature and signed by the Governor in 2011.

While there will always be partisan cries of electoral fraud, it is important to determine whether these allegations a) **can be documented** or are just uninformed opinions; b) **whether they occurred in Florida** and are thus relevant to this legislation; c) **whether they occurred recently and sufficiently widespread** to warrant this legislation; d) and **whether any allegations of fraud or electoral abuse were transmitted to the Florida Legislature in time in 2011 to justify these onerous provisions of HB 1355.**

I would add that in 2008, approximately **eight million three hundred thousand** Floridians voted in the Presidential elections. While among 8.3 million voters, there will always be some singular incidences of registration or voter fraud (I believe there are public reports of such incidences in Seminole and Orange County). However, I would suggest that among **8.3 million votes, any claims of widespread fraud or abuse should meet a verifiable number of incidences to be sufficiently significant to justify these draconian and adverse changes to our election laws.**

I would recommend to the Senate Committee to conduct a confidential survey of all 67 county Supervisors of Elections as their opinions and concerns relative the controversial provisions of this legislation. I would also recommend surveying the 16 state attorneys to determine incidences of electoral fraud or abuse reported to their districts by supervisors of elections or others and what was the disposition of those cases.

If there are not verifiable incidences of widespread fraud or even just significant problems, any claims that these controversial provisions were necessary to prevent fraud, protect the registrants application or increase the integrity of the elections would not only be highly inaccurate and misleading, but also political hypocrisy at its worst.

PERSONAL OPINION:

Issue 1

The reduction of early voting days from 14 days to eight days and the elimination of the Sunday before the Tuesday election adversely affects those citizens who utilize early voting for its convenience, as well as those who need time and assistance to get to the polls to vote. These groups includes African-American and Hispanic citizens as well as others who need assistance including our poor and our elderly. See my comments in **Appendix No. 2**

It is my opinion that these changes regarding early voting were a deliberate, intentional act of the Florida Legislature to suppress minority voting in the State of Florida and that this represents the Florida Legislature returning in 2011 to the disgraceful and detestable Jim Crow tactics to lower minority voting of the last century. I have included my letter to the Florida Times Union as **Appendix No. 3**.

Issue 2

F.S. 97.057 - Third-party voter registration – This obnoxious provision’s practical effect is to suppress voluntary voter registration efforts throughout Florida which would disproportionately reduce minority voting and others who benefit from volunteer voter registration efforts. **See Appendix No. 4** for my reasoning.

The alleged benefits of these changes are specious. The practical adverse chilling affects on volunteer voter registration efforts and thus on voting, and particularly minority voting are blatantly obvious and clear to all objective observers.

I believe that the arguments supporting this provision are not based on verifiable documentation.

In partial reference to this section on Third-party voter registration, League of Women Voter’s President Deirder Macnab, has stated

“Overall, it creates a mountain of risk and red tape that has proved insurmountable to grass roots groups like the League of Women Voters that has thousands of volunteers willing to work five hours on weekends to register voters.”

The committee is aware of two teachers encouraging civic participation of their students by involving them in voter registration efforts and having inadvertently violated the law, became potential subjects of \$1,000 fines. In my conversations with Supervisor of elections, many other teachers attempting to encourage their students to become involved in civic affairs and registering to vote have now run afoul of these provisions.

There is not enough time to analyze this mountain of risk and red tape, but let's look at just a few issues.

Besides, the unjustified reducing the time to return registration forms from 10 days to 48 hours, the state has also mandated the volunteer to print on the registration form not only the month and day, they must also show the hour and the exact minute that the registration form is filled out.

How absurd and picayune the Florida Legislature has become.

What happens if the exact minute the form was filled out is not correct? Does that affect the validity of the registration? I hope not, but there are no written guidelines explaining this.

And even if everything is perfect, and the individual volunteer/organization turning his or her collected voter registration forms into the supervisor of elections has a flat tire or a problem with their car, delaying them one minute past the deadline, they are now technically subject to fines up to \$1,000.

What Florida citizen would like to participate in voter registration drives on their own to improve democracy and make their state and their country better, when in these economic times, whether they be middle class, from lower income families, or from poor urban neighborhoods, and would dare subject themselves, their parents, or their family to economic fines totaling up to \$1,000 because of basically minor or innocent violations of absurdly complex and technical procedures? What volunteer third party organization operating in multiple counties want to risk up to \$1,000 fines per county for inadvertent mistakes.

No wonder the League of Women Voters has stopped registering voters. No wonder traditional volunteer efforts at voter registration in Florida have come to a standstill.

But the Florida Legislature's efforts to suppress volunteer voter registration efforts do not stop with just new bureaucratic regulations and punitive civil penalties.

Additionally the Florida Legislature has mandated that every voter registration agent and volunteer must sign Sworn Statement **DS-DE 120** (06/2011) See **Appendix No. 5**.

This form outlines how a voter registration volunteer, if they violate Florida law, will be subject to third degree felonies entailing up to five years in prison and up to five thousand dollars in fines.

Unfortunately, this sworn statement is the least informative, but most intimidating state document that I have seen. As an attorney, a former assistant State Attorney, and as former Chief Elections officer this form would intimidate me. One Supervisor of Elections stated flatly that they would not sign it. Think of the chilling effect on a volunteer who is not an attorney, or

someone who does not have a college education, or actually, any citizen who would like to improve our democracy by engaging in voter registration..

In my prepared remarks in **Appendix No. 5A**, I have outlined this intimidating language of the sworn statement through its emphasis to the volunteer of third degree penalties and prison sentences up to five years. I have also pointed out how even an innocent technical violation by the volunteer could lead to a technical third degree felony violation.

I have even pointed out that **the Sworn Statement itself misstates Florida criminal electoral law. If the State of Florida does not understand the law, how can any Floridian who is not an attorney understand Florida's new election laws with its bureaucratic technicalities and punitive civil fines and third degree felonies?**

Instead of encouraging our students, teachers and average citizens to become involved in our electoral process by participating in voter registration drives, the message of the Florida Legislature is loud and clear to all voter registration volunteer. Voter registration is not worth the risk of the potential fines or criminal penalties. **-WE DO NOT WANT YOU TO GET INVOLVED!**

The League of Women Voters after 72 years of bi-partisan registration certainly got the message as did La Raza, as well as the Florida's two teachers Dawn Quarles and Jill Cicciarelli. Now many others around are our state receiving the same message.

