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NEW STATE VOTING LAWS III: PROTECTING VOTING RIGHTS IN THE HEARTLAND

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

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NEW STATE VOTING LAWS III: PROTECTING VOTING RIGHTS IN THE HEARTLAND

MONDAY, MAY 7, 2012

UNITED STATES SENATE,
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:32 a.m., at the Carl B. Stokes United States Court House, 801 West Superior Avenue, Cleveland, Ohio, Hon. Dick Durbin, Chairman of the Subcommittee, presiding.

Present: Senator Durbin.

Also present: Senator Brown of Ohio.

OPENING STATEMENT OF HON. DICK DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Chairman DURBIN. This hearing of the U.S. Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights will come to order. The hearing today is entitled "New State Voting Laws III: Protecting Voting Rights in the Heartland."

This hearing will assess the current state of voting laws recently passed throughout the country and examine the potential impact of HB 194, Ohio's new voting law.

Good morning. My name is Dick Durbin. I am a United States Senator from Illinois, Chairman of this Subcommittee. For those who are attending their first congressional hearing, let me explain how we are going to proceed.

I will deliver a brief opening statement and recognize my colleagues Senator Sherrod Brown and Congresswoman Marcia Fudge for their opening statements. We will then turn to our other witnesses for their opening statements, and after that, Senator Brown and I will have some questions for the witnesses.

There is perhaps no right in America more essential to our democracy than the right to vote. Show me a person who cannot express their preference at the ballot box, and I will show you a person likely to be ignored by those in power. At its best, our great country is one with open and vigorous political debates, followed by fair and transparent elections where all eligible citizens have unobstructed access to the ballot box.

I do not need to remind anyone in this room that our democracy has not always extended the right to vote fairly nor equally to all citizens. For generations, women, African Americans, and even those without property were denied the right to vote. Even after

the right to vote was legally expanded, for close to a century there was a well-organized, sometimes violent, racist campaign that successfully prevented many African Americans from exercising the right to vote.

It took six constitutional amendments, civil disobedience, bloodshed, and the loss of too many lives, but—over time—America learned from our mistakes and guaranteed the right to vote, regardless of race, sex, class, income, physical ability, or State of residency.

All of us who now celebrate that progress have a responsibility in our generation to remain vigilant in ensuring that America's hard-fought progress on voting rights is not reversed on our watch.

That is why we are here today.

Ohio's new law, HB 194, threatens to make it harder for tens of thousands of Ohioans to vote. Unfortunately, Ohio is only one of more than 30 States that, in the last 2 years, have introduced bills or enacted new laws to restrict access to the voting place.

Last September, this Subcommittee held its first hearing to examine the rash of new voting laws passed in States which include Wisconsin, Texas, Kansas, Florida, Alabama, Tennessee, South Carolina, and right here in Ohio. These laws may have different provisions in each State, but together they threaten to disenfranchise millions of eligible voters in the next election. Let me give you some examples.

States like Pennsylvania, Wisconsin, Texas, Alabama, Kansas, and South Carolina have passed restrictive photo ID laws. These States acknowledge that hundreds of thousands of their own residents—who are already registered to vote—do not currently have a photo ID that would satisfy the new ID requirements. Nationwide, the nonpartisan Brennan Center for Justice estimates that laws like these will prevent more than 5 million people from voting in November.

Other States, like Texas and Florida, are subjecting volunteers and nonpartisan organizations, such as the Boy Scouts and Rock the Vote, that register voters to onerous fines if they fail to comply with unnecessary administrative burdens. These volunteer organizations are the primary way that many African Americans, Latinos, low-income, first-time, and new resident voters register. New laws like those in Florida and Texas have led organizations like the League of Women Voters to suspend all voter registration activity.

In January, our Subcommittee conducted its first field hearing in Tampa, Florida, to examine Florida's new voting law, which will lead to widespread disenfranchisement of tens of thousands of Floridians. We received testimony at that hearing from the League of Women Voters in Florida that under Florida's new restrictive voting laws, they will not participate in voter registration in this election.

Ohio has joined Florida in rolling back early voting by eliminating about half of the early voting period. Across the country, early voting has become popular. People vote early because they may not be able to take time off work or they need child care or they may need assistance getting to the polls. In 2008, the last Presidential election, 30 percent—almost a third—of all votes were

cast before election day. Drastically reducing the early voting period will lead to longer lines on election day, and, sadly, many people will just not vote.

I am pleased that the Department of Justice has already objected to the new laws in South Carolina and Texas and that it is challenging Florida's law in court, but we must remain vigilant.

It is not a coincidence that these new voting laws swept the country after change in political control in many State houses and Governors' offices. The American Legislative Exchange Council (ALEC), a conservative advocacy group that is funded, in part, by the billionaire Koch brothers, has provided guidance to State legislators on voter ID legislation and encouraged its passage.

One need look no further than one of ALEC's founders, Paul Weyrich, to understand why ALEC and other conservative activists are so aggressively pursuing these laws.

In a moment of candor, Mr. Weyrich said to supporters, and I quote: "I do not want everybody to vote . . . . As a matter of fact, our leverage in elections quite candidly goes up as the voting populace goes down."

If the goal is to drive down turnout by causing confusion and creating barriers to the ballot, then HB 194 is going to accomplish that goal in Ohio.

Four of the most worrisome provisions of HB 194 include: cutting the early voting period in half, from 35 days to 17 days; eliminating the weekend before election day from the early voting period; eliminating the requirement that poll workers direct voters to the correct precinct; preventing counties from mailing applications for absentee ballots to all registered voters.

Unlike voters in some other States, Ohioans are fortunate: You have the last word on HB 194.

Many of the groups and people here today gathered more than 500,000 signatures to place a measure on the November ballot that would repeal HB 194.

And the outcry from across Ohio that led to the ballot measure on HB 194 has persuaded the legislature to consider repealing it in full. Senator Brown and I call on the legislature to do just that.

As we will learn from our witnesses today, HB 194 threatens to disenfranchise tens of thousands of voters if it is not fully repealed. In such an important State, a battleground State for both political parties, a State that may decide the next President of the United States, the election could be decided by a relatively small number of people. Every vote counts. Every vote should be counted.

[The prepared statement of Chairman Dick Durbin appears as a submission for the record.]

I am very pleased to be joined on the dais today by the senior Senator from Ohio, my friend Senator Sherrod Brown. Senator Brown has been concerned about the disenfranchising voting laws that have swept the country in the past 2 years, particularly in his home State of Ohio. As Ohio's former Secretary of State, he provided invaluable testimony and insight at the first congressional hearing on this issue, which I chaired in the Constitution Subcommittee. He urged the Constitution Subcommittee to come to Ohio to conduct this hearing and investigate HB 194, and I am pleased we could accommodate his request.

Before I recognize him, I would like to say two things:

First, under the rules of the Senate Judiciary Committee, the Ranking Republican Member of this Subcommittee, Senator Lindsey Graham of South Carolina, was given the freedom to choose two witnesses to appear here today and, of course, to attend. He could not because of a conflict in his schedule, but he chose the witnesses who will appear on behalf of his point of view, and they will be part of our witness panel.

I also want to ask unanimous consent for Senator Brown to join me in participating in the hearing. Hearing no objection, I will now turn to Senator Brown.

[Laughter.]

Chairman DURBIN. Senator, the floor is yours.

OPENING STATEMENT OF HON. SHERROD BROWN, A U.S. SENATOR FROM THE STATE OF OHIO

Senator BROWN. That is the way the Senate does things, by the way.

Senator Durbin, thank you. It means so much to me and to all of us in this room and to hundreds of thousands of Ohioans that you are here. I know that Congresswoman Fudge, when she and I talked about this—and she and I have been involved in this issue for really ever since the legislature began to concern itself with HB 194 and other pieces of legislation, and I appreciate her involvement today and her urging Senator Durbin also to join us. I thank Judge Oliver for opening up this beautiful courtroom to us so that so many people could join us and be part of this.

We will hear from witnesses today. I thank them for joining us, and as we hear from them, there have been numerous recent efforts, as we know, to erect needless barriers to voting in Ohio. These efforts under the guise of preventing fraud and cutting spending—those seem to be the two reasons we hear—are part of a cynical effort to impede access to the ballot. Specifically, HB 194, as Senator Durbin has said, dismantles a number of common-sense, effectiveness, and, I underscore, bipartisan measures that assist people with voting. More on that in a second.

I am here today not only as Senator of a State often at the center of our national elections but also as a two-term, 8-year Secretary of State of Ohio charged with administering elections from 1983 to 1990. So I understand what goes into ensuring the fundamental right to vote. Inherent in that responsibility is ensuring that voting is accessible and free of intimidation and road blocks.

As a State, over a period of decades, Ohio legislators undertook a bipartisan effort to help Ohioans vote more easily. When I was Secretary of State and I would go to the legislature about expanding access to registration and to the ballot, Democrats and Republicans more often than not worked together to make voting laws work for large numbers of people. When I was Secretary of State, we understood that civic-minded Ohioans had many priorities pulling them in many directions, so we sought to make voting and registration a bit easier.

As Secretary of State, I asked businesses to help out Ohio's utility companies cooperate by including registration forms in utility bill statements. Driver's license bureaus registered people to vote

as the old Ohio Bureau of Employment Services did. One company housed in the Chairman's State of Illinois, the McDonald's Corporation, at our request printed 1 million tray liners with—voter registration form tray liners that were put in McDonald's restaurants all over Ohio. People could register to vote on their tray liners, so occasionally someone turned in registration forms with ketchup and mustard stains.

[Laughter.]

Senator BROWN. We accepted them, and I assume some of them still exist in Boards of Elections around the State as official voter registration forms.

Today, instead of protecting the right to vote, we have seen shameless attempts to undermine it. In those days before, there was a bipartisan recognition that democracy was stronger and more vibrant and more representative of all of us if we worked to expand access to the vote. We are being told that HB 194 and laws like it which significantly reduce the number of early voting days and make it more difficult for Ohioans to exercise their right to vote, they say it will reduce costs and reduce the risk of fraud. The overwhelming evidence, however, indicates that voter fraud is virtually non-existent and that these new laws will make it harder and more costly for hundreds of thousands of Ohioans to exercise their right to vote.

It is symbolically significant that Senator Durbin is holding his second field hearing in Ohio following the hearing that Senator Durbin did in Florida. During the 2004 Presidential race, Ohio saw a bit of a rerun of Florida in 2000, a dysfunctional election marred by electronic voting machines improperly tallying votes, and Ohioans waiting in line for hours in some cases.

My wife and I went to Oberlin College, then in my congressional district, where voters, most of them young, waited for 6 hours to vote. At Kenyon College, an hour and a half south of here, not far from where I grew up, voters waited 9 hours to vote. This was not a question of voter fraud, individual voter fraud, or individuals trying to game the system. This was not a question of an individual voting multiple times. People almost never, ever do that. Voters are not going to try to do that. There is nothing in it for a voter to try to vote five times and change an election.

The clouds over the 2004 election in Ohio were caused by process, not by individual voters.

I will say that again. The clouds over the 2004 election were caused by process, not by individual voters.

Now, 7 years later, we see a continuation of the efforts to undo a model election system created by Republican and Democratic members of the legislature, a bill signed by a Republican Governor, as Ohio returns to the headlines again for the wrong reasons. The new election law undermines Ohio efforts to ensure that all votes are counted. The law dismantles those earlier laws I was talking about, voting laws passed by both parties and signed by then-Governor Taft several years ago.

That is what is disturbing. There was consensus—there was consensus in Ohio about voting—and now there is an effort by one political party to undercut that consensus.

HB 194 undermines an Ohioan's ability to vote in a number of ways. I will focus on two of them in the interest of time.

First, the bill significantly reduces the early voting window. As Senator Durbin said, the bill no longer requires election workers—the second point—to redirect voters who arrive at the wrong precinct to the correct precinct. Let me address them in turn.

In a seemingly innocuous manner, HB 194 eliminates early voting on Saturday, Sunday, and Monday prior to the election—the three busiest days of early voting. This reduction was made despite the fact that in 2008, 19 percent of those who cast early ballots voted those early ballots on that weekend preceding the election. This significant reduction in early voting was made despite the fact that evidence overwhelmingly indicates that limiting early voting will cost money and disrupt efficiency. This reduction in early voting was made without any evidence of fraud and despite the fact that only a few years prior, both parties thought it was a good idea.

HB 194 eliminates Sunday early voting. Make no mistake. Cutting Sunday voting was intentional and it was intended to suppress voting. On the Sunday before the election, particularly in communities of color, Ohioans who work long hours during the week go to the polls, fulfilling their civic and their spiritual obligations on the same day. There is no justification for this. For no good reason, now HB 194 limits Boards of Elections' options and increases their costs by mandating that they close shop on that Sunday when people are coming from church.

By ending early voting, the lines outside polling stations will only get longer, and costs will only increase. This adds to frustration and surely it limits voting. Single parents, shift workers, and busy professionals who work during the week will have unnecessary additional pressures that may prevent them from being able to cast a vote. Exercising one's right to vote is a sacred duty. It should not be riddled with additional burdens making it harder.

Another burden—and then I will close with this—posed by HB 194 is that it discourages poll workers from performing one of their most basic functions: helping voters find their right precinct. This piece of legislation no longer requires that poll workers assist the confused or elderly or disabled or young voter in getting to their correct precinct. In essence, Ohio law discourages neighbors from helping neighbors. This phenomenon is so common that it has a name: right church, wrong pew.

Given the current consolidation of polling places and fewer voting locations, we know that to save money the State, probably rightly, has begun to consolidate polling places, and as a result, there is a great deal of confusion. In Akron, for instance, it is extremely likely that voters will increasingly come to the correct building to vote, but then they may end up in the incorrect precinct in that building. By removing the requirement that poll workers direct voters to their correct precinct, it has made it difficult for law-abiding Ohioans whose only crime is they were not sure which precinct number they were in—it makes it extremely difficult for them to cast their ballot.