The reality is that the Florida Legislature creation of **FS. 97.0575** was not to improve the integrity of elections or protect the sanctity of the ballot, but in **a blatant effort to suppress traditional voluntary voter registration efforts** by creating an unwieldy, complex, possibly unenforceable and in parts unintelligible structure with punitive civil fines as well as serious criminal penalties for voter registration volunteers and their organizations.

The suppression of volunteer voter registration drives is directly intended to suppress minority as other groups as voting as well outlined above.

The suppression of volunteer voter registration efforts to reduce minority voting is foreign to the bipartisan efforts of both parties, Democrats and Republicans at a local level, as well as supervisors of elections and other citizens to expand voter participation of qualified voters, encourage voter participation of all qualified electors and strengthening our democracy.

This provision passed by the Florida Legislature and signed by the Governor is an aberration from Florida's history of progress in expanding electoral participation that should be an embarrassment to the Legislature and the Governor.

Issue 3

The final act of the Florida Legislature in diminishing the voting opportunities that I will comment on is contained in their Amendments to F.S. 101.045.

These changes restrict the previously existing opportunity of people who have moved to a new county to register and vote in their new county on the day of the election when their legal address on their identification bears the address of the county where they used to live.

Instead of being able to being able to vote quickly and efficiently on a voting machine, they will now be required to vote by a paper provisional ballot. I have provided more explanation in **Appendix No. 6.**

This radical change in long standing Florida law allegedly is necessary according to the proponents of the legislation to avoid voter fraud and abuses, by an elector voting in one county, and then traveling to another county to vote, or the action being called "double voting".

Let me express to the Committee that this change in the law was not necessary, and there was no substantiation of fraud or double voting in Florida justifying this change in the law.

I state this because none of the Supervisors of Elections that I have talked to voiced support for this legislation as written and **all** stated that they are not aware of the fraud or abuse or double voting in their county that the proponents of the Legislation claim is such a problem.

As I stated before, the **Florida State Association of Supervisors of Elections** representing all 67 county Supervisors of Elections stated there were, and I quote again.

"No reports of widespread abuses or double voting"

(NOTE. See FSASE Report above)

In addition to the FSASE statement, there is a common sense reason there is not the widespread threat of double voting which the public which has not voted this way does not understand. Under the old law, besides providing proof of your identity through government documents and other measures, the qualified citizen wanting to vote in a new county must also sign a sworn oath stating

- a. They were registered to vote in their old county
- b. That they have not voted in that county
- c. That they now reside in their new county
- d. That there are eligible vote in their new county
- e. That they are also otherwise able to vote.

What this committee is aware of, to make a false declaration on a state document on any of these five statements is a third degree felony subjecting the individual to five years in prison and a \$5,000 fine.

What individual, or may I say imbecile , after presenting sufficient documentation to identify who they are, are then going to sign a document committing a third degree felony for the purpose of casting an invalid vote? And the state felony is in addition to similar felony provisions of Federal law for fraudulently voting in a Federal election.

To claim there is a widespread threat of double voting fraud justifying changing the law, is as idiotic as believing that there is a widespread threat of bank robbers going around and presenting their photo identification to the bank teller and then signing their name on an oath to verify their identification, before they attempt to rob the bank.

Common sense says this is not going to happen, and the supervisors of elections understand this. Only the Florida Legislature and the Governor claim that there is a threat.

The Florida Legislature and the Governor are not idiots or imbeciles. They know there is not threat of widespread abuse or double voting as they claim. They know that this legislative change has nothing to do with preserving the integrity of our elections. They also, know that it will adversely affect the participation in the electoral process of students and minorities, and others who traditional lean Democratic, because that is the fundamental purpose of these provisions.

While I have attempted to outline the individual affects of each provision, the Committee should look at the collective impact of these provisions. I believe the Committee will recognize the collect negative impact on these groups, minorities, students, poor and others needing assistance in registering and voting to be significant, particularly in light of the lack of any documented evidence of fraud or abuse to justify these electoral changes.

Finally, the Brennan Center Report reviews the national effort during 2011 when HB 1355 was passed. They have identified 37 states in which legislation that could be termed restrictive were introduced, and thirteen states, one of which is Florida, such legislation was passed.

Courts have long held that specific findings of discrimination can be established through patterns of conduct, laws and timing which result in discrimination. I believe the Committee will find, and I will paraphrase former Congressman Andrew Young, "a deliberate and systematic effort" to suppress voter registration and voter participation of minorities and others likely to vote Democratic.

In light of all of these factors, I believe that this Committee should come to the conclusion that HB 1355, as passed by the Florida Legislature and signed by the Governor, is designed to suppress voter registration and voter participation of groups that tend to vote Democratic, which specifically include Afro-American and Hispanic minorities, as well as the elderly, the poor, students and others that need assistance in registering and voting.

I stated at the beginning that I view HB 1355 that suppresses the opportunity and thus the right of minorities and others to register and vote, as an attack on the sacred right of every qualified citizen of our state to vote, regardless of their race, the socio-economic conditions or the political beliefs or party. As such, it is an attack on the Constitutional and civil rights that are most dear to every American and fundamental to all other rights we enjoy as citizens.

To actively seek to suppress voter registration and voting rights for any group, for whatever reason, is a betrayal to the most precious American principles, and a betrayal of every American who has served his country in the military. This is not only a deplorable act, but also a detestable act that brings shame on our Legislature, our Governor, and our state ... including those of us who believe that public service is to serve the people of our state, and not to ourselves or our party... When basic civil rights such as voting are prostituted for partisan advantage, eroding the highest of principals enshrined in our Constitution. They are not just eroding civil rights of others, but undermining the basic principles of our government, our democracy and country.

Appendices

The attachments referenced below are intended to supplement this statement. They will be made part of the hearing record and are on file with the Subcommittee.