Mr. Chairman, I conclude with saying that this is a solution in search of a problem. It is a solution in search of a problem. It is not something we need to do. There was consensus in Ohio. The

changes which were enacted after the 2004 election, the problems then, they were corrected. The changes that were enacted in 2006, I repeat, by a Republican legislature with a Republican Governor, led to shorter lines, more clarity, and less frustration for voters. While none of the changes I have mentioned today make it impossible to vote, as a practical matter they install burdens to voting, burdens that simply have no good reason to exist. Ohio deserves better when it comes to protecting their fundamental constitutional right to cast a ballot.

Thank you.

[The prepared statement of Senator Sherrod Brown appears as a submission for the record.]

Chairman DURBIN. Thank you very much, Senator Brown.

We invited the entire Ohio congressional delegation to join us today, and I am happy that we have with us our colleague Congresswoman Marcia Fudge. Since 2008, Congresswoman Fudge has represented Ohio's 11th District, which includes much of Cleveland and 22 suburbs. She was one of the first Members of Congress to speak out about the rash of new State voter suppression laws. She led more than 100 Members of Congress in urging the Justice Department to review all new State voting laws that have the potential to disenfranchise voters. Congresswoman Fudge has hosted national press conferences, educational briefings, and meetings with Department of Justice officials and worked with activists here in Ohio to place the referendum on the ballot on HB 194. She introduced the Voter Protection Hotline Act, which would establish a national hotline to provide voters with information and the opportunity to report intimidation and other deceptive practices.

Congresswoman Fudge, thank you for hosting us in your district today, and the floor is yours.

STATEMENT OF THE HONORABLE MARCIA L. FUDGE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Representative FUDGE. Thank you very much.

Thank you, Mr. Chairman, and I would also like to thank our senior Senator, Senator Sherrod Brown. I want to as well thank all of those who are in attendance today, especially our community leaders, our elected officials, our clergy, our civil rights community, and our labor community. Thank you very much for being here.

And I want to thank you, Mr. Chairman, for holding this very timely and important field hearing today, in particular because this district is a district that will be most affected by the laws that are in effect today.

Mr. Chairman, the people of Ohio have spoken. Last year, a coalition of voting rights advocates delivered more than 300,000 valid signatures in opposition to House Bill 194. This action, as carried out by the people of Ohio, satisfied the requirement necessary to place a referendum on the November 2012 ballot to repeal House Bill 194.

According to its proponents, the bill "makes numerous efforts to ensure the integrity of the elections process and to simplify the process." This statement could be no further from the truth.

Ohio House Bill 194 represents a reversal of voting rights in the State of Ohio. It represents confusion and it represents disenfranchisement.

If Ohio House Bill 194 officially becomes law, it would reduce access to voting by shortening the early voting period. It would decrease the responsibility of poll workers to direct confused voters to their correct precincts. This bill would make it more difficult for citizens to cast absentee ballots and complicate provisional voting. House Bill 194 even eliminates the incredibly popular and effective early voting on Sundays.

After House Bill 194 was signed by the Ohio Governor, House Bill 224 was passed by both Houses of the Ohio General Assembly. House Bill 224 is a bill that aims to improve voting for our servicemen and -women and overseas voters—something that is wonderful and that we agree with. But, also, it amends parts of House Bill 194, and one of those amendments eliminates in-person voting the weekend before an election, thus adding to the problem facing Ohio voters.

Recently, the Ohio General Assembly reached a crossroads of sorts. The legislature introduced Senate Bill 295 to repeal House Bill 194. There are two very significant problems with Senate Bill 295. First, it is an attempt to remove the referendum from the ballot and, thus, override the constitutional right of voters to decide the fate of House Bill 194 in November. Second, this bill would not completely repeal House Bill 194. It would not fully restore early in-person voting because of a subsequent amendment made to House Bill 194.

Today many questions still remain. How will the Ohio Legislature untangle this mess? How will Ohio ensure that the confusion already created will not manifest itself before and on election day in November? What must be done to ensure that the constitutionally guaranteed right afforded by the referendum process is protected?

Ohioans and every citizen across this Nation need to know there is a concerted effort underway to limit, suppress, and undo the uninhibited right to vote. This sophisticated, organized, and well-funded effort is sweeping across America. From Ohio to Wisconsin, down to Florida and across to Texas, the franchise is under attack.

The plan is clear: Prevent certain predetermined segments of the population from exercising their right to vote. Students, the elderly, the disabled, minorities, and low-income voters are all targets.

According to the Brennan Center for Justice, 41 States have introduced 176 restrictive voting bills since the beginning of 2011. A total of 74 bills are pending in 24 States. The franchise is under attack.

The tactics being used today are not new. What we called the poll tax 50 years ago is now voter photo ID laws. Instead of the physical threats of the 1950s and 1960s, meaning the billy clubs and the dogs, unnecessary and confusing laws are being used to prevent turnout in targeted communities.

The Election Protection Coalition reported disturbing examples of recent deceptive tactics and voter intimidation. In Milwaukee, flyers were distributed telling voters they cannot vote if they have not paid their parking tickets. Reports of armed gunmen intimidating,

mocking, and misinforming voters at heavily Latino precincts were reported in Arizona. And right here in Ohio, there were reports of flyers falsely providing that Republicans vote 1 day and Democrats vote the next day.

Mr. Chairman, the franchise is under attack. Suppressive State laws only perpetuate these deceptive tactics. The men and women elected to represent voters are only adding to the confusion with bills like Ohio Senate Bill 295 and House Bills 194 and 224.

The right to vote is among the most important rights we enjoy as Americans. As said best by my friend Congressman John Lewis, This right is almost sacred. Because of its importance, because of the power behind the vote, it is the one right most often compromised. And for the same reasons, it is the right we cannot allow to be denied.

Dr. Martin Luther King, Jr., once said, and I quote: "The ultimate measure of man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy."

We are living in a time of great challenge and controversy. The most vulnerable among us are once again under attack.

Chairman Durbin and Senator Brown, again, I thank you for holding this hearing today. I thank you for your efforts to protect the franchise. I stand with you. And to those who would disenfranchise us, shame on you who would restrict our voting rights. We must continue to protect the right to vote.

Mr. Chairman, I yield back the balance of my time.

[The prepared statement of Representative Marcia L. Fudge appears as a submission for the record.]

Chairman DURBIN. Congresswoman Fudge, thank you for your testimony.

I am going to ask you a question, the first question I asked at the field hearing in Florida. I related it to their law which we were taking a look at. I will ask it in the context of Ohio.

Supporters of HB 194 argue that they are trying to suppress fraud, those who are trying to vote who are not eligible to vote. Critics of HB 194 say that, in fact, what they are doing is just suppressing the vote, that the fraud, if there is some—and there may be some in every election—is not addressed by the law itself.

So I would like to ask you: Was there evidence of fraud in early voting, particularly on the weekend before the election, in your congressional district, in Ohio, that might give rise to this effort to reduce the opportunity for people to vote early across the State of Ohio?

Representative FUDGE. Quite simply, Mr. Chairman, the answer is no. There has been no fraud. I believe that the number is maybe four cases of fraud in the State of Ohio over the last 10 years. It is minuscule, if it exists at all. And there is some belief that there has been no reported incidences of fraud.

Chairman DURBIN. Let me ask you this question. I am trying to figure out how they could reason that failing to direct a voter to the proper precinct to vote will somehow lessen fraud. It clearly would lessen the vote if the person walks into a polling place and ends up at the wrong precinct table in a high school gymnasium, for example. So when it comes to directing people to the right pre-

cinct, as Senator Sherrod Brown said, the right church and the right pew, how can that possibly have anything to do with voter fraud?

Representative FUDGE. The only reason for something like that is, again, to continue to confuse the electorate and to stop people from voting, because the other thing it does, if a person wants to file a provisional ballot, they think they are at the wrong place, it also creates an additional problem with the provisional ballot. And so they have now in two different ways stopped a person from voting or that vote from counting.

Chairman DURBIN. Thank you.

Senator Brown.

Senator BROWN. I have one question, Congresswoman Fudge. Thank you for joining us. It is along the lines of what Senator Durbin said.

There is a week created, so-called the Golden Week, created by the Republican legislature in a bipartisan vote, signed by the Republican Governor, where voter registration overlaps, if you will, with early voting so that voters may actually register and vote at the same time, as they are allowed to in some States. Along the lines of Senator Durbin's question, have you seen any evidence in your travels around the State, but especially in your congressional district, of any even accusations of fraud during that week or any evidence of fraud?

Representative FUDGE. No, Senator, and let me just suggest to you this: I do not know of any single person who would take a piece of identification that is not valid in person to a polling place and try to vote. It is the most ridiculous and ludicrous thing I have ever heard.

If there is any fraud, the fraud is in the absentee balloting, which is what they did not address because most people of means and most people who are not Democrats vote absentee. If there is going to be any fraud, it is before people come to the polls, because that is the point at which we cannot verify who is voting. But that is the one place that they did not even address. So they clearly cannot be trying to address fraud because they did not address the area where the fraud could occur.

Senator BROWN. Thank you.

Thanks, Mr. Chairman.

Chairman DURBIN. Congresswoman Fudge, that is exactly the point that was made at the closing of the Florida hearing, that if the object is to lessen fraud, to reduce the number of ineligible voters who cast a ballot, why aren't these State legislatures addressing the absentee ballot provisions? Which, of course, could give rise to fraud as well as any other provision in the law.

Thank you for your clear testimony and staying within the time limit. It is so rare on Capitol Hill.

[Laughter.]

Representative FUDGE. I thank you. Thank you so very much, Mr. Chairman. Thank you for having me.

Chairman DURBIN. We appreciate it.

Our second panel is going to consist of several witnesses, and I will introduce them as we are setting up the table here and ask them to step forward, if they would, please.

By way of introduction, Daniel Tokaji is a distinguished professor of law at Ohio—at The Ohio State University—I have learned that—Moritz College of Law, and a leading authority on election law and voting rights. Professor Tokaji has published numerous articles in the Nation's most respected law reviews, co-authored the casebook "Election Law." A graduate of Harvard College and Yale Law School, Professor Tokaji clerked for Judge Stephen Reinhardt of the U.S. Court of Appeals for the Ninth Circuit. He has litigated many civil rights and election law cases, including serving as counsel in cases that kept open "Golden Week," as referred to by Senator Brown, for simultaneously registration and voting in Ohio's 2008 general election.

After him, David Arredondo, the director of international student services at Lorain County Community College. Mr. Arredondo is the vice chairman of the Lorain County Republican Party Executive Committee and Lorain County chairman of the Romney for President Campaign. He has worked in education for 30 years as an admissions adviser, administrator, writer, and adjunct professor. He is a radio news commentator and political pundit who appears on local radio shows, expressing opinions about various political issues and speaking on behalf of Republican candidates. He is a graduate of Miami University, where he was a Mexican Government scholar.

Carrie Davis is executive director of the League of Women Voters of Ohio. Ms. Davis has been an outspoken advocate against changes to Ohio's election laws that could disenfranchise voters. She recently testified at hearings before the Ohio General Assembly urging legislators to vote against HB 194. Ms. Davis also served as counsel in a number of high-profile Ohio election law cases, including *Project Vote v. Brunner* and *Boustani v. Blackwell*. Prior to joining the League of Women Voters of Ohio, Ms. Davis served as staff counsel for the American Civil Liberties Union of Ohio, focusing on voting rights and good government. She graduated from Albion College and Case Western Reserve University School of Law.

Dale Fellows is an executive committee member of the Lake County Republican Party and a member of the Republican State Central Committee. Among his extensive public and community service, Mr. Fellows previously served as Lake County Commissioner and has been a member of the Lake County Board of Elections for 18 years. He is president and co-owner of Morgan Litho, Inc. and Eagle Advertising. Mr. Fellows is a graduate of Kent State University and Lakeland Community College.

I will note for the record that we received his testimony quite late last night, and we did not have the time to go through it in the kind of detail we would have liked to.

Gregory Moore, Sr., is the campaign director for Fair Elections Ohio, a nonpartisan advocacy group that developed and implemented the statewide campaign to repeal HB 194. Among several other previous posts, Mr. Moore was executive director of the NAACP National Voter Fund, where he coordinated national programs designed to promote voter rights, election reform, voter education, and minority participation. During his tenure the organization registered 425,000 new voters. Mr. Moore founded the Ohio

Voter Fund, a statewide organization promoting voting rights and civic education. He is no stranger to the Judiciary Committee. He served as chief of staff and legislative director for Congressman John Conyers of Michigan when Congressman Conyers was Chairman of the Judiciary Committee in the House of Representatives.

Now, as is the practice and tradition of this Subcommittee, I will swear in the witnesses and ask you each to please stand and raise your right hand. Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ARREDONDO. I do.

Ms. DAVIS. I do.

Mr. FELLOWS. I do.

Mr. MOORE. I do.

Professor TOKAJI. I do.

Chairman DURBIN. Thank you. Let the record reflect that all of the witnesses answered in the affirmative.

Professor Tokaji, you are the first to testify.

STATEMENT OF DANIEL P. TOKAJI, PROFESSOR OF LAW, THE OHIO STATE UNIVERSITY, MORITZ COLLEGE OF LAW, COLUMBUS, OHIO

Professor TOKAJI. Thank you so much, Mr. Chairman, Senator Brown. I appreciate the opportunity to testify before you today. I am the Robert M. Duncan/Jones Day Designated Professor of Law at The Ohio State University's Moritz College of Law. I want to emphasize that the remarks I make today are on my own behalf and not on behalf of The Ohio State University.

As this Subcommittee is aware, the voting rules around the country have engendered a great deal of attention around the country in the past decade, no more so than in Ohio. We have seen more than our share of voting controversies, particularly since 2004. And we have learned something, I think, from these controversies.