- Appendix 1** An comparison of the origin and passage of HB 1355 and election reform Florida Legislature legislation enacted into law in 1977.
- Appendix 2** Comments on the reduction of early voting days and the elimination of the Sunday before the Tuesday election as an early voting day.
- Appendix 3** View Point letter posted by The Florida Times Union on December 11, 2011 by Bruce A. Smathers.
- Appendix 4** Comments on Florida Statutes 97.0575.
- Appendix 5** DS – DE 120 , “THIRD-PARTY VOTER REGISTRATION ORANGIZATION REGISTRATION AGENT’S SWORN STATEMENT - available on the Florida, Secretary of State, Division of Elections website under Third-Party Registration.
- Appendix 5A** Comments on DS – DE 120.
- Appendix 6** Comments on Florida Statutes 101.045.

**Testimony of
Ciara Torres-Spelliscy,
Assistant Professor of Law at Stetson University College of Law¹
&
Nina Hayden, Esq.²
Before the U.S. Senate Judiciary Committee's
Subcommittee on the Constitution, Civil Rights and Human Rights
Field Hearing in Tampa, Florida
January 27, 2012**

We thank the Committee for traveling from Washington to Florida to hold this important hearing today. We are heartened the U.S. Senate Judiciary Committee is taking a keen interest in the voting laws in Florida. As the whole nation learned in 2000, the choices made by Florida voters have a national impact.³

Dr. Martin Luther King Jr. wrote in 1957, eight years before the passage of the Voting Rights Act, "all types of conniving methods are still being used to prevent Negroes from becoming registered voters. The denial of this sacred right is a tragic betrayal of the highest mandates of our democratic traditions and it is democracy turned upside down."⁴ Sadly, these attempts to reduce the number of voters continue to this day. We urge you to consider this written testimony and ask that you act to protect the voting rights of every Floridian and American citizen.

HB 1355 is just the latest in a long line of laws designed to limit the franchise in the State of Florida.⁵ Florida legislators argue this legislation is needed to curb fraud, save money and

¹ Professor Torres-Spelliscy teaches Election Law and Constitutional Law at Stetson Law School. She writes on her own behalf, not on behalf of Stetson University.

² Ms. Hayden is an attorney, a former Elected Official to the School Board of Pinellas County and a former candidate for FL State Senate District 16.

³ Bush v. Gore, 531 U.S. 98 (2000).

⁴ Dr. Martin Luther King, Jr., *Give Us the Ballot*, available at

http://www.votetrustusa.org/index.php?option=com_content&task=view&id=743&Itemid=26.

⁵ H.B. 1355, 114th Reg. Sess. (Fla. 2011), available at <http://www.flsenate.gov/Session/Bill/2011/1355>.

ensure a more orderly process.⁶ However, fraud is minimal in the State as evidenced by the Florida Department of State only referring 31 cases of alleged voter fraud to the Department of Law Enforcement in the past three years.⁷ This testimony places HB 1355 in historical context, so the Committee understands this law follows the pattern of previous laws in Florida that have sought to make it harder instead of easier to vote.⁸ We will divide our discussion into two parts (1) Florida's recent history of limiting the franchise and (2) Florida's racial history of denying minorities full participation in the electoral process.

(1) Florida's Recent Forays into Curtailing Early Voting Days and Suppressing Voter Registration

In 2004, Florida began offering early voting.⁹ Studying recent elections, Democracy Fellows at the University of California Irvine Peter A. Miller and Neilan S. Chaturvedi found "Florida was [] noteworthy in the general election campaign as more than half the votes were cast early or by absentee ballot."¹⁰ HB 1355 could reverse this trend by shortening the early voting period from two weeks to one for Florida voters.¹¹

⁶ WENDY R. WEISER & LAWRENCE NORDEN, VOTING LAW CHANGES IN 2012 at 21 (Brennan Center 2011), available at http://brennan.3cdn.net/d16bab3d00e5a82413_66m6y5xpw.pdf

⁷ Lizette Alvarez, *Florida Passes Bill to Limit 3rd-Party Voter Registration*, *New York Times*, May 5, 2011, http://www.nytimes.com/2011/05/06/us/politics/06voting.html?_r=2.

⁸ To Compare Florida's recent changes to its voting laws to other recent changes in other state, see WEISER & NORDEN, VOTING LAW CHANGES IN 2012.

⁹ The Florida Senate Interim Report 2011-118 (Oct. 2010),

www.flsenate.gov/Committees/InterimReports/2011/2011-118cc.pdf ("In 2004, the Florida Legislature amended s. 101.657, F.S., and introduced a standardized and mandatory process for in-person early voting in Florida elections."); *Id.* ("In 1998, the Legislature provided an opportunity for persons casting absentee ballots to do so in person at the supervisor of elections office. This form of early voting was discretionary for each supervisor of elections.")

¹⁰ Peter A. Miller & Neilan S. Chaturvedi, *Get Out the Early Vote: Minority Use of Convenience Voting in 2008*, 3 (working paper), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1644268 (referencing CHUCK TODD & SHELDON GAWISER, *HOW BARACK OBAMA WON: A STATE BY STATE GUIDE TO THE HISTORIC 2008 PRESIDENTIAL ELECTION 57* (2009)). Note these authors are in the midst of revising their paper and their final figures may be revised.

¹¹ 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>.

HB 1355 has been criticized for eliminating the opportunity for voters to cast a vote on the Sunday before Election Day.¹² This was a key day for religious voters to go from the pews to the polling place to cast a ballot.¹³ In 2008 and 2010, ten counties in Florida, including our home county Pinellas, offered voting on the Sunday before the Election.¹⁴ But HB 1355 ties the hands of counties who would like to offer this option to their constituents. This compression of the voting schedule may have a pronounced impact on minority voters who took advantage of early voting in previous elections, since as *USA Today* reported, “[i]n Florida, 54% of African-American voters cast their ballots early in the 2008 general election, and blacks made up nearly a third of statewide turnout the Sunday before Election Day.”¹⁵

HB 1355 has caught the attention of election experts as the most restrictive law in the nation for voter registration drives. As election law expert Professor Justin Levitt has noted: Florida’s third party voter registration requirements “are the most restrictive provisions in the country...”¹⁶ Also experts from the Brennan Center for Justice at NYU School of Law have noted that Florida:

...enacted laws which have shut down registration drives that previously registered hundreds of thousands of citizens in those states. Florida will now

¹² Trymaine Lee, *Florida Early Voting Limits Could Negatively Affect Blacks, Latinos*, HUFFINGTON POST, Jan. 4, 2012, http://www.huffingtonpost.com/2012/01/04/limits-on-early-voting-in_n_1184134.html (quoting the NAACP “more than 32 percent of those who voted early on that last Sunday before Election Day were African American, and nearly 24 percent were Latino.”).

¹³ Jenée Desmond-Harris, *No Voting After Church?*, THE ROOT, Jan. 5, 2012.

¹⁴ Early Voting Reports, available at <https://doe.dos.state.fl.us/fvrscountyballotreports/FVRSAvailableFiles.aspx>.

¹⁵ Fredreka Schouten, *Civil Rights Groups, Democrats Fight Early-Voting Limits*, USA TODAY, Dec. 11, 2011, <http://www.usatoday.com/news/politics/story/2011-12-11/early-voting-laws-minority/51816886/1>; see also Letter to the Department of Justice from the NAACP LDF, Florida Conference of Black State Legislators and Florida State Conference NAACP, at 3 (June 17, 2011), http://naacpldf.org/files/case_issue/2011_06-17%20LDF%20joint%20statement%20to%20AG%20regarding%20Florida%20election%20laws.pdf.

(“Significantly, African Americans make up a disproportionate percentage of early voters in Florida’s covered counties. African Americans constitute only 12.15% of the voting age population in the five covered jurisdictions in Florida, but were 18.86% of early voters during the 2008 General Election, with over 41,000 African Americans voting early...”).

¹⁶ Testimony of Professor Justin Levitt, Loyola Law School, Los Angeles Before the United States Senate Committee on the Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights, *New State Voting Laws: Barriers to the Ballot?*, Sept. 8, 2011.

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.¹⁷

Unfortunately, this is not the first time that Florida has been down this road.¹⁸ In 2005, the state passed a law that restricted and penalized third party voter registration and was rebuffed by the courts.¹⁹ In 2007, the law was changed to be more reasonable and was upheld by the courts.²⁰ Yet with the enactment of HB 1355, Florida changed the law once more to be just as burdensome as the 2005 law in some respects and worse in others, such as giving groups who seek to register others to vote far less time to return completed registrations to the State and imposing higher fines.²¹

Younger voters such as students could also be shortchanged by HB 1355. Its new set of restrictions could even stop high school civic teachers from registering high school students to vote, a practice which had previously helped youth to become registered Florida voters.²² Voto Latino noted recently: "Florida's efforts to suppress voters' rights may be the most severe [in the nation] ... Florida students and others who move within the state can still update their registration at the polls, but now they will be forced to use provisional ballots, which likely

¹⁷ Statement of Lawrence D. Norden, House of Representatives Forum, *Excluded From Democracy: The Impact of Recent State Voting Changes*, (Nov. 14, 2011), http://brennan.3cdn.net/8c251e03aac12496d9_3bm6bx1ci.pdf.

¹⁸ Martha R. Mahoney, *Democracy Begins at Home Notes from the Grassroots on Inequality, Voters, and Lawyers*, 63 U. MIAMI L. REV. 1, 22 (2008) (finding that "in 2005, Florida changed its election laws in ways that were likely to have a disproportionate effect on minority voters.").

¹⁹ League of Women Voters of Florida v. Cobb, 447 F.Supp.2d 1314, 1322 (S.D. Fla. 2006).

²⁰ Diaz v. Cobb, 541 F.Supp.2d 1319 (S.D. Fla. 2008); Florida State Conference of the NAACP v. Browning, 522 F.3d 1153 (11th Cir. 2008).

²¹ Compare FLA. STAT. § 97.0575 (2008) (ten days to return completed registration forms) to HB 1355 (48 hours to return completed registration forms).

²² Project Vote, *Engaging the Youth Electorate through High School Voter Registration* (July 2010) ("State high school voter registration programs, such as those in Florida and Vermont, have been found to be effective in increasing voter registration and turnout among youth.").

won't be counted."²³ And the youth-oriented group, Rock the Vote graded Florida 34th out of 50 states for its voting laws.²⁴

Attorney General Eric Holder in a recent speech about the turmoil over voting rights in the states singled out Florida. The Attorney General said:

Since January, more than a dozen states have advanced new voting measures. Some of these new laws are currently under review by the Justice Department, based on our obligations under the Voting Rights Act. ... We're also examining a number of changes that Florida has made to its electoral process, including changes to the procedures governing third-party voter registration organizations, as well as changes to early voting procedures, including the number of days in the early voting period.²⁵

This is likely why civil rights groups have intervened in Florida's preclearance suit in order to highlight the law's negative impact for the three judge panel reviewing HB 1355 under the Voting Rights Act.²⁶ This new law has also generated a Constitutional challenge.²⁷ Once again, Florida citizens are witnesses to the sad spectacle of the State being sued by the League of Women Voters over its harsh election laws.

²³ Mary Moreno, *Restrictive Voting Laws Threaten to Disenfranchise Millions*, VOTO LATINO BLOG, Nov. 30, 2011, <http://www.votolatino.org/voting/2011/11/30/restrictive-voting-laws/>.

²⁴ Travis Pillow, *Rock the Vote: Florida voting system pretty lousy for young people*, FLORIDA INDEPENDENT, June 8, 2011, <http://floridaindependent.com/33354/rock-the-vote-florida-voting-system-pretty-lousy-for-young-people/> ("Florida ranks 34 out of 50 states on Rock the Vote's national scorecard, meeting 35 percent of the group's recommendations, which are intended to serve as a 'national benchmark.'").

²⁵ *Transcript: US Attorney General Holder Criticizes Voter ID Laws, Calls For Greater Access in Speech at the LBJ Library & Museum*, December 14, 2011, <http://www.policyshop.net/home/2011/12/14/transcript-us-attorney-general-holder-criticizes-voter-id-la.html>.

²⁶ League of Women Voters of Florida, the Brennan Center, the Lawyers' Committee for Civil Rights Under Law, and the National Council of La Raza have intervened in *State of Florida v. United States of America*, Civil No. 1:11-cv-01428-CKK-MG-ESH (D.D.C.); *Branch v. Smith*, 538 U.S. 254, 262 (2003) ("Under § 5, a jurisdiction seeking administrative preclearance must prove that the change is nondiscriminatory in purpose and effect. It bears the burden of providing the Attorney General information sufficient to make that proof . . . and failure to do so will cause the Attorney General to object.").