We have learned that the right to vote is not something that can be taken for granted, that it is not merely a right but also a responsibility, and that the responsibility extends not merely to exercising our right to vote but to taking affirmative steps to protect that right. This is why I am so glad that this Subcommittee is paying attention to this issue and why I am so glad that you are here in Ohio today.

We must never forget that democracy exists not for the benefit of elected officials or election officials, but for the benefit of all of us, we the people of this country. And we must take care to ensure that access and equality prevail when it comes to our voting rules.

Now, I have provided very detailed written testimony about issues around the country and here in Ohio. I want to focus on just a couple of things, Mr. Chairman, in my testimony today.

The first is this: We have had really serious problems with laws and practices that prevent people from exercising their right to vote in this State. Those of us who have been here for a while remember former Secretary of State Blackwell's order, which prohibited registration forms from being accepted unless they were on 80-pound paper weight.

Now, since 2004, I think it is fair to say things have gotten better. We have seen some improvements. We have seen some degree of stability in our system. Unfortunately, HB 194 and related changes in our voting system take us in the wrong direction.

Now, I want to focus in the remainder of my testimony on three things that I view as particularly problematic. One has already been mentioned: the limitations on early voting, going from a total of 35 days to a total of just 12 days, limiting early voting on Saturdays, and eliminating it entirely on Sundays; and as you mentioned earlier, eliminating it on the last 3 days prior to election, this will affect somewhere in the neighborhood of 105,000 people.

Why is it so significant, this elimination of early voting on Sundays? Well, research has shown that people of color, in particular African Americans and Latinos, are more likely to turn out to vote early on Sundays.

Second, the issue that Senator Brown mentioned in his opening remarks, this one-word change in Ohio law, but a very significant one. Our present law requires that poll workers direct voters to the proper polling location if they appear at the wrong one. HB 194 would eliminate this requirement. Mr. Chairman, Senator Brown, this is essentially giving poll workers discretion to discriminate.

Third, provisional ballots. We have a lot of provisional ballots. Most of them get counted, but a lot of them do not, approximately 40,000 in 2008. HB 194 will make this problem worse. Fortunately, we have a Federal consent decree in effect which requires that provisionals be counted if cast in the wrong precinct due to poll worker error. But that consent decree is now under attack in a lawsuit that has been filed, amazingly, by our State legislative leaders.

For all the complexity of our voting laws—and I realize my time has expired—the bottom line here is quite simple: We should be making it easier for eligible citizens to vote, not more difficult. And, unfortunately, our legislative leaders in Ohio seem to be intent on taking us in exactly the opposite direction.

Thank you.

[The prepared statement of Prof. Daniel P. Tokaji appears as a submission for the record.]

Chairman DURBIN. Thank you very much.

Mr. Arredondo.

STATEMENT OF DAVID G. ARREDONDO, DIRECTOR OF INTERNATIONAL STUDENT SERVICES, LORAIN COUNTY COMMUNITY COLLEGE, ELYRIA, OHIO

Mr. ARREDONDO. Senator Durbin, Senator Brown, good morning to everyone. Today I come before you to speak in favor of supporting fair and honest elections for all American citizens. It is our civic duty to ensure the integrity of our electoral process at the Federal and State levels. Voting is a privilege and a responsibility.

Our current system is actually a composite of 50 systems that vary from State to State. Some require photo identification; others do not. Some allow for no-fault absentee voting; others do not. Some allow for early voting or Internet voting. Currently, 16 different States have enacted a photo ID mandate. Fifteen States, including Ohio, require voters to show some form of personal identification such as a utility bill or a bank statement.

It would be helpful if we had a more uniform system of voting, especially when Federal elections like the election of a President are concerned. However, only Congress and the Senate can make such a change. In an effort to make voting easier and more accessible, Congress and State legislatures have lowered the bar for voter registration and the casting of ballots. Some proponents would have you believe that any law regulating elections is an attack on their constituents' rights. Using that logic, voting should be extended unconditionally, year-round, 24/7, to ensure that their candidates win. Fortunately, the vast majority of Americans do not agree with this premise.

At one time, America did have a voting system that could be above suspicion of fraudulent registration and voting. But that system went out the door with the motor voter law of 1993, enacted by a Democratic majority Congress and signed by President Bill Clinton. Through motor voter, it is possible for foreign nationals to vote. I was recently made aware that a former foreign student of mine was registered to vote in Lorain County. This he was able to do when he happened to renew his driver's license and was offered the opportunity to register to vote. No proof of citizenship was required. Fortunately, he has never attempted to vote. American college students have the opportunity to hold multiple voting registrations in their home State as well as the State where they attend school. There is no way of cross-checking these.

Allow me to share with you how it is possible to reform a one-time, pathologically corrupt voting system, that of Mexico's. By no means do I suggest that our electoral system is as corrupt as Mexico's was prior to 1996. I do, however, advocate a major reform of our current system.

Following the widespread corruption of the 1988 Presidential race, all major parties agreed to the formation of a nonpartisan, nongovernmental electoral commission that would conduct the voting process and ensure fair and honest elections. This resulted in the creation of the Federal Electoral Institute that set about the task of developing a system for Federal and State elections through hard-fought reforms enacted in 1992, 1993, and 1994. The first Presidential election under the new system in 2000 resulted in the election of the first non-Institutional Revolutionary Party candidate elected president since 1928 in probably the cleanest Presidential election in Mexican history up to that time.

The electoral system created by Federal Electoral Institute is open and transparent. Every eligible Mexican citizen has a tamper-proof photo ID card with a thumbprint and an embossed hologram. All voters are required to vote in their neighborhoods. All elections are held on Sundays in Mexico. Mexico is a relatively poor country yet does not lower standards to allow for the poor to register and vote as is done in America. No excuses are made while setting a high standard for all with no discernible drop in voter participation. In 1994, voter registration stood at 45 million. In 2009, registration was 72 million.

Countries like Haiti and Iraq have adopted certain aspects of the Mexican electoral system to various degrees. The purple thumbs shown by Iraqi voters in their first free elections is a practice first employed in Mexico.

In conclusion, Americans need elections that are above question and reproach and should not settle for a current system that casts doubt on the outcome, regardless of whether the result is close or not.

Thank you.

[The prepared statement of David G. Arredondo appears as a submission for the record.]

Chairman DURBIN. Thank you very much.

And now we recognize Ms. Carrie Davis, executive director of the League of Women Voters of Ohio.

STATEMENT OF CARRIE L. DAVIS, EXECUTIVE DIRECTOR, LEAGUE OF WOMEN VOTERS OF OHIO, COLUMBUS, OHIO

Ms. DAVIS. Good morning. Thank you, Chairman Durbin, Senator Graham, and also thank you to Ranking Member—or to Chairman Durbin, Senator Brown, and thanks also to Ranking Member Graham and Members of the Subcommittee for holding this field hearing today to help focus our Nation's attention on this problem of voter suppression legislation that is sweeping this country. I am honored to be here today on behalf of the League of Women Voters and the League of Women Voters of Ohio.

As many are aware, the league was founded in 1920 by a group of suffragettes who had successfully fought for the right to vote, but recognized that that was only the start of the battle, not the end, and that we had to be vigilant to hold onto that right to vote and preserve it for every eligible voter.

During the last year and a half, we have experienced an unprecedented attack on voting rights. As we have heard from many prior witnesses, there has been a wealth of bills introduced and in many cases passed around the country, and our sister leagues have felt the sting of these voter suppression bills from one end of the country to the other.

Just two examples: In Wisconsin, they passed a strict voter ID bill and also made it difficult for organizations like the league to register new voters. In the State of Florida, they passed onerous new restrictions on organizations that want to conduct voter registration drives so that our sister leagues there would have faced potential penalties, including fines up to $5,000 and a third-class felony, for registering eligible voters.

Not surprisingly, many of these battles over voting rights are happening in States where close vote counts will have a dramatic impact. And if the votes are close and there are disputes over implementation of these confusing new laws, there is a real risk that our Nation could face a repeat of disputed election results being tied up in lengthy and complicated litigation and throwing doubt on the legitimacy of the election results. In short, we do not want to return to the problems of 2000 and 2004. We want to move forward, not backward.

The League of Women Voters of Ohio and its many coalition partners have been actively engaged for the last 2 years in fighting off a wealth of attacks on voting rights in the State of Ohio that run the risk of returning us to the problems we saw in 2004. My written testimony details all the numerous bills dealing with, for example, restrictive voter ID, the many changes made in House

Bill 194, the changes made a short 3 weeks later in House Bill 224, and the current effort in Senate Bill 295 to repeal HB 194. And if you are confused already, you are in good company because many people across the State of Ohio are likewise confused about all these many changes. Yet what is strikingly absent from all of these many proposed bills is any provision for voter education or poll worker training and recruitment to help alleviate all the confusion caused and to make sure that we are able to run as smooth and effective an election this fall and in future years.

Many nonpartisan organizations cautioned the Ohio Legislature against this legislation, including the League, the Miami Valley Voter Protection Coalition, Northeast Ohio Voter Advocates, the NAACP, Common Cause Ohio, the Coalition on Homelessness and Housing, the ACLU of Ohio, the Women with Disabilities Network, and numerous other State and national experts and academic experts who pointed out the flaws of this legislation.

As we have heard from other witnesses, there would be significant cuts to the time period and availability of early and absentee voting. One thing that I would like to add is that this, in fact, carries more risks and goes back on progress. Because there was such a groundswell of interest by voters in voting early and absentee, many counties were able to consolidate precincts at a significant cost savings because they had fewer voters demanding to vote on election day and instead voting early.

One of those election officials from Montgomery County testified on HB 194 and said, "They consolidated precincts and saved money. If these cuts to early and absentee voting went through, they would have to either un-consolidate those precincts or face the risk of having the long lines that we saw in 2004. We do not need that. That is moving us in the wrong direction."

In addition, both HB 194 and a recent Secretary of State directive restrict the hands of counties to send out absentee ballot applications to all voters. This was hugely successful, and that option has now been taken away.

There are also concerns about "right church, wrong pew" and voters no longer being required to be directed to the proper precinct.

In short, gentlemen and Senators and guests who are here today, House Bill 194 moves us in the wrong direction. It includes many provisions that, if they were to go into effect, would harm Ohio elections. If Ohio legislators really want to help improve the system, instead of imposing onerous new restrictions, they need to focus on improved voter education, poll worker recruitment, and poll worker training to make sure that the rules we have are implemented fairly and that all voters have a chance to have their ballot cast and counted.

[The prepared statement of Carrie L. Davis appears as a submission for the record.]

Chairman DURBIN. Thank you.

Mr. Fellows, the floor is yours.

STATEMENT OF DALE FELLOWS, REPUBLICAN STATE CENTRAL COMMITTEEMAN, LAKE COUNTY REPUBLICAN PARTY, AND EXECUTIVE COMMITTEE MEMBER, WILLOUGHBY HILLS, OHIO

Mr. FELLOWS. Thank you, Chairman Durbin and Senator Brown. It is good to see Senator Brown again. I was sworn in by Senator Brown the first time I took office as an elections official in the State, so I have a fondness for the Senator for that reason.

I will apologize for the lateness of my testimony. I was actually on a family vacation when I was contacted in the middle of the week: "Would you like to do this?" I said, "Okay, sure."

Chairman DURBIN. That is a legitimate excuse.

Mr. FELLOWS. So I was trying to carve out some time to send it. I apologize for that.

I also have to apologize and hope you will indulge me on this. I was under the impression we were going to talk about the voter ID law in Ohio, so I had my testimony geared toward that. I did not realize we were going to talk about HB 194. So if you would indulge me, I will talk about HB 194, and it might be a little disjointed because I did hear some of the comments today, and I know a little bit about it, being immediate past president of the Association of Election Officials here in Ohio that dealt with this. We worked on this for 3 years with Secretary Brunner and then Secretary Jon Husted.

There is in that bill, as a matter of fact, over 100-some changes to the elections law, as my colleagues in the elections world have noted, and only a few that are actually controversial, if you will. And the whole thing will be repealed and is on hold now because of the repeal. And those bills go back, again, to HB 260 and Senate Bill 8.

Let me address some of the things that were mentioned. The eligibility and voters' rights, amen, absolutely amen on voters' rights. But it is also the voter's right that does not disenfranchise that voter that made a legitimate vote. When voter ID laws were first implemented, I was shocked at how many people came to me and said, "It is about time we have some voter ID laws in Ohio," because they felt that people were voting who were not actually eligible. There is, of course, instances of voter fraud and attempts to defraud the system in Ohio, and I can give you all sorts of instances of that.

But let us talk about cutting the early voting period at a cost in that. That was an initiative by the bipartisan Ohio elections officials back in 2010 to stop the in-house voting as of after Friday or Saturday of the election because we have to conduct an election. Most counties cannot afford the resources, both monetarily and people-wise, because most counties in Ohio are very small and they may only have two people that actually work those elections. The same with working on Saturdays and Sundays when you only have a staff of two people, the director and deputy director.

Correcting the voting location, it is not a requirement that they do not it. They can do it. Our poll workers are asked to do that. But it was a liability issue, too, if they happen to be drawn into court, as they have been over the years.

The task force, as I mentioned, was the one that we—and I go back to our bipartisan election officials association. If there is somebody that should write those laws, maybe it should be us because most of those things in there were our initiatives that would better the system in Ohio.

I also challenge everyone here, those on the panel who have not already done it and anyone else, to volunteer as an election day poll worker. Walk in the shoes of an election day board member, Board of Elections worker, because, one, we need you, we need those volunteers.

When I hear about suppressing the vote, again, this is going to be something that I did not know we were going to talk about, but let me talk to you about that. The long lines on election day in 2008 were actually before the election, not on the election. We had 4-hour lines in our little county of Lake County. We had tons of hype throughout the State about the election and everybody getting out to vote, and, in fact, the final results were less than 17,000 more voters in the Presidential election between the two primary elections—or candidates from 2004 where there was no early, as we call it—people call it "early voting" versus 2008 out of over 5 million in each of those elections.

The voting period, cutting the—deleting the voting period for in-house, I talked about that. The cost of cutting—I mean, it is—anyway, I apologize for being a little bit disjointed because I was not prepared to talk about this, but let me end with one comment.

Voting is a right, a privilege, and a responsibility that we should all take very seriously. It is the essence of our democracy. I believe, Senator Durbin, you said that in your opening comments. Election officials, legislators, and voters should fight every day to protect that right, that privilege, and that responsibility with all the fervor we can muster. And we must help protect every voter's rights as well as never compromise the integrity of the system so that there is the utmost confidence that every election is fair and honest. Voter ID laws can and should accomplish just that.

Once again, Mr. Chairman, Senator Brown, and other Members of the Committee who are not here, it has been an honor and a privilege to present this testimony today, and I look forward to any questions and comments you may have of me.

[The prepared statement of Dale Fellows appears as a submission for the record.]

Chairman DURBIN. Thank you, Mr. Fellows.

I would now like to recognize Mr. Moore. You have the floor.

STATEMENT OF GREGORY T. MOORE, CAMPAIGN DIRECTOR, FAIR ELECTIONS OHIO, CLEVELAND, OHIO

Mr. MOORE. Thank you, Mr. Chairman, Chairman Durbin, Senator Sherrod Brown, who I have known for several years, and Congresswoman Fudge, we have worked together over the years. My name is Greg Moore. I am the campaign director of Fair Elections Ohio. I am also here representing the many coalitions who came together to put together the campaign which gathered over 500,000, half a million, signatures from across the State. We are also joined by the co-chair of Fair Elections Ohio, who I must acknowledge, Reverend Otis Moss, Jr. There are also several mem-

bers of our allies and friends in organized labor and within the clergy who are here. Those clergy who helped us get those signatures were the bulk of the volunteer effort, and it demonstrates how important the issue of the weekend voting is to them. And many of them are in this room, and I want to say thank you to all of them, particularly Bishop Clark and Bishop Perry and many others who have been working throughout the years in support of voting rights.

We are at a crossroads right now, Mr. Chairman, because there are a couple things happening, and my comments and prepared testimony goes into great detail about this. We have a ballot initiative that is pending on the November ballot. We have a piece of legislation, SB 295, that seeks to repeal it. But we also have provisions in that bill that take away those rights of the voters who have been standing in long lines over the years.

Mr. Fellows mentioned those long lines. Those lines were, in fact, on Sunday and on Saturday in 2008, and that is why we are fighting so hard for that provision to stay there.

The members of the Ohio Legislative Black Caucus, chaired by Representative Sandra Williams, have been working with us and members of both chambers, including Senate Minority Leader Eric Kearney, who is one of our committee petition members, and Senator Nina Turner, to try and fashion whatever legislation there is pending now into something that would represent a full repeal of HB 194. But, of course, we have not reached that point yet.

So I am here basically to lend my voice to all those voter rights activists in this room who fought so hard to put this on the ballot.

The key to all of this is that many of us are quarreling over whether or not the Republican majority has the authority to remove this issue from the ballot, and that is certainly something we can continue to debate and may even have to go through litigation to resolve. But the fact remains that it represents one of the few instances, if not the only instance in the U.S., where the legislature is in full retreat and seeking to repeal voter suppression legislation. In fact, there are very few cases where we are able to stop the law from becoming implemented.

In fact, in 2011, we had only 6½ weeks to collect the 231,000 plus signatures. Had we not collected those signatures by September 29th, all these provisions of HB 194 would have taken effect on September 30, 2011. And the election that we just had to repeal Senate Bill 5 (Issue No. 2 on the ballot) would have been impacted. I would even venture to guess it may not have even been the same outcome.

So we have been able to stop the law from becoming impactful both for that election and to have stopped it from taking effect for this important 2012 election. In addition to that, people circulating petitions now for the repeal of our redistricting laws are operating under the current existing laws that, again, would have been rolled back had we not stopped this effort.

Now, by all accounts, we will have a vote tomorrow in the House of the Ohio Legislature that would determine whether or not SB 295 becomes the law. What we are saying—and time goes by so quickly—is that today it no longer appears to be a question of whether 194 will be repealed. It is now, rather, a question of how

and a question of when. This speaks to the power of the citizens' veto, which we were able to move to the highest level just as our friends in organized labor were able to do in 2011. In 2012, the citizens' veto is still standing strong. And so tomorrow the House of Representatives will be taking this issue up. They can restore the provisions of 194—they can restore the provisions that brings the law back to the way they were before 194 was enacted. There will be allies in the House offering amendments to 295 that will seek to restore the 3-day weekend. We want to take this opportunity to urge the legislature—in fact, this may be our final appeal to the legislature publicly—to please listen to the voices of the people of Ohio, 500,000 people or more have signed the petition, the people have spoken. We have seen the law. They want it repealed, not partially but fully. They want it repealed not next month but tomorrow. And they want it all repealed now, or we will repeal it ourselves on November 6th.

Thank you.

[The prepared statement of Gregory T. Moore appears as a submission for the record.]

Chairman DURBIN. Thank you, Mr. Moore.

I am going to ask the panel, all of you, a collective question. Anyone can respond if they wish.

As I mentioned with Congresswoman Fudge, the first question I ask at each of these hearings is that the critics of the new law in Ohio argue that it is designed to suppress the vote of people who would otherwise vote—the poor, minorities, elderly, disabled, and the like. The supporters of the law say, no, it is designed to suppress voter fraud.

So what history of voter fraud do you have in Ohio that would be addressed by HB 194?

Mr. FELLOWS. Senator, if we were to talk to pretty much most counties in the State, you will have some kind of situation that may have occurred. Certainly prior to having voter ID laws, you had folks who would come——

Chairman DURBIN. Excuse me, sir. We have got to stick with the law, not voter ID.

Mr. FELLOWS. Oh, I am sorry.

Chairman DURBIN. It is about early——

Mr. FELLOWS. It is 194.

Chairman DURBIN. So what I am trying to say is beyond anecdotal evidence and things that people may talk about on talk radio, I would like to get into the real——

Mr. FELLOWS. I do not want to talk about that——

Chairman DURBIN. The real examples of, for example, prosecutions for voter fraud in Ohio relative to early voting periods that led the legislature to say, "We are going to restrict these early voting periods." So is there a history of that that you can point to? How many prosecutions have you had for voter fraud in Ohio during the early voting period out of the millions of votes that have been cast? Does anybody have any idea?

Professor TOKAJI. I do not have a precise number, Mr. Chairman, but it is no more than a handful. And the reality of the situation, contrary to the myth, is that voter fraud is extremely rare in this State and in this country. At the time that the ID bill was being

debated, I went and I looked for any cases I could find of the kind of fraud that the voter ID bill would prevent, voter impersonation fraud——

Chairman DURBIN. Mr. Arredondo, do you have examples of——

Professor TOKAJI [continuing]. And I could find not a single instance of in-person impersonation.

Chairman DURBIN. Any examples of prosecutions for voter fraud?

Mr. ARREDONDO. I do know that in Lorain County in the past there have been a few cases of voter fraud, and the county prosecutor has chosen not to prosecute them. I am also aware that in other counties throughout Ohio there have been a small similar situation of voter fraud, and the prosecution has refused to prosecute them.

Something else that——

Chairman DURBIN. Excuse me, but I am going to hold you to that for a second because I have some other questions. The point I am getting to here, in this hearing and others, if you are going to change the law that allowed 105,000 Ohio citizens to vote in the weekend before the election, you clearly need a motive. If the motive is to suppress the fraud that is going on during that weekend, case made. But if you cannot even point to a prosecution of more than a handful of people, then I think it argues that it is about suppressing the vote rather than suppressing fraud.

Mr. Arredondo, I have a question to ask you. You speak glowingly about Mexican electoral reform, and one of the things that you pointed to was that in Mexico you were allowed to vote on Sunday. So if it is a good idea for Mexicans to vote on Sunday, why is it a bad idea for people in Ohio to vote on Sunday?

Mr. ARREDONDO. Well, first of all, let me point out that there is no such thing as absentee or early voting in Mexico. Everybody votes on the same day, which happens to be Sunday. I would be in favor of such a change in our electoral system for that kind of a process.

Chairman DURBIN. Why do you think Sunday is a better day to vote?

Mr. ARREDONDO. Well, first of all, it is not a work day so we do not give people an excuse to say, "I am sorry. I am working Monday through Friday. Saturday would be fine, Sunday would be fine."

Chairman DURBIN. That is the point of early voting on Sunday before the election, which is being eliminated by HB 194.

The second point that you raise is about the motor voter law that was passed during President Clinton's administration and approved by Congress, and you use an example, you say foreign nationals are allowed to vote under motor voter law. I am sure you have read that law, and you talked about a student who was given an invitation to vote. Any person under the motor voter law who wishes to vote has to attest under penalty of perjury that they are American citizens, and the penalty is not only a fine but up to 5 years in prison. So it may not be a casual decision to just go ahead and be a foreign national and vote under the motor voter law. Would you agree with that?

Mr. ARREDONDO. I do, but in the case of my student, in talking with him, he was oblivious to what it was that he was signing.

Chairman DURBIN. He would have been handed an attestation, and on the attestation he would have been asked if he was an American citizen. If he signed that and lied about it, he was subjected to a potential of 5 years in prison.

Mr. ARREDONDO. We understand that, yes.

Chairman DURBIN. So to suggest that we have loosened the laws and made it casual, 5 years in a Federal prison is a pretty serious penalty.

Mr. ARREDONDO. Myself, I would prefer that someone prove that they are an American citizen with a birth certificate or with a naturalization paper.

Chairman DURBIN. I would say to you that the laws as they exist establish these attestations before one can be allowed to vote, and if there was an abuse of this, I would suppose there would be a few prosecutions you could point to in the State of Ohio. Can you?

Mr. ARREDONDO. As I said, prosecutions tend to be very, very lax on voter fraud. May I—one thing about the early voting, may I answer?

Chairman DURBIN. Of course.

Mr. ARREDONDO. Because you were bringing up particularly the weekend before. As my colleague Mr. Fellows pointed out before, these laws, whether they are done at the Federal or State level, really should involve those who are part of the system, that is to say, our poll workers, our registrars, and they will tell you that the weekend before the election is one that is so frenzied and one that occupies them with much detail of deploying voting machines and setting up the process so that it is done in an absolutely flawless manner, and that they would prefer to have those 3 days in order to make sure that election day is run without any difficulty.

Chairman DURBIN. Mr. Arredondo, let me just say this: I understand that it is extra work. Early voting is extra work. By eliminating the opportunity for early voting on the weekend before, you are now going to move more of those voters to election day. Mr. Fellows talked about some sympathy for these election officials. I have it. That is a hard job. In Illinois, it is a 12-hour run of responsibility. And they do not get paid a heck of a lot of money to do it. But now, by eliminating the early voting opportunity, you are shifting more burden to the actual election day. They may be lucky in some places to get out in 12 hours.

Senator Brown.

Mr. FELLOWS. Mr. Durbin, could I address that real quick? I am sorry.

Chairman DURBIN. Of course, please.

Mr. FELLOWS. One of the things is election fraud is hard to prosecute because usually you cannot catch the person that has done it. But when the voter comes into the polls and wants to vote and their vote has already been cast and they are told, "You cannot now vote," what do you do with that person? You cannot even catch that person. And that is documented in our laws. And what I say to those things is thanking elections officials and professionals for the fact that these do not happen so often.

But to your point about election day, your folks on election day, that election weekend, in 2008 our professional staff was up 42 out of 48 straight hours. I am not even sure that that is legal under

the Federal labor laws. And we were not unusual. There were some that never slept for 48—because you have got to administrate that law. And we were there in our little county of Lake County until 10 o'clock with voters because you want them all to vote the day before the election. Then we had to run our lists to let folks know at the polling locations, the 157 presiding judges, who had voted already so that—because we always on election day have people come in who have applied for or taken an absentee vote or voted in-house and then come to the polls, forgetting that they had already voted, or had said, "Oh, well, I did not vote my mail-in ballot, so I can just come to vote." Well, we do not know if you have already voted that or not.

So those lists have to go to the presiding judge, so we had to use deputy sheriffs to deliver these to 157 people when they had to be down at the polls at 6 a.m.

Chairman DURBIN. There is no argument here. The people——

Mr. FELLOWS. Right. That is the process.

Chairman DURBIN. The people working the election offices and the polling places really put in the hours, and we thank them for it. We can never compensate them enough for that. The question, though, is whether or not we want to deny an opportunity to vote for those who have similar hardships and inconveniences. And the Ohio law, unfortunately, restricts that opportunity in early voting.

I am going to turn it over to Senator Brown. We will come back for a second round of questions.

Senator BROWN. Thank you, Chairman Durbin.

Mr. Fellows, thank you for your advertising for more poll workers.

Mr. FELLOWS. Yes.

Senator BROWN. That was an ongoing problem. Unlike Illinois, where they only work 12 hours, the harder-working people of Ohio work 13 hours at the polls, from 6:30 a.m. to 7:30 p.m., I believe still, right? And we all appreciate that. We also know there is a continuing shortage of poll workers. It is hard to get people to do that for the little bit of pay and the long hours, and to my mind, that is another argument for Sunday voting, that we can get more people into the polling place earlier.

I will start with you, Professor Tokaji. In 2004, there were serious problems. The legislature fixed those problems in 2006. The legislature, bipartisan, reacted to the problems of 2004 election day, which probably everybody in this room is familiar with. In 2010, there was an election, and the legislature responded by tightening and changing dramatically election laws. Did something happen in 2010 that caused the legislature to do that? I do not mean the outcome of the election, but were there problems in the machinery and efficiency and fairness of the election? Were there fraudulent activities in 2010 that caused the legislature to need to do this?