²⁷ Press Release, Brennan Center for Justice at NYU School of Law, *League of Women Voters of Florida v. Browning*, Dec. 15, 2011 (noting that "the League of Women Voters of Florida, Rock the Vote, and the Florida Public Interest Research Group Education Fund ('PIRG') filed suit in federal court in Tallahassee challenging Florida's onerous new restrictions on community-based voter registration drives [under the First Amendment].").

(2) Florida's Racial History & the Franchise

While Florida's latest voting law has the potential for impeding voters across the board, like previous voting law choices, the worst impact is likely to fall hardest on racial and ethnic minorities. Of course, in so short a space, we cannot provide the full history of Florida's election laws, but a sample will give the Committee a sense of the history of discrimination.

A. Hispanic/Latino Voters in Florida

In Florida, Latinos account for one-in-seven (15%) of the state's eligible voters and 21.5% of the state's population.²⁸ Florida has a significant population of Latino voters for whom English is not their first language.²⁹ For example, Florida is home to many individuals originally born in Puerto Rico where Spanish is their first language.³⁰ Puerto Ricans are American by birth and once relocated to Florida, they have all the rights and privileges as other citizens including the right to vote. Florida also has a significant Cuban American population which has gained their citizenship through naturalization.³¹ Instead of embracing this diversity among the Florida electorate by offering bilingual election materials in locations with large Spanish speaking citizens, English only laws had a discriminatory effect on language-minority groups by requiring that "all county governmental meetings, hearings, and publications shall be in the English

²⁸ Mark Hugo Lopez & Paul Taylor, *The 2010 Congressional Reapportionment and Latinos*, Pew Hispanic Center, (Jan. 5, 2011), <http://www.pewhispanic.org/2011/01/05/ji-reapportionment-gains-and-hispanic-population-growth/>.

²⁹ JoNel Newman, *Unfinished Business: The Case For Continuing Special Voting Rights Act Coverage in Florida*, 61 U. MIAMI L. REV. 1, 27 (Oct. 2006) ("In the period since Congress incorporated protection of language based minorities into the Voting Rights Act, Florida's Spanish-speaking population has veritably exploded.").

³⁰ Jeannette Rivera-Lyles & Scott Powers, *Central Florida's Puerto Ricans Want Voices Heard, 300,000 In Orlando Area May Be Potent Force In 2012 Elections*, ORLANDO SENTINEL (June 13, 2011) ("more than 847,000 [Puerto Ricans] — live in Florida, up 75 percent in the past decade, according to census figures. The growth rate is even more rapid in Central Florida, where 300,000 now live.").

³¹ JoNel Newman, *Ensuring That Florida's Language Minorities Have Access to the Ballot*, 36 STETSON L. REV. 329, 332 (2007) ("In the twenty-year period from 1959 to 1979, almost one million Cuban refugees arrived in Florida after fleeing the Castro regime.").

language only” and some counties failed to provide required Spanish-language translations for absentee ballot certificates when sending these ballots to language-minority groups.³²

In 1975 Congress expanded certain provision of the Voting Rights Act to address widespread discrimination against language minorities.³³ Section 5 pre-clearance requirements were expanded “to geographic areas where a significant number of language minorities resided.”³⁴ At the same time, Congress also made permanent the temporary ban on the use of literacy tests or similar devices, created the language-minority assistance provisions of Sections 203 and 4(f)(4), and added discrimination against language minorities to the scope of Section 2.”³⁵

Florida triggered the pre-clearance provision of Section 5 of the VRA by discriminating against language-minority groups in voting.³⁶ In 1975 five Florida counties, Collier, Hardee, Hendry, Hillsborough and Monroe were included as “covered” jurisdictions under the meaning of the Voting Rights Act because of their use of English only election materials that discriminated against voters with a dominant language other than English.³⁷ Under Section 4(f)(4) of the Voting Rights Act a formula resulting from the 1975 amendments covered jurisdictions if “(1) over five percent of the voting-age citizens on November 1, 1972, were members of a single language-minority group; (2) the United States Attorney General finds that election materials were provided in English only on November 1, 1972; and (3) the Director of the Census determines that fewer than fifty percent of voting-age citizens were registered to vote

³² *Id.* at 346-349.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 344-346.

³⁷ George L. Waas & Mitchell D. Franks, *Implications of the Voting Rights Act on Reapportionment and Redistricting of Local Government*, 65 FLA. B. J. 20 (Oct. 1991).

on November 1, 1972, or that fewer than fifty percent voted in the November 1972 presidential election.”³⁸

The practice of not providing sufficient Spanish language voting materials is not ancient history in Florida. In 2008, in Volusia County which has a large Puerto Rican population offered only English voting materials, a potential violation of the Voting Rights Act Section 4(e). This prompted a suit by LatinoJustice/PRLDEF to rectify the situation. Only after the suit did the County come to an accord with LatinoJustice to provide Spanish language assistance in future elections.³⁹

Given this history of discrimination against Latino voters in Florida, groups working to protect the Latino vote, have been gravely concerned about the potential impact of HB 1355. Eric Rodriguez, Vice President with the Office of Research, Advocacy and Legislation at the National Council of La Raza criticized HB 1355 in the following manner, “rather than curbing fraud, the new restrictions will limit voter participation by creating unnecessary burdens on groups that are involved in registering new voters in Florida.”⁴⁰

Ironically, if the intent of the framers of HB 1355 was to subtly boost Republican voters at the expense of Democratic voters by tripping up Hispanic voters, then HB 1355 has the potential to backfire as Florida’s Hispanic voters lean Republican.⁴¹ This truly is not a partisan issue. The issue here is the ability of Floridians to exercise their constitutionally protected right to vote.

³⁸ *Id.*

³⁹ Press Release, PRLDEF, *Lawsuit results in Volusia County Accord* (April 16, 2010), http://latinojustice.org/briefing_room/press_releases/Volusia_County_Accord/.

⁴⁰ Mary Ellen Klas, *Groups Urge Feds To Throw Out Florida's Election Law For Violating Voting Rights Act*, DEMOCRACIA BLOG, July 20, 2011.

⁴¹ Mark Hugo Lopez, *The Latino Vote in the 2010 Elections*, Pew Hispanic Center, ii (Dec. 30, 2010) (“In Florida Hispanic voters gave greater support to Republican candidates than elsewhere. ... The Hispanic vote in Florida has traditionally tilted more Republican than in other states, owing largely to the presence of the GOP-leaning Cuban-American community.”).