Professor TOKAJI. Not at all. In fact, I would say that at least here in Ohio, 2010 was the least eventful election that we have had in a long time from the standpoint of election administration problems. And this is largely because we in the State—and that means voters, poll workers, and election officials—have largely gotten ac-

customed to, we have absorbed the many changes in our election system that have occurred in the past decade.

So we have now got this level of stability which would be disrupted by HB 194, and going back to part of your question, there is really no explanation for what has happened here and in other States other than changes in the composition of State legislative bodies.

Senator BROWN. As an observer in 2004 of the elections, one of the biggest concerns I had was sort of the changing rules and directives that the Secretary of State sent out, to the point where I and, I assume, many, many others were confused on election day what exactly the laws were. You know, there were poll watchers. There were lawyers that came in from out of State on both sides to watch and make sure all this was done right. You know, I fear that is happening right now with the uncertainty that Ms. Davis has talked about.

Mr. Arredondo, one question for you. You talked about lowering the bar for voters and your concerns about fraud. What does 194 do to resolve the issue of lowering the bar, as you describe it? Can you give me two or three specifics how it resolves the issue of our lowering the bar and letting voters in?

Mr. FELLOWS. HB 194 specifically does not do anything that is going to really address that other than the—well, it is going to eliminate the Golden Week, and certainly it is going to give relief to election workers who, as I pointed out before, are compelled to provide service above and beyond the call of duty in order to prepare for a well-run election on election day. So this is—and not the least of which, 194 is designed to save for our counties money that have been strapped for increased costs on added days of voting, particularly on weekends.

Senator BROWN. When poll workers direct confused voters to the correct precinct, is that lowering the bar?

Mr. ARREDONDO. You know, first of all, I am not a member of the Ohio Legislature, and I am not so sure that I understand all of the ramifications of 194, particularly the one about not being able to direct voters to proper precincts. That one is really beyond my, you know, imagination.

Senator BROWN. Does Sunday voting lower the bar?

Mr. ARREDONDO. I am sorry?

Senator BROWN. Does Sunday voting lower the bar?

Mr. ARREDONDO. As I said before, I would like to see a uniform day of voting that we could all vote on the same day, as is done in Mexico. If that happens to be Sunday, I would like that to happen.

Senator BROWN. So there should be no early voting at all?

Mr. ARREDONDO. I am sorry?

Senator BROWN. Would you prefer we had Sunday voting one Sunday in November, presumably, and no absentee, no early voting at all?

Mr. ARREDONDO. That is correct.

Senator BROWN. That is what you would prefer.

Mr. ARREDONDO. We pointed out before that—and I believe either you or Senator Durbin mentioned that absentee voting certainly opens up the door to fraud.

Senator BROWN. Except none of you on this panel could really point to anybody prosecuted for voting—I mean, it just strains credibility to think that some person out there is going to vote—is going to start voting early in the morning, vote in Cuyahoga County, then go to Medina, then go to Richland, then go to Morrow, then go to Huron County, cast six votes to try to change an election when the chances of getting caught exist—I do not know how high they are—and the chances of going to prison if you do get caught are very high and your chances of changing an election with those six votes that day are almost infinitesimal.

Mr. ARREDONDO. Let me answer that one of the easiest ways to cause fraud by absentee is by college students who are from out of State who have the opportunity to register in their home State as well as the State where they are attending school. And you mentioned Oberlin before as a case in point.

There are, I believe, 7,000 to 8,000 registered voters in the city of Oberlin, yet the population of Oberlin is probably about 8,000. So this is evidence of the fact that there are a number of students who no longer live in Oberlin who have gone elsewhere and are still able to ask for an absentee ballot in Lorain County and one in wherever they are now residing. And there is no way that we have any kind of a monitoring of that kind of a process.

Senator BROWN. I do not agree with that. There are plenty of ways, if you are a local election official in that county—and I believe you actually live in Oberlin, right?

Mr. ARREDONDO. I am in Lorain.

Senator BROWN. Okay. You live in Lorain. I am sorry.

Ms. Davis, do you want to address that?

Ms. DAVIS. Yes, thank you, Senator Brown. The question that both of you have asked about the number of prosecutions for fraud in Ohio was asked during all the legislative hearings in both the Ohio House and the Ohio Senate on House Bill 194 and all the other bills that have been introduced on election issues in the last year and a half. No one there was able to answer that question either because we have not had this rash of prosecutions in the State of Ohio for voter fraud, although we do know where the investigations for fraud are happening. And just to give you one example from the 2008 election dealing with this so-called Golden Week, where we have the start of early voting 35 days before election day and the close of registration 30 days before, so we have this 5-day window.

In 2008, there was a lot of excitement about this overlap period. It was litigated in the Federal court for the Northern District, the Southern District of Ohio, and the Ohio Supreme Court, all of whom concluded that under Ohio law that has to be followed. It is not unconstitutional. It does not violate any laws. That is perfectly to do. And just in the spirit of full disclosure, I was counsel, direct counsel on one of those cases and amicus counsel on the other two. That overlap week was upheld by numerous courts.

But we do know where the investigations were occurring, and just one example of that in 2008, in Greene County, which is in the southern portion of Ohio, and also happens to include a number of Ohio's historically black colleges, there a public records request was made of the Greene County Board of Elections for the number of

voters who registered during that time and requested an absentee ballot. And due to public pressure from all the people questioning why that county and why those college communities, that public records request was withdrawn. But we know just anecdotally from instances like that where the investigations are happening, even though it was perfectly lawful, as decided by three courts for people to register and request an absentee ballot during that time.

Chairman DURBIN. Ms. Davis, I was going to followup on that question, too, because it gets back to the basic point here. Anyone who falsifies their application for an absentee ballot is subject in most States to a criminal penalty. Is that the case here?

Ms. DAVIS. Chairman Durbin, yes, that is true. Under Section 3599 of the Ohio Revised Code, if you were to falsify any of those election documents, it is, in fact, a crime, and they can be prosecuted and punished.

Chairman DURBIN. Going back to Senator Brown's point, to think that you would hopscotch from county to county, vote at your college and then vote back home, and run the risk of going to prison every time you did, seems incredible. And I would just go on to say that I am not surprised to hear that when your legislature asked the same question, where is the voter fraud, no one could produce the evidence. It draws you to the other conclusion. If it is not about suppressing fraud, it is about suppressing votes.

Mr. Moore, I want to bring you into this conversation. We are talking about 105,000 people who voted, or did in one of the last elections in Ohio in the early voting. So 105,000 ballots, what impact could that have on elections that you have witnessed in your time?

Mr. MOORE. Well, we do know in 2004 the election was decided by the failure to count a lot of those ballots that were provisional. So we know that if you have the last weekend voting and a lot of those people are coming in that have not voted for a while, you could get a number of provisionals during that time period. So that 93,000 plus would be an extremely important number of people to leave out of the equation, especially when this election in Ohio was decided only by less than 100,000 votes, literally, in 2004.

Chairman DURBIN. Professor Tokaji made an earlier point about the likelihood that minority voters would vote on the closing weekend, "souls to the polls" efforts and the like. So could you testify for the record, if you know, what impact this has on the minority vote in terms of eliminating the last weekend?

Mr. MOORE. Yes, Senator. I think the problems that we have around this issue of the lines is mostly an urban problem and a college campus problem, because that is where there are large concentrations of voters trying to fit into a small limited number of precincts. And when there is a high demand for voting, the lines are longer, and there are more people who are trying to get access.

It is very difficult for a student to try to vote when he or she has class or a working mother to try to vote when they have day-care issues. So that would have a major impact on the ability of people to be bale to vote in this election.

If I could just say one more thing, Mr. Chairman, I worked for 5 years on the motor voter bill, 4 years as an advocate and 1 year as legislative director to Congressman John Conyers, Jr., the Rank-

ing Member on the House Judiciary Committee. It took us a long time to get that provision together, so I do not want anybody to leave this room thinking that the motor voter bill, the National Voter Registration Act, created any opportunity for people to vote fraudulently. It only creates an opportunity for people to *register*. All the voting happens much longer after they have done that.

A final point that was in my statement which I did not get to say: If we use the same logic of shutting down the last weekend (the last 3 days), it would be like shutting down department stores the last 3 days before *Christmas* because too many people are shopping. It just would make no sense at all because you would basically stop the shopping at the highest point of demand. And so giving us those 3 days is not just an academic argument. The demand is highest right before the election, and so to close the doors down and put a padlock on the right to vote during those 3 days, after you've given them 35 days before, is voter suppression because it suppresses the ability of people, especially those 100,000 you mentioned, to actually vote.

Chairman DURBIN. You could probably get away with that because shopping is a privilege and not a right.

[Laughter.]

Chairman DURBIN. Professor Tokaji, let me ask you, could you respond to Mr. Fellows' point on this directing to the proper precinct issue? And he raised a question of the liability of a poll worker. And as I understand the change in the law, first there was mandatory language that said the polling official shall direct the person to the right precinct.

Professor TOKAJI. Right.

Chairman DURBIN. Now the language is permissive and it opens up a possibility raised by one of the witnesses here that a poll worker would pick and choose those that he would direct to the right precinct for whatever reason. But the question raised by Mr. Fellows whether the poll worker assumed some liability under the law, and I think he said may be sued for failing to direct a voter to the correct precinct. First, do you know if that has ever happened?

Professor TOKAJI. No, and I also teach Federal courts law, and I would say that that poll worker would almost surely enjoy qualified immunity. The only exception I could imagine is let us say a poll worker intentionally was refusing to direct African Americans to the proper precinct but was directing white voters, for example. If a poll worker was intentionally doing that, then conceivably they might be, but you would have to have that level of conduct for anyone to be personally liable. And, in fact, by eliminating this requirement, it is opening the door to new litigation of the kind that materialized in Florida back in 2010—in 2000, rather.

Chairman DURBIN. I will ask Ms. Davis, who apparently has witnessed some of the testimony about HB 194. Was there evidence that poll workers were being sued for failing to direct people to the right precinct?

Ms. DAVIS. Mr. Chairman, to my knowledge, there has not been situations where poll workers individually were sued, but there may have been occasions where they were called as witnesses to testify in cases where a county board of elections was sued. And

this goes to reinforce the point of why this change in the law is so irrational. Right now, poll workers are required to direct voters to the proper precinct, and if they are not in the proper precinct, then those votes do not count. HB 194 makes that discretionary, which actually increases the legal problems of equal protection. There is unbridled discretion of the poll worker to pick and choose if they want to help someone or not, so that raises the possibility of more litigation.

But what would actually be helpful, instead of making it discretionary, if they want to reduce the chances of litigation, improve poll worker training, give those poll workers the tools they need to help direct voters to the right precinct. That would be a solution that would actually solve a problem rather than——

Chairman DURBIN. Mr. Fellows, let me give you the last word.

Mr. FELLOWS. Thank you. I appreciate it. I apologize if I—I do not think I used the word "sued" in there because—I hope I did not because that is not—they have been dragged into court.

Chairman DURBIN. You said it is a liability issue, they have been drawn into court over the years.

Mr. FELLOWS. That is correct. That is exactly what I meant. They have been drawn into court numerous times. Hamilton County was the big one.

Chairman DURBIN. As witnesses?

Mr. FELLOWS. Yes, correct. And then what it does is it makes us—we had a situation in my community, too, where they got—then we cannot find poll workers. No one wants to be dragged into court just to work for 1 day a year. So it was not—that was one of the issues that it just intimidates people from——

Chairman DURBIN. Does it happen frequently?

Mr. FELLOWS. It keeps—what?

Chairman DURBIN. Did it happen frequently?

Mr. FELLOWS. Not frequently, but it happened large-scale in Hamilton County, and that is when, again, the Association of Elections Officials, the bipartisan group, asked the legislature to do this. If we go back to 2010 to that task force report on numerous things about absentee voting, I think that that would solve a lot of the issues, because it was a bipartisan approach. Senator Brown is well aware of that organization.

I do want to ask just real quick, mailing absentee applications has been resolved. It is going to be mailed throughout the State of Ohio this year.

Chairman DURBIN. That was a decision by your Republican Secretary of State?

Mr. FELLOWS. Correct. And one of the issues that we have as elections officials is inconsistency in the process when we are talking about voting or having polls open on Saturdays and Sundays. As I mentioned, most of the counties in Ohio are very small. They cannot afford the staff to do that. Their staff may be only two. And now you have situations where you have multi-county districts, congressional district, State Senate district, appeals court districts, et cetera, that cross county lines. So now you have one set of voters having rules and open polls because those counties can afford it, but you have others that cannot afford it. So now you have

disenfranchised certain voters by doing that inconsistency. And that was one of the major issues with that.

With the poll worker, I think we addressed the poll worker thing.

And then when we go back to—I know you are very large on empirical data, and rightly so. There is no empirical data that shows between 2004 when we had the old style, where you had to have a reason to vote absentee, like you had to be a senior or out of the county, to where in 2008 you had the early voting, the empirical data shows that the total voter turnout was infinitesimal.

Chairman DURBIN. Thank you. Before I turn this over to Senator Brown, I have reflected on an earlier statement I would like to correct so I can return safely to my home State of Illinois. Our polls are open from 6 in the morning until 7 in the evening, so it is a 13-hour day. The poll workers are there early and stay late, so it was not 12 hours.

[Laughter.]

Mr. FELLOWS. God bless the poll workers of our country.

Chairman DURBIN. Senator Brown.

Senator BROWN. But our poll workers actually work harder during the 13 hours——

[Laughter.]

Senator BROWN. Thank you.

Mr. Fellows, the numbers between 2004 and 2008, we could argue this, are not quite infinitesimal. In 2004, 5.6 million voters voted; in 2008, 5.7. A hundred thousand is not——

Mr. FELLOWS. No, no, no. I do not know which numbers you have, but from the Secretary of State's office, the total vote count was about, I want to say, a 52,000- to 57,000-vote difference. That is total voters. But if you just go to who voted for the two major political parties, the candidates, it would have been Senator Kerry and George W. Bush in 2004 and McCain and Barack Obama in 2008. The difference was less than 17,000 votes difference out of over 5 million votes.