B. Black Voters in Florida

Latino voters are not the only group at risk under HB 1355. Florida also has a long history of discriminating against black voters as well. For example, examining Florida's purges of voters leading up to the pivotal 2000 election, it was black voters who bore the brunt of wrongful removals from the voting rolls. As Associate Professor of Public Policy at the John F. Kennedy School of Government Guy Stuart found, "this [pre 2000 election purge] attempt was plagued by error, that the errors were probably biased against registered African American voters..."⁴² And Florida's flawed procedures regarding maintenance of eligible voter list's had a disproportionate impact on minority voters.⁴³

The U.S. Commission on Civil Rights found the same disturbing pattern in 2000 after examining how ballots were counted at rates which lessened the power of minority voters. The Commission found, "[a]pproximately 11 percent of Florida voters were African American; however, African Americans cast about 54 percent of the 180,000 spoiled ballots in Florida during the November 2000 election based on estimates derived from county-level data."⁴⁴ Or as the Commission put it, "disenfranchisement of Florida voters fell most harshly on the shoulders of African Americans," who were "nearly 10 times more likely than white voters to have their ballots rejected in the November 2000 election."⁴⁵ Time after time, it is minority voters who are left shortchanged in Florida's political process.⁴⁶

⁴² Guy Stuart, *Databases, Felons, and Voting: Errors and Bias in the Florida Felons Exclusion List in the 2000 Presidential Elections*, 119(3) POLITICAL SCIENCE QUARTERLY 453, 535 (Fall 2004).

⁴³ George L. Waas & Mitchell D. Franks, *Implications of the Voting Rights Act on Reapportionment and Redistricting of Local Government*, 65 FLA. B. J. 20 (Oct. 1991).

⁴⁴ U.S. COMM'N ON CIVIL RIGHTS, VOTING IRREGULARITIES IN FLORIDA DURING THE 2000 PRESIDENTIAL ELECTION 2 (June 2001) available at <http://www.uscbr.gov/pubs/vote2000/report/main.htm>.

⁴⁵ *Id.*

⁴⁶ *U.S. to Look Into Possible Irregularities at the Polls*, CHIC. TRIB., Dec. 4, 2000, at 9 (reporting on a computer analysis finding that "the more black and Democratic a precinct, the more likely a high number of presidential votes was not counted."); Kim Cobb, *Black Leaders Want Action on Florida Vote Complaints*, HOUS. CHRON., Nov. 30,

Some of Florida's troubled racial history has been unearthed in modern court cases. For example, the Eleventh Circuit Court of Appeals found in 1982, "the at-large election systems found throughout Florida were the result of a state-wide scheme to disenfranchise black voters."⁴⁷ In *Nipper v. Smith*, black voters challenged certain judicial elections.⁴⁸ In this case, the Eleventh Circuit Court of Appeals recounted the following history of Florida discrimination:

Florida employed various franchise restrictions - from the poll tax to the white primary -for decades in an attempt to restrict the access of black voters to the ballot. . . . In addition, ...a consensus among the experts[] suggested that, although little disparity exists in voter registration, black voter turnout appears to be slightly lower than white turnout. And the 'rolloff' effect - which measures the number of voters who sign in at the polls but fail to cast a vote for a particular election on the ballot - is greater among black voters than white voters.⁴⁹

Even though the Eleventh Circuit Court of Appeals denied the plaintiffs' requested relief, this case provides evidence of discrimination against minority voters,⁵⁰ such as "numerous discriminatory election practices in Florida, including at-large election schemes, white primaries, and candidate filing fees."⁵¹ In a more recent case, the Eleventh Circuit noted that racism was present in Florida's post-Civil War Constitution. The Court stated, "[w]e do not doubt that racial discrimination may have motivated certain [] provisions in Florida's 1868 Constitution such as a legislative apportionment scheme that diminished representation from densely populated black counties."⁵²

2000, at A24 ("U.S. Rep. Corrine Brown, D-Jacksonville, said that 16,000 of the 27,000 ballots left uncounted in Duval County were from predominantly black precincts.").

⁴⁷ Newman, *Unfinished Business*, at 37-38.

⁴⁸ *Nipper v. Smith*, 39 F.3d 1494 (11th Cir. 1994).

⁴⁹ Newman, *Unfinished Business*, at 43-44.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Johnson v. Bush*, No. 00-03542-CV-JLK, slip op. at 8 (11th Cir. Apr. 12, 2005).

Florida had poll taxes until 1937.⁵³ Poll taxes are one of the classic tactics to depress voter turnout among the poor, including racial minorities.⁵⁴ A few years before the federal Voting Rights Act was passed, the picture of voting rights for blacks was bleak in many parts of Florida. In 1959 and 1961, the United States Commission on Civil Rights documented lower Florida's voter registration rates for its black population compared with its white population. The Commission's 1959 Report revealed five counties in northern Florida with fewer than three percent of the voting-age blacks registered.⁵⁵ The Commission Found in 1961: "In two Florida counties no Negroes are registered to vote although they represent 15.2 percent and 11.9 percent respectively of the population. In four counties less than 10 percent of the voting age Negroes are registered. The Negro voting age population ranges between 24 percent and 51.1 percent of the total voting age population in these counties. . ."⁵⁶ The legacy of depressed black voter registration could be seen in lower numbers of black elected official from Florida. Just two decades ago, Florida lagged behind its sister states in electing African Americans to its Congressional delegation despite its large black population.⁵⁷

Florida should work to make sure it does not return to the bad old days when minority voters were disproportionately shut out of the franchise. Yet, it is in states with growing minority populations like Florida where voting restrictions are popping up. As the NAACP documented in a recent report, "[s]everal of the very states that experienced both historic participation of people of color in the 2008 Presidential Election and substantial minority

⁵³ U.S. COMM'N ON CIVIL RIGHTS, VOTING: 1961 U.S. COMM'N ON CIVIL RIGHTS REPORT, at 22 (1961), available at <http://www.law.umaryland.edu/marshall/usecr/documents/cr11961bk1.pdf>.

⁵⁴ Susan Cianci Salvatore, *Civil Rights in America: Racial Voting Rights*, 9 (2009), www.nps.gov/nhl/themes/VotingRightsThemeStudy.pdf.