Senator BROWN. But the issue is how many—okay, I will not belabor this. The issue is how many people actually voted, but that is not a big concern.

One of the things, Mr. Fellows, that you were known for, I remember when I was Secretary of State, and that many of your colleagues are is a strong view of—strong advocates for local control in elections. And while we have State rules, we also want local elections officials to be empowered to do what they have to do to do this job fairly and efficiently. You had mentioned this for a moment the first time in the hearing about the local boards of elections have—prior to this new law had the discretion whether they wanted to mail absentee ballots—applications to anybody—to their whole county.

Mr. FELLOWS. Correct.

Senator BROWN. To all eligible voters—all registered voters in their counties. The legislature took away that discretion by HB 194. I know that Secretary Husted, to his credit, has done the right thing and is going to open that up this year. Well, really he has got to follow the law of the fact that 194 is on the ballot to be challenged. But why do you want—why does this bill and do you support this bill wanting to take away that local control? Because no

longer can you at the Lake County Board or Mr. Arredondo at the Lorain County Board decide I want to—we have the money and we think it makes sense for us locally to make that decision? We are not—the law never told them they had to do it. Some counties did it, some did not. Why should we take away that local——

Mr. FELLOWS. Just so you know, I do not necessarily support everything in HB 194. What I support very adamantly is all the things that we as elections officials ask the legislature to do. We actually—our task force said to mail absentee applications to everybody in the State. It became a monetary issue, a cost issue to do it. But what we do call for, as all elections officials do because of my point on the multi-county district, is consistency. We cannot just have that—that autonomy would be great if the elections in all the district were contained into our own little counties and it did not affect anything else. But when we have so many districts that go outside of our county into neighboring counties and then we could not afford——

Senator BROWN. You would be including the congressional district that now goes from Cleveland to Toledo, for instance?

[Laughter.]

Mr. FELLOWS. Yes, that could be—or the ones that used to go down south all the way to the river district. But, yes, I mean, we—but there is more than just congressional. I mean, there is State Senate, there is appeals courts. It goes on and on, as you know. And so we as elections officials absolutely would love to see absentee applications go out to everybody, and that was our stance on it.

Senator BROWN. It was the right stance.

Mr. Moore, do you want to comment?

Mr. MOORE. Just for clarification, Senator Brown, what we are asking for is for the law to be restored to the way it was before 194 was passed. Under that system, counties had the discretion to extend the early voting period to fit the needs of their county. So if you have a county with a lot of long lines, a big urban community, and there is a known demand for more ballots and smaller precincts, I think it is proper to allow those counties to make that decision, because what happens in Belmont County may not—the rules in Belmont County may not be the same ones you need to have in Cuyahoga County where you have a much larger population, and that is when it goes back to Senator Durbin's question. Minorities are impacted, young people are impacted, people who live in cities are more adversely impacted by this.

So all we are saying is leave it to the discretion of the counties to fit the needs of that county, but not try to impose something that might work for Belmont County on Cuyahoga County, which draws abundant numbers. This throws us back in long lines, puts us back out in the rain. Let us restore the law back the way it was and give us the right to cast our vote without——

Senator BROWN. Thank you.

Professor Tokaji, Ms. Davis mentioned the Golden Week, and it has been discussed from time to time during all this. Some saw the Golden Week as an opportunity for rampant fraud. You called the Golden Week once one of the best features of Ohio's system. Tell me why you said that, and reassure all of us in this room, reassure

this Subcommittee, if you would, what systems are in place to make sure that this, for all intents and purposes, 5, 6 days of election day registration, that it is fairly done, efficiently done, and people's right to vote is protected, but we are protecting against fraud at the same time?

Professor TOKAJI. So as a matter of Ohio law, as you mentioned earlier, a law that passed a Republican State legislature and was signed by Governor Taft, we have no-excuse absentee voting, which means anyone is entitled to vote absentee, and that includes early voting.

This is actually more secure than voting on election day because you have plenty of time to check whether the individual is, in fact, registered and eligible to vote before the ballot actually gets counted. It cannot as a matter of constitutional law get counted until election day. And the reason I said I think it is one of the best features of Ohio law is if we look at the data from around the country on the reforms that actually improve turnout, allowing one-stop shopping, allowing voters simultaneously to register and cast their ballots is the one reform that across jurisdictions over a long period of time has been shown to result in substantial increases in turnout. We need more eligible people voting, not fewer.

Senator BROWN. So you are arguing that—this is a very important point, I think, to make. You are arguing that if you go in on October—what are the dates of the Golden Week this year?

Mr. FELLOWS. Early and absentee starts October 2nd this year.

Senator BROWN. Okay. So for those 5 days, 5, 6 days, if Carrie Davis goes in—you live in Franklin County.

Ms. DAVIS. Yes.

Senator BROWN. If Carrie Davis goes into her Franklin County Board of Elections and votes during—where I assume she is probably already registered, but if she is not, she goes and registers and votes that day, one of those days, the protections against fraud are actually better aimed at her, if you will, than they are if Carrie Davis registers prior to that and goes to vote back in her Columbus precinct on election day.

Professor TOKAJI. That is precisely right, because you have plenty of time—at least 30 days before the ballot will actually be counted where you can actually check to make sure the person——

Senator BROWN. The ballot will be in an envelope with her name on it, and if somebody challenges it and she can be shown not to be a legitimate voter, they will set that ballot aside for challenge, but it will never be counted unless—it may not ever be counted because she might not have been a real voter.

Professor TOKAJI. Yes, which almost never happens. And, by the way, I can count on no hands the number of incidents of fraud associated with this 5-day period, the so-called Golden Week.

Senator BROWN. Okay. Thank you, Mr. Chairman.

Chairman DURBIN. I want to thank this panel. I want to thank Professor Tokaji, Mr. Arredondo, Ms. Davis, Mr. Fellows, and Mr. Moore for joining us here. I know it is a personal sacrifice. I am glad that we did not completely mess up your family vacation, Mr. Fellows. Thank you very much for being here, all of you, as part of this hearing.

This is not the last of these hearings. Unfortunately, we have a lot of other States facing the same basic question. I will continue to ask the same question of each panel: What is the incidence and experience of voter fraud that gave rise to the change in State law? We now have the answer in Ohio and the answer in Florida, and the answer is there is no evidence of fraud that gave rise to this change in the law. But we do know what the law will do. It will reduce the likelihood of voting for some Americans. It will make it inconvenient and a hardship when, in fact, we should make it as easy as legally possible for every American to vote. We are a stronger democracy when more people participate in this democracy. And we owe it to those who fought for these rights over the years and to the men and women in uniform today who still fight for those values that we should never, ever take for granted.

And for those who say, "Well, it will not affect me; I get off on election day, and it is no big problem," it does affect you because it affects this country that we live in, the values of the country that we live in, and the very basic concept of whether or not the right to vote for every American is worth fighting for, whether it is on a battlefield or in a hearing before a legislative committee.

So I thank you for being here and being part of the record that we have made today. You are not alone in your interest in this issue. We have statements from dozens of organizations, including the former Ohio Secretary of State Jennifer Brunner, Northeast Ohio Voter Advocates, Ohio Women with Disabilities Network, Project Vote, ACLU of Ohio, Advancement Project, AFL–CIO of Ohio, Mayor Earl Leiken of Shaker Heights, the National Action Network, Northeast Ohio Coalition for the Homeless, Ohio Education Association, Pipefitters Union, Rabbis Richard Block and Robert Nosanchuk, Reverend Stanley Miller, State Representative Michael Stinziano, Stuart Garson of the Cuyahoga County Democrats, the Lawyers' Committee for Civil Rights, the Leadership Conference on Civil and Human Rights, the Citizens Alliance for Secure Elections, and the Harvard Community Centers, and without objection, their statements will be entered into the record, and I thank them.

[The information appears as submissions for the record.]

Chairman DURBIN. For the witnesses who are here today, there is a possibility that you will be sent written questions by way of followup, and I hope that you can respond on a timely basis.

I want to thank Senator Brown for inviting me here today, inviting the Committee, and if there are no further comments from our panel or colleagues, I thank our witnesses and everyone in attendance for their interest in this important issue.

This hearing stands adjourned.

[Whereupon, at 11:15 a.m., the Subcommittee was adjourned.]

[Additional material submitted for the record follows.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Witness List

Hearing before the
Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights

On

"New State Voting Laws III: Protecting Voting Rights in the Heartland"

Monday, May 7, 2012
Carl B. Stokes United States Court House
801 West Superior Ave., Cleveland, OH 44113
9:30 a.m.

Panel I

The Honorable Marcia L. Fudge
United States Representative
State of Ohio

Panel II

David Arrendondo
Director of International Student Services
Lorraine County Community College
Elyria, OH

Carrie L. Davis
Executive Director
League of Women Voters of Ohio/Education Fund
Columbus, OH

Dale Fellows
Republican State Central Committeeman
Lake County Republican Party, Executive Committee Member
Painesville, OH

Gregory T. Moore
Campaign Director
Fair Elections Ohio
Cleveland, OH

Daniel Tokaji
Professor of Law
The Ohio State University, Moritz College of Law
Columbus, OH

PREPARED STATEMENT OF REPRESENTATIVE MARCIA L. FUDGE

Representative Marcia L. Fudge
Testimony (As Prepared for Delivery)

Senate Judiciary Committee Field Hearing: *Ohio Voting Laws*
May 7, 2012 at 9:30am – Carl B. Stokes U.S. Court House

Thank you, Chairman Durbin, and to our Ohio Senator, Senator Sherrod Brown, thank you.

Thank you for holding this timely and important field hearing today in my home district, *the 11th Congressional District in the great state of Ohio.*

Mr. Chairman, the people of Ohio have spoken. Last year, a coalition of voting rights advocates delivered more than 300,000 valid signatures in opposition to Ohio House Bill 194.

This action, as carried out by the people of Ohio, satisfied the requirement necessary to place a referendum on the November 2012 ballot to repeal House Bill 194.

According to its proponents, the bill "makes numerous efforts to ensure the integrity of the elections process and to simplify the process."

This statement could not be further from the truth.

Ohio House Bill 194 represents a reversal of voting rights in the state of Ohio. *It represents confusion. It represents disenfranchisement.*

If House Bill 194 officially becomes law, it would *reduce access* to voting by *shortening* the early voting period. It would *decrease* the responsibility of poll workers to direct confused voters to their correct precincts. This bill would make it *more difficult* for citizens to cast absentee ballots and *complicate* provisional voting. House Bill 194 *even eliminates the incredibly popular and effective* early voting on Sundays.

After House Bill 194 was signed by the Ohio Governor, House Bill 224 passed both houses of the Ohio General Assembly.

House Bill 224 is a bill that aims to improve voting for our servicemen and women and oversees voters. House Bill 224 also amends parts of House Bill 194. One of those amendments eliminates in-person voting the weekend before an election, thus adding to the problems facing Ohio voters.

Recently, the Ohio General Assembly reached a "*cross-roads*" of sorts. The legislature introduced Senate Bill 295 to repeal House Bill 194.

There are two very significant problems with Senate Bill 295. *First*, it is an attempt to remove the referendum from the ballot, and thus override the constitutional right of voters to decide the fate of House Bill 194 in November.

Secondly, this bill would not completely repeal House Bill 194. It would not fully restore early in-person voting because of the subsequent amendment made to House Bill 194.

Today, many questions still remain. How will the Ohio Legislature untangle this mess? How will Ohio ensure that the confusion already created won't manifest itself *before and on Election Day* in November? What must be done to ensure that the constitutionally guaranteed right afforded by the referendum process is protected?

Ohioans and every citizen across this nation need to know there is a concerted effort underway to limit, suppress and undo the *uninhibited* right to vote. This sophisticated, organized and well-funded effort is sweeping across America. From Ohio to Wisconsin, down to Florida and across to Texas, ***the franchise is under attack***.

The plan is clear – prevent certain pre-determined segments of the population from exercising their right to vote. Students, the elderly, the disabled, minorities and low-income voters are ***all targets***.

According to the Brennan Center for Justice, 41 states introduced 176 restrictive voting bills since the beginning of 2011. A total of 74 bills are pending in 24 states.

The franchise is under attack.

The tactics being used today are not new. What we called a poll tax 50 years ago, is now voter photo-ID laws. Instead of the physical threats of the 50s and 60s - ***the billy clubs and the dogs***- unnecessary and confusing laws are being used to prevent turnout in targeted communities.

The Election Protection Coalition reported disturbing examples of recent deceptive tactics and voter intimidation. In Milwaukee, fliers were distributed telling voters they cannot vote if they have not paid their parking tickets. Reports of armed gunmen intimidating, mocking and misinforming voters at heavily Latino precincts were reported in Arizona. *And right here in Ohio*, there were reports of fliers falsely providing that Republicans vote one day and Democrats vote the next day.

The franchise is under attack.

Suppressive state laws only perpetuate these deceptive tactics. The men and women elected to represent voters are only adding to the confusion with bills like Ohio's Senate Bill 295 and House Bill's 194 and 224.

The right to vote is among the most important rights we enjoy as Americans. As said best by my friend Congressman John Lewis, "***This right is almost sacred.***" Because of its importance – because of the power behind the vote – it is the ***one right*** most often compromised. And for the same reasons, ***it is the right we cannot allow to be denied.***

Dr. Martin Luther King once said, ***"The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy."*** We are living in a time of great challenge and controversy. The most vulnerable among us are ***once again under attack.***

Chairman Durbin and Senator Brown, again, thank you for holding this hearing today. Thank you for your efforts to protect the franchise – I stand with you.

We must continue to protect the right to vote.

I yield back the balance of my time.

PREPARED STATEMENT OF DAVID G. ARREDONDO

"New State Voting Laws III: Protecting Voting Rights in the Heartland"
Monday, May 7, 2012 at 9:30 a.m., at
the Carl B. Stokes United States Court House, 801 West Superior Ave., Cleveland, OH 44113.