⁵⁵ U.S. COMM'N ON CIVIL RIGHTS, VOTING: 1961 U.S. COMM'N ON CIVIL RIGHTS REPORT, at 28.

⁵⁶ *Id.* at 106.

⁵⁷ MALDEF, NAACP LDF, NAPALC, *The Impact of Redistricting in Your Community: A Guide to Redistricting* 11 (2000) ("prior to 1990, there were still five southern states with substantial African American populations which had not elected a single African American to Congress since the end of Reconstruction: Alabama, Florida, North Carolina, South Carolina, and Virginia.").

population growth according to the 2010 Census are the ones mounting an assault to prevent similar political participation in 2012. These states include those that experienced the largest growth in total African-American population during the last decade [including] [] Florida...⁵⁸ Given the history of racial discrimination against black voters in Florida, civil rights groups working to increase participation by black voters are also deeply concerned about in impact HB 1355 could have on the communities they serve.⁵⁹

Conclusion

This testimony has been submitted to ask that you act to protect the voting rights of all Floridians. The state of Florida has a long history of discriminatory laws which have resulted in denying minorities full participation in the electoral process. Florida's recent passage of HB 1355 echoes this history of using its election laws to impede voter participation. The breadth of HB 1355's new restrictions on early voting and third party registration may cause citizens of all stripes to find it more difficult to exercise the franchise in Florida. Thank you for the opportunity to present this testimony before the U.S Senate Judiciary Committee.

⁵⁸ NAACP Legal Defense and Educational Fund, Inc. & the NAACP, *Defending Democracy: Confronting Modern Barriers to Voting Rights in America* 3 (2011).

⁵⁹ Press Release, NAACP Legal Defense and Educational Fund, *LDF Moves to Intervene on behalf of Florida NAACP and African-American Voters in Florida Voting Rights Case*, Sept. 7, 2011.

My name is Pastor Eddie J. Walker. I'm the lead pastor of In God's Time Tabernacle of Jesus in the African American community of the historic African-American community of Parramore in Orlando, Florida. More than a year ago, I became a clergy leader with FOCUS, the Federation of Congregations United to Serve, which is part of a statewide organization called PICO United Florida and the PICO National Network.

Through FOCUS and PICO, we are working to ensure that America and the state of Florida remains the land of opportunity for ALL PEOPLE and that everyone has the right to vote and participate in our democracy. But we are in a struggle. We're going backwards not forwards. The rights we fought for 50 years ago are now being dismantled through FL's new voting law, HB 1355.

FOCUS is nonprofit and nonpartisan, but has always encouraged people to get involved in our democracy and exercise "faithful citizenship". Many of our congregations have helped with voter registration drives—but now we are afraid of steep financial penalties and unclear consequences for third parties who register voters. Many of our African-American congregations have encouraged their people to vote early after worship services on the Sunday before elections. Now, this new law ends early voting on Saturday. Tell me, who does this discriminate against? It is painfully clear.

While I'm fighting for the rights of my community, I am also fighting for my personal rights. I would like to share my own personal story.

I was born in Selma, AL, November 16, 1950. My family migrated to Pensacola, FL, where I was raised by my grandmother while my mother was traveling with her new husband Earnest Walker who was in the U.S. Army. We lived a meager existence but a happy and loved filled one.

At the age of 20, I was drafted into the U.S. Army and became a military policeman. I stayed in the army for ten years, eight months and some days. My intentions were to make a career of the army, because I had steadily advanced through the ranks, but when I was stationed in Germany, I was railroaded out because I was a Black man getting promoted ahead of my Caucasian peers.

I had gotten use to a comfortable lifestyle, because I was getting paid and was secure with my military position. So when I departed the army, I was not able to get a decent job because of the code that was placed on my DD214 (discharge paper). So I resorted to selling drugs. After driving taxis for approximately three (3) years, drugs became my primary source of income.

After several arrests, I ended up in prison. On Dec. 7, 1995, I was arrested for trafficking cocaine. I think it is widely known that the sentencing laws for crack cocaine which is more prevalent in the Black community put people behind bars much longer than for powder cocaine. In May of 1996, I was sentenced to three ten year sentences and I served my time and was released from prison work release on May 3, 2001.

When I was in a work release program, I questioned my supervisor about people with less experience making a higher wage, and guess what, I lost my job and I was left thinking, what do I do now? You guessed it.....

I went back to what I knew, drugs, not only selling but, using as well until eventually God came and rescued me from myself. In May of 2004, I surrendered my life to the Lord and that's when my life began to come back together. I was ordained in 2005 as a minister of the gospel of Jesus Christ and again in 2006 as a pastor.

I applied for clemency rights restoration in 2005, and I am still waiting to get my voting rights back so I can become a true U.S. citizen.

Why am I tell you all this? Because this law is just one more assault on me as a Black man and on the people in my community. We are fighting for racial justice, and seeing the progress we've made just slip away.

I committed a crime, and I've paid my time (according to the law of the state of Florida), so why have my civil and voting rights not been restored? How long does an American have to pay for a crime after the law has been satisfied? But I am still a citizen of Heaven even if the United States and Florida still haven't restored me....

We need you, our federal officials, to take action to protect the civil rights of the people of Florida. We need this committee and the Department of Justice to take immediate action. Our state leadership will not come to our aid. Please, I pray, take action now to repeal HB 1355 and do the right thing so that all people can vote and participate in our democracy.

Thank you for letting me share,
Pastor Eddie Walker.
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Orlando, FL 32805

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Testimony

by

**Brent Wilkes, National Executive Director
The League of United Latin American Citizens**

before

**The United States Senate
Judiciary Committee**

January 27, 2012

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Thank you Chairman Durbin and members of the Judiciary Committee for bringing attention to this very important issue and allowing me to testify before you today.

My name is Brent Wilkes, executive director of LULAC, the League of United Latin American Citizens.

Founded in 1929, League of United Latin American Citizens is the oldest and largest member based Hispanic advocacy group in the United States. Organized into more than 900 grassroots councils, LULAC has a presence in Hispanic communities across the country thus enabling LULAC to reach more constituents and operate more programs in the Hispanic community than any other organization.

The mission of LULAC is to advance the economic condition, educational attainment, political influence, health, and civil rights of the Hispanic population of the United States.

In its 82 years, LULAC has made tremendous strides towards this mission. In addition to the hundreds of programs which are developed and run at the local/grassroots level, LULAC has had such monumental accomplishments as being a corner stone for many successful Hispanic organizations such as: the American GI Forum to address Hispanic veterans concerns, the Mexican-American Legal Defense and Education Fund (MALDEF) as a legal arm in our community, the Little School of the 400 which served as the model for the Head Start Program, SER- Jobs for Progress, Inc. which has trained and placed thousands of Hispanics in jobs, and the LULAC National Education Services Center (LNESEC) which has provided millions of dollars in scholarship money to college bound Hispanics while also offering a variety of services such as computer centers, reading programs, and counseling services to both grade school and college students.

The 2010 Census confirmed the explosive growth of the Latino population in the U.S. and underscored the enormous influence Latinos could exert if the community's full voting power were realized. 50.5 million Hispanics make up the US population or 16.3% of the US population.

Although the Hispanic population is now the nation's largest minority community, voter participation lags the population's growth. Every month 50,000 Latinos turn 18 and become eligible to vote but according to numerous studies the problem for Latinos is voter turnout. The National Association for Latino Elected Officials projects that an estimated 12 million eligible Latinos will not vote in next year's election. The mobilization of a large Latino turnout at the 3 polls requires a point of unification around which they can mobilize. The recent and ongoing immigration reform debate has become extremely heated, polarized, and catalyzed anti-immigrant and xenophobic attitudes. Such backlash has made the importance of civic engagement increasingly apparent to the Latino community in order to make our voices heard.

Such a political climate provides fertile ground to encourage the active participation of all eligible Hispanics in the democratic process by registering to vote and voting. Census projections forecast the US Hispanic population will be 132.8 million or 30% of the US population by 2050. The University of Washington projects that in eleven states, Hispanics will be greater than 10% of the electorate and account for 5-10% of the electorate in 13 additional states, thus having potential significant influence in 24 states. Estimates to upwards of 21.5 million Latinos will be eligible to vote in November 2012, meaning over 8 million Latino eligible voters need to be registered. This leaves much work to be done, and since LULAC has an incredible grassroots network in key states throughout the country, they can be mobilized around issued-based education for non-partisan voter registration and get-out-the-vote campaign.

Unfortunately, Florida's HB 1355 is really a transparent attempt to discourage Latino, African American, senior, youth and other vulnerable populations in Florida from registering to vote and to suppress those populations from participating in Florida's democratic process. The provisions of the law are unnecessary, restrictive, and punitive. None of them address the few instances of voting irregularities that have taken place in Florida and, in our opinion; they will actually make it more likely that inadvertent mistakes will be made because of the unrealistic and unnecessary deadlines the bill requires for filing voter cards. In fact, the law's only affect will be too narrow the civic engagement of Latinos and other vulnerable populations.

First: By reducing the number of days for early voting from 14 days to eight days - from the 10th to the 3rd day before the election; the law will have draconian implications for our organizations to continue to register voters in Florida. Call participants have already expressed dissatisfaction with the new law since they have witnessed a significant reduction in the number of local groups willing to conduct voter registration efforts within the Latino community, when compared to the previous year. Only the two major political parties and national groups will have the administrative and financial structures necessary to comply with the new law. This therefore prevents local Florida groups from promoting the civic engagement and participation of their neighbors and fellow Floridians in the electoral process.

Second: By requiring third-party voter registration organizations to submit voter registration applications within 48 hours of receipt instead of 10 days as provided by existing law, and imposing a fine of \$50 for each failure to comply with the deadline, and imposing fines of up to \$1,000 for failing to comply with other provisions., the law will prevent Latinos to be registered to vote and further narrow Latino representation in Florida. The new law stifles the efforts of third parties to increase voting in Florida citizens even though our efforts have been proven successful. In fact, more than one-third of voters who registered through third-party drives were racial minorities in 2008, confirming that community-based registration initiatives are imperative for the Latino community. Organizations, like the League of Women Voters of Florida, Rock the Vote, and the Florida Public Interest Group Education Fund as well as the League of United Latin American Citizens suffer under the conditions represented by HB 1355 that make our mission close to impossible to achieve. These additional fines are progressively more expensive, which discourages third party groups to seek increasing electoral participation. Because most working class families work closer to 60 hours a week and are not home by 5pm, a canvass voter registration initiative is impossible. The efforts of third party groups, then, are imperative to increasing registered voters in Florida since they use alternative measures to reach eligible voters. Because voter registration efforts are transformed into risky practices that require large finances, HB 1355 threatens the success of community voter registration efforts. Most importantly, HB 1355 as passed presents retrogressive policies that directly impacts the violations of the Voting Rights Act of 1965 and creates a challenge for racial and language minorities voters in Florida who are both protected under the Voting Rights Act of 1965.

Third: The section of the law related to “address change” fails to take into consideration the impact of foreclosures and the rental housing market. With this law, voters who move from one Florida County to another are therefore unable to make an address change at the polls on the day of an election and vote a regular ballot, except for active military voters and their family members, or are forced to use a provisional ballot.

Fourth: The new law requires Supervisors of Elections to deny absentee ballot requests if there are any discrepancies regarding an individual’s signature, which directly impacts Hispanic seniors. Guaranteeing the absentee ballot to this portion of the Latino electorate is crucial because Hispanic seniors traditionally rely on the absentee ballot to vote. Since they are not English proficient, their handwriting can easily be misconstrued, making their requests invalid. This suppression of an important portion of the Latino electorate endangers the strength of the Hispanic vote in the state of Florida.

The Latino community in Florida is diverse and growing stronger, yet declining voter registration rates do not reflect this growth. Out of the 2.1 million eligible Latino voters in Florida, only one million are registered to vote. This law will hurt the mission of civic organizations like LULAC, where part of our mission is to engage the Hispanic community in the democratic process. The restrictions of the law place an unreasonable burden on voter registration initiatives to register folks who are non-English proficient, and whose information must still be verified before submitting the voter registration information to the state.

We respectfully ask that the Judiciary Committee and the United States Department of Justice strike down any discriminatory laws whose only purpose is to dilute the Latino community’s voting power that we have worked too hard to establish and further ask that you ensure that the state of Florida comply with the Voting Rights Act of 1965.