Opening Statement by David G. Arredondo

Good Morning Everyone.

Today I come before you to speak in favor of supporting fair and honest elections for all American citizens. It is our civic duty to ensure the integrity of our electoral process at the Federal and state levels. Voting is a privilege and a responsibility

Our current system is actually a composite of fifty systems that vary from state to state. Some require photo identification, others do not. Some allow for no-fault absentee voting. Others do not. Some allow for Early voting or internet voting. Currently 16 different states have enacted a photo-ID mandate. Fifteen states, including Ohio, require voters to show some form of personal identification such as a utility bill or a bank statement.

It would be helpful if we had a more uniform system of voting, especially when federal elections like the election of a president are concerned. However, only Congress and the Senate can make such a change. In an effort to make voting "more easy" and "more accessible," Congress and state legislatures have lowered the bar for voter registration and the casting of ballots. Some proponents would have you believe that any law regulating elections is an attack on their constituents' rights. Using that logic, voting should be extended unconditionally, year round, 24/7, to ensure that their candidates win. Fortunately, the vast majority of Americans do not agree with this premise.

At one time, America did have a voting system that that could be above suspicion of fraudulent registration and voting. But that system went out the door with the Motor Voter Law of 1993, enacted by a Democratic majority Congress and signed by President Bill Clinton. Through Motor Voter, it is possible for foreign nationals to vote. I was recently made aware that a former foreign student was registered to vote in Lorain County. This he was able to do when he happened to renew his drivers license and was offered the opportunity to register to vote. No proof of citizenship was required. Fortunately, he has never attempted to vote. American college students have the opportunity to hold multiple voting registrations in their home state as well as the state where they attend school. There is no way of cross checking these.

Allow me to share with you how it is possible to reform a one-time, pathologically corrupt voting system, that of Mexico's. By no means do I suggest that our electoral system is as corrupt as Mexico's was prior to 1996. I do however advocate a major reform of our current system.

Following the wide-spread corruption of the 1988 presidential race, all major parties agreed to the formation of a non-partisan, non-governmental, electoral commission that would conduct the voting process and ensure fair and honest elections.

In October, 1990, the Federal Electoral Institute (IFE) was created and set about the task of developing a system for federal and state elections through hard-fought reforms enacted in 1992, 1993, and 1994. The first presidential election under the new system in 2000 resulted in the election of the first non-PRI (Institutional Revolutionary Party) candidate, Vicente Fox, elected president since 1928 in probably the cleanest presidential election in Mexican history up to that time. In 2006, Felipe Calderon was elected president in a close election despite unfounded charges of fraud by his opponent.

The electoral system created by IFE is open and transparent. Every eligible Mexican citizen has a tamper-proof photo-ID card with a thumbprint and an embossed hologram. All voters are required to vote in their neighborhoods and in 2005, the law was amended to allow for "external," or out of country absentee voting. There is no such thing as a provisional ballot. All elections are held on Sundays. Mexico is a relatively poor country yet does not lower standards to allow for the poor to register and vote as is done in America. No excuses are made while setting a high standard for all with no discernible drop in voter participation by the lower economic classes. In 1994, voter registration stood at 45,279,053. In 2009, registration was 72,347,857.

The registration process requires all citizens to personally enroll. Applicants are photographed and fingerprinted and then required to personally return to collect their voting credential. Countries like Hati and Iraq have adopted certain aspects of the Mexican electoral system to various degrees. The purple thumbs shown by Iraqi voters in their first free elections is a practice first employed in Mexico.

Americans can also learn a few things from an electoral system that is above reproach.

PREPARED STATEMENT OF CARRIE L. DAVIS

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Statement by
Carrie L. Davis, Executive Director
League of Women Voters of Ohio
Presented to the
United States Senate Judiciary Committee,
Subcommittee on the Constitution, Civil Rights and Human Rights
May 7, 2012 Field Hearing on
"New State Voting Laws III: Protecting the Right to Vote in America's Heartland"

Thank you Chairman Durbin, Ranking Member Graham, Senator Brown, and members of the Subcommittee for holding this field hearing which will help focus our nation's attention on voter suppression legislation that is sweeping this country and threatening the integrity of the November 2012 election in many states, including key swing states like Ohio. The right to vote and have your vote counted is the very foundation of our democracy and recently it is under attack.

My name is Carrie Davis, and I serve as Executive Director of the League of Women Voters of Ohio. The League of Women Voters has over 140,000 members and supporters nationwide, with Leagues in all 50 states and in more than 700 communities across the country. The League has been fighting for equal access to the polls since our inception 92 years ago, when our organization was formed by those who successfully fought to gain the right to vote for women.

A. The League of Women Voters has actively fought against repressive voting legislation across the country in 2011 and 2012, and that fight continues.

During the last year and a half, we have experienced an unprecedented attack on voting rights. According to the National Conference of State Legislatures, 341 photo ID bills alone have been introduced in 41 states in 2011-2012. The League actively opposed a wide variety of voter suppression legislation in 22 states. To date, four of those states have new laws that create new and in some cases insurmountable barriers to the polls, and five more states' suppressive laws are awaiting legal decisions.

This assault on voters is sweeping across the country, state by state, and is one of the greatest self-inflicted threats to our democracy – our way of governing – in our lifetimes. These new laws threaten to silence the voices of those least heard and rarely listened to in this country – the poor, the elderly, racial and ethnic minorities, the young and the differently abled. These state legislative threats include requiring restrictive photo ID and or proof of citizenship in order to

vote. They include restricting independent voter registration drives, eliminating Election Day registration, dramatically shortening time periods for early and absentee voting, and imposing presumptions of voter error.

The League of Women Voters opposes these new laws and legislation because:

- They risk disenfranchising millions of eligible voters
- They will cost millions of dollars to implement
- There is no evidence that there is a need for such draconian measures

In Wisconsin the state not only passed a strict voter photo ID bill, but they also made it more difficult for organizations like the League to register new voters. Previously a volunteer could be trained by the state's Government Accountability Board to registered voters anywhere in the state but now our volunteers must be trained by each individual municipality to register voters from that jurisdiction and there are over 1,800 municipalities. Regarding their ID bill, the League in Wisconsin has challenged their new law based on the Wisconsin Constitution. This action has resulted in a permanent injunction of the law ensuring photo ID will not be required in a series of elections relating to primary and recall elections occurring in April, May, June and August. A final determination is still pending.

The state of Florida has also passed a law that puts new onerous restrictions on organizations that want to conduct voter registration drives in the state. The League in Florida has been forced to stop registering voters in the state because of the potential penalties in the new law, including fines up to $5,000 and a third class felony. The League is also actively seeking denial of pre-clearance of their new restrictions on third party registration.

These laws have added new bricks to the wall of obstacles some face on their way to the ballot box. These laws are confusing, time consuming and cost-prohibitive for many law abiding citizens, including some who have been exercising their legal right to vote for decades and are now unsure if they can "jump high enough" to get to the ballot box.

Not surprising, many of these battles over voting rights are happening in states where close vote counts will have a dramatic impact. If the votes are close, and there are disputes over implementation of new laws, there is a real risk that our nation could face a repeat of disputed election results being tied up in lengthy and complicated litigation and throwing doubt on the legitimacy of the election results.

B. The League of Women Voters of Ohio and its coalition partners have been actively engaged in a year and a half long battle to fight off costly and confusing legislation that, if implemented, runs the risk of returning Ohio to the problems of 2004[1].

[1] Ohio's 2004 election woes were well chronicled. They included long lines and wait times up to five hours at the polls on Election Day, controversy over issuing or counting provisional ballots cast in the wrong precinct, and the proper format for voter registration forms. In 2006, the Ohio General Assembly enacted legislation that expanded mail-in absentee voting to all voters, rather than those meeting a list of select criteria, and created the option of in person early voting. These were done in large part to remedy the 2004 problem of long lines at the polls. For a more

The League of Women Voters of Ohio (LWVO) has ardently advocated for sensible election policy based on one of the League's founding principles: "The League of Women Voters believes that every citizen should be protected in the right to vote." The consent of the governed means that we absolutely believe in the importance of every vote, and that the right to vote is hollow without access and unless every vote is counted. Regrettably, the 2011-2012 Ohio General Assembly has not emulated this principle.

Voting is also considered sacrosanct under the Ohio Constitution, which states in part:

> "Every citizen of the United States, of the age of eighteen years, who has been a resident of the state, county, township, or ward such time as may be provided by law, and has been registered to vote for thirty days, **has the qualifications of an elector, and is entitled to vote at all elections...."**

Article V, Section 1 of the Ohio Constitution (emphasis added).

The Ohio Constitution authorizes the legislature to enact laws concerning residency. However, once residency is established and the citizen has been registered for thirty days, that citizen is "entitled to vote at all elections." That statement is very clear. It does not say that you are only entitled to vote if and when the voter jumps through additional hoops.

1. During the 2011-2012 legislative session, the Ohio General Assembly passed legislation that would roll back the progress that has been made since 2004 and that suppresses the votes of countless eligible Ohio voters.

The Ohio General Assembly has moved several different election bills, so far, in the 2011-2012 legislative session. All of these bills include provisions that voter advocates, including the League of Women Voters of Ohio, opposed on the basis that they would harm voter access and were not needed.

- Voter ID - House Bill 159 (HB 159) would have imposed a restrictive photo identification requirement on all voters, whether voting in person or absentee. The House and Senate each passed different versions of the bill in the spring of 2011 but in the face of strenuous objections from good government groups such as the League, the legislature did not ultimately agree on a version to pass. However, even though the voter identification bill did not pass, many Ohioans mistakenly believe that it did. In both the November 2011 general election and the March 2012 primary, voter advocates received phone calls and written feedback from many voters, including long-time voters, who were confused as to what voter identification rules were currently in effect. We also heard of poll workers who were unsure what the law required. As presidential elections historically are the highest turnout elections, LWVO is concerned that many more voters and poll workers may have the same confusion this fall.

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thorough discussion of Ohio election history, please see Written Statement of Professor Daniel Tokaji as presented at the above-captioned field hearing.

- Systemic Elections Changes - At the same time, both chambers were also considering a pair of bills to make comprehensive election changes, Senate Bill 148 (SB 148) and House Bill 194 (HB 194). The two bills were eventually merged into HB 194, which was passed in June 2011. HB 194 included numerous changes that are harmful to voters, most notably: (a) a huge reduction in the dates for early in-person and mail-in absentee voting; and (b) worsening the problem of voters appearing at the right polling location but wrong precinct table, HB 194 removed the requirement that poll workers direct voters to the proper precinct. These will be addressed in more detail below.

- Three weeks after passing HB 194, the General Assembly added a slate of amendments onto a separate bill, House Bill 224 (HB 224), to make changes to the recently passed HB 194. However, after a successful referendum petition effort blocked HB 194 from taking effect, elections were once again thrown into confusion over whether the HB 194 referendum only blocked HB 194 from taking effect or if it also blocked part or all of HB 224 from taking effect. Even the Ohio Secretary of State had to request an Ohio Attorney General Opinion to divine the answer.[2]

- Most recently, in spring 2012, the General Assembly took up a bill to repeal HB 194 so that the referendum would not appear on the November 2012 ballot.[3] As of today, the Ohio Senate has passed SB 295, and the bill is currently pending on the House floor calendar.[4]

Collectively, all of this legislative tug-of-war has thrown Ohio elections into a state of confusion. Voters are not the only ones harmed; election officials and poll workers are too. It takes a lot of

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[2] On September 28, 2011, the Ohio Attorney General issued Opinion 2011-035 (available online at http://www.ohioattorneygeneral.gov/getattachment/7e57b6b7-1679-495c-901e-55cdaa7d5f80/2011-035.aspx) to clarify what effect the referendum on HB 194 would have on the effective dates of provisions in HB 194 and provisions in HB 224 that refer back to HB 194. The 13-page opinion delves into a constitutional analysis of the legislative and referendum processes, and it ultimately concluded that some provisions of HB 224 are stayed by the HB 194 referendum while others are not.

The Ohio Secretary of State then issued Advisory 2011-07 (available online at http://www.sos.state.oh.us/SOS/Upload/elections/advisories/2011/Adv2011-07.pdf) on October 14, 2011, which lists certain provisions of HB 224 that were stayed by the HB 194 referendum and also includes a list of other provisions that were not stayed.

[3] It is unclear whether the state constitution allows for legislative repeal of a bill that has never taken effect and is pending a referendum vote. To the best of the League of Women Voters of Ohio's knowledge, and that of our coalition partners, the Ohio Supreme Court has never addressed this issue. Perhaps even more troubling, members of the General Assembly have nonetheless rushed to pass a repeal bill despite its dubious constitutionality. See, e.g., "Batchelder On Board With Election Law Repeal Bill Teed Up For Senate Committee Vote," 3/19/2012 Gongwer Report ("Speaker Bill Batchelder (R-Medina), who previously expressed concern that repealing a law during a citizen-initiated referendum might prove unconstitutional, now thinks the House should follow the Senate's lead, according to spokesman Mike Dittoe.Speaker Batchelder still has some lingering constitutional misgivings, he said. 'But that's only because we have no precedent. We don't know what scenario will play out.'").

[4] Gregory Moore, with Fair Elections Ohio, will address the HB 194 referendum and SB 295 repeal in more detail in his written statement and testimony to this Committee.

time and planning to run a smooth election, and that cannot happen when the rules are continually in flux. The steady stream of proposed changes in the midst of a presidential election cycle makes it harder for election officials to draft and implement their election administration plans. It also makes it harder for election officials to train poll workers if whatever rules are in effect today may change tomorrow.

Perhaps the biggest impact is the confusion this causes voters and poll workers. Yet, none of the legislature's proposals has called for, let alone funded, increased poll worker training or voter education to keep up with the ever changing election legal landscape.

One need look no further than the Ohio voter identification law to underscore the need for voter education and poll worker training on any significant election law changes. The Ohio legislature imposed the current voter identification requirements in House Bill 3 (HB 3), which was passed in 2005 and went into effect in 2006. Despite the fact that HB 3 provided for voter education, and that poll worker training every year since has included voter identification rules, we continue to receive reports from voters that some of them are confused about what forms of voter identification are accepted and that some poll workers will not accept forms of lawful identification. If confusion remained prior to 2012, then the recent flurry of legislation is going to make the problem worse, not better.

Unlike other election administration matters on which all sides may not always agree, I think we can all reach consensus on the idea that elections operate more smoothly when the participants – election officials, poll workers, and voters – understand the rules.

Prevailing wisdom among election officials and voter advocates is that major election changes should be made in off-year elections for this very reason – it takes time for election officials, poll workers, and voters to adapt. Making major changes in the middle of a presidential election, especially without any provision for voter education and poll worker training, is a recipe for confusion; and confusion leads to lost votes – whether due to inadvertent error or people capitalizing on that confusion to suppress voter participation.

2. HB 194, if it were to go into effect, would not only risk suppressing votes of specific communities, it would lead to – rather than avoid – longer lines on Election Day, increased costs to cash-strapped counties, and the likelihood of even more lawsuits.

Numerous voter advocates cautioned the Ohio General Assembly against enacting HB 194. Groups including the nonpartisan League of Women Voters of Ohio, Miami Valley Voter Protection Coalition, Northeast Ohio Voter Advocates, Common Cause Ohio, Coalition on Homelessness and Housing in Ohio, ACLU of Ohio, and the Ohio Women with Disabilities Network were joined by academic and national experts in urging the legislature not to pass such a harmful law, especially on the eve of a presidential election year.

Many of the changes made by HB 194 would reverse the progress that Ohio has made in the years since the well-chronicled problems of the 2004 election, worsen existing problems, and create new ones.

HB 194 would impose severe cuts to the time periods for early in-person and mail-in absentee voting

In 2006, the Ohio legislature expanded early voting options. It moved from excuse-only mail-in absentee voting to no-fault absentee voting that is open to all registered voters. It also created in-person early voting at the county Board of Elections during the same time period. Thus, beginning in 2006, Ohio voters could cast an early ballot – either in person or by mail – beginning 35 days before Election Day up through the day before.

HB 194 drastically cuts both time periods. It would reduce the start of mail-in voting from 35 days to 21 days before Election Day, and it would reduce the start of early in-person voting from 35 days to 17 days before Election Day. It also ended early voting at 6p.m. the Friday before Election Day. This translates to a reduction from the current 5 weeks of early voting by mail or in person to 3 weeks of vote by mail and 2 weeks of early in-person voting.

HB 194 also cut the hours and days that early in-person voting could be held by the counties. Evening hours would no longer be permitted, as early voting would be limited to regular business hours. No more Sunday voting. Saturday voting would be limited to 9a.m. until 12 noon – no afternoons or evenings.

The increase in absentee voting has helped prevent a repeat of the long lines of voters that caused hardship for voters and embarrassed Ohio in 2004. To that same end and to increase convenience for voters, boards of elections have initiated a variety of innovations that have also been successful in reducing some of the stress on poll workers and have afforded voters a variety of means to cast their vote. Several legislators falsely asserted during hearings on HB 194 that these differences violate the right to equal protection embodied in the 2009 settlement of the League's lawsuit against the Secretary of State, *League of Women Voters of Ohio v. Brunner*. Not so, the LWVO lawsuit and settlement were designed to ensure a fair and even playing field protective of voters' rights. The aim was to prevent voters from being disenfranchised or unduly burdened by individual counties that were interpreting and applying the law in varying ways that took away the right to vote. Neither the settlement nor the right to equal protection provides that counties should only do the minimum – and no more. Counties may provide additional assistance to voters beyond the minimum the law requires, taking into account their particular demographic, geographic and financial circumstances.

Proponents of HB 194 also claimed that reduced early voting would save county Boards of Elections money. That, too, is questionable. During legislative hearings on HB 194, Betty Smith, then-Deputy Director and now Director, of the Montgomery County Board of Elections (which includes the City of Dayton) testified that their county had been able to save money by consolidating precincts due to the high number of increased early and absentee voting that significantly reduced Election Day voting at the polls.[5] Director Smith further testified that if HB

[5] Director Smith's testimony explained the basis of their consolidation by the numbers:

194's cuts to early voting occurred, the Board would have to un-consolidate precincts (which itself is neither easy nor without cost) or else risk long lines at the polls. Montgomery is not the only county facing this reality, as many Ohio county Boards of Elections have recently consolidated precincts to save money.

Between 2008 and 2010, fourteen Ohio counties reduced the number of precincts they had by more than 15%. These include some of Ohio's most populous counties: Cuyahoga (Cleveland area) reduced by 26%, Hamilton (Cincinnati area) by 23%, Lake (Cleveland suburb) by 27%, Lucas (Toledo area) by 28%, and Sandusky by 19%. These fourteen counties accounted for 31% of the total votes statewide in 2010.[6] While the precinct data analysis for the 2012 general election cannot yet be completed, anecdotally we know that additional counties have consolidated precincts since 2010 – for example, Summit County (Akron area).[7]

Finally, these cuts will negatively impact a lot of voters.

The demand for both early in-person and mail-in absentee voting is very high. If we examine data from the Cuyahoga County Board of Elections, Ohio's most populous county and one of the largest voting jurisdictions in the nation, their data bears this out. In the years since absentee and early voting were expanded, the percentage of absentee ballots that made up the total number of ballots counted has increased: 19.83% in November 2006, 14.25% in November 2007, 39.55% in November 2008, 44.61% in November 2009, and 46.73% in November 2010.[8] Furthermore, by eliminating the last three days of early voting on the Saturday, Sunday, and Monday before

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> Noting the trends in absentee voting, and thus the reduction of voters at the polls on Election Day, Montgomery County executed a precinct consolidation program in 2009. We consolidated 548 precincts into 360, while still maintaining the 1,400 active voters or less in each precinct. When we studied the voter statistics, we found that the number of mailed in absentee voters from 2004 to 2008 had doubled from 24,500 voters to 43,000 voters. We had been watching this trend from 2005 to 2008 and considered this trend as a factor throughout the precinct consolidation process. Likewise, for in office voting, from 2006 to 2010 we saw 6 times the amount of in office voters. In 2008 alone, Montgomery County saw 28,000 in office voters over a period of 35 days. With the implementation of the precinct consolidation project, we were able to save our county approximately $200,000 per year.
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> Testimony of Betty Smith, Deputy Director, Montgomery County Board of Elections, on HB 194, delivered to the Ohio House State Government and Elections Committee in 2011.

[6] Data gathered from Election Results available on the Ohio Secretary of State website and presented in testimony to the Ohio House State Government and Elections Committee during the May 2011 hearings on HB 194 by Counsel for the nonpartisan Miami Valley Voter Protection Coalition, Ellis Jacobs.

[7] "Summit County will have 298 precincts in the November election, down from 475," Stephanie Warsmith *Akron Beacon Journal*, April 26, 2012.

[8] November 2010 Official Canvas Certification Data, Cuyahoga County Board of Elections, available online at http://boe.cuyahogacounty.us/pdf_boe/en-US/ElectionResults2011/Nov10OfficialCanvasCertificationData.pdf

Election Day, HB 194 would prevent approximately 105,000 voters who would otherwise vote during this time.[9]

In addition to the raw number of voters impacted by the restrictions in HB 194, some voters will be more impacted by these cuts than others.

- Voters with disabilities will be negatively impacted. HB 194 eliminates curb-side voting if a polling location is deemed ADA accessible. However, what is considered accessible by an official may not in fact truly be accessible for every voter. Ohio has had curb-side voting for many years for people who cannot get into the polling site. In addition, HB 194's restriction on time for early voting also impacts voters with disabilities who may have to rely on others for transportation to the polls or early voting locations. These provisions have the effect of limiting and discouraging voters with disabilities, as well as some elderly voters.[10]

- In terms of demographic characteristics, early voters were more likely than election-day voters to be women, older, and of lower income and education attainment.[11] For example, "early voters are much more likely to be women than day-of-election voters, 62.1 to 48.8%. And thus election-day voters were mueh more likely to be male, 51.2 to 37.9%."[12]

- HB 194's restrictions also threaten to take away immensely popular community efforts to help get voters to the polls. In the Cleveland area in 2008, several predominantly African American churches promoted early voting through "souls to the polls" programs that arranged to take parishioners to vote early after Sunday services.[13] Under HB 194, county Boards of Elections are prohibited from offering any early voting hours on Sundays.

These represent just a few examples of the specific harms that would impact Ohio voters if HB 194 were to go into effect. Although even if Ohioans are successful at blocking HB 194, we have to remain vigilant that these same harmful provisions are not put in place via other legislation or policy decisions.

Absentee Ballot Application Mailings

A related absentee voting concern is the recent dispute over election officials mailing unsolicited absentee ballot applications to all registered voters. Following the 2006 expansion of absentee voting to all voters, many county Boards of Elections promoted this option by mailing absentee ballot applications to all registered voters. Urban counties in particular used this method to

[9] See Written Statement of Norman Robbins, Research Director, Northeast Ohio Voter Advocates, presented as part of this field hearing.
[10] Provided by Karla Lortz, co-founder of the Ohio Coalition of Citizens with Disabilities and the Ohio Women with Disabilities Network.
[11] "A Study of Early Voting in Ohio Elections," Ray C. Bliss Institute of Applied Politics, University of Akron (2010), available at http://www.uakron.edu/bliss/research/archives/2010/EarlyVotingReport.pdf
[12] Id.
[13] See "Take your souls to the polls," ACLU podcast, available at http://www.aclu.org/voting-rights/take-your-souls-polls-voting-early-ohio

encourage more voters to cast a ballot early, and it was successful. Counties that mailed absentee applications to all voters saw a boost in early voting. Because so many voters cast a ballot early, this helped to reduce lines and wait times on Election Day at the polls. As mentioned above, many counties, such as Montgomery and Summit, were able to consolidate precincts due to lower Election Day demand.

HB 194 took away this popular option, by prohibiting county Boards of Elections from sending unsolicited absentee ballot applications. Under the proposed new law, Boards of Elections could only send absentee applications upon request from the voter. Notably, while HB 194 has not gone into effect pending the referendum vote this fall, this provision has nonetheless taken effect at the instruction of Ohio Secretary of State Jon Husted. In Directive 2011-26, which was issued August 22, 2011, Husted prohibited county Boards from sending such unsolicited mailings.

This policy change once again saw Ohio moving backwards in an area where progress had been made. Sending unsolicited absentee applications was successful for county Boards of Elections, as it resulted in more voters casting a ballot early and thereby lowering the number of voters the county needed to serve on Election Day. The program was also valuable from the voters' standpoint, for which absentee voting became that much more convenient. In fact, voters in those counties came to depend on receiving an application in the mail without having to request it. Unlike election officials, most voters are unaware of Secretary of State Directives. Many voters in counties that had previously sent unsolicited applications found themselves waiting for one to arrive in the mail in 2011.

Cuyahoga County, in particular, had success sending unsolicited absentee applications and did not want to lose that option. In response to Directive 2011-26, the Cuyahoga County Executive proposed that a county office other than the Board of Elections send the absentee applications to all county voters. Secretary Husted disagreed, but he reached an agreement with Cuyahoga County Executive Ed Fitzgerald, under the terms of which, Cuyahoga would not send the mailings in 2011, and, in exchange, Husted's office would mail them statewide in 2012. While it is our understanding that Secretary Husted intends to abide by this agreement, it is our sincere hope that the Secretary of State's plan will ensure that absentee ballot applications are sent not only to now-existing registered voters, but that it will also provide for voters who newly register, move to Ohio, or update their registrations in the months leading up to the November 2012 election.

Worsen "right church, wrong pew" problem

Recent elections -- especially in Ohio, but elsewhere as well -- have shed light on the problem of voters showing up at the correct polling location, but not being directed to the proper precinct table within multiple-precinct locations. This is commonly referred to as "right church, wrong pew" and has led to questions over whether part of all of those ballots should be counted and what criteria should be used to decide.[14]

[14] For more detail on this issue and related litigation, please Professor Daniel Tokaji's written statement and testimony.

Ohio law currently *requires* poll workers to direct voters to the correct precinct (although this occasionally does not occur due to poll worker error or other factors). Rather than call for improved poll worker training or Election Day procedures, the Ohio legislature proposed to *prohibit* poll workers from directing voters to the proper precinct. When this met with outrage, the legislature changed the legislation so that the final enacted version of HB 194 made it *optional* for poll workers to direct voters to the correct precinct. As numerous voter advocates and lawyers pointed out during legislative testimony, making direction optional invites Equal Protection violations and discriminatory treatment of voters due to a poll worker's wholly unbridled discretion.[15] It thus invites costly litigation.

It also increases the likelihood of uncounted ballots. Because of the ongoing consolidation of polling places into fewer voting locations, it is increasingly likely that voters may get to the correct voting location and then be directed to the incorrect precinct table. If a poll worker does not catch the error, the voter will vote a provisional ballot in the wrong precinct, which will not be counted because, as this bill is written, the voter is required to vote only in his own precinct. His or her vote would not count if it is cast in the wrong precinct. Most people do not live and breathe elections as some of us do, and it is hardly reasonable to expect someone to know s/he is in precinct16B not 16C. Nor do we believe that any voter will deliberately choose to vote in the wrong precinct. So the reason that a voter votes in the wrong precinct is an error on the part of the polling place officials. To cast out such votes deprives legitimate voters of their right to vote. In 2008 alone, more than 14,000 votes from legitimately registered voters were not counted because they were cast in the wrong precinct. We strongly believe such votes should be counted for all races and issues for which the voter was eligible to vote.

Lastly, some advocates pointed out that this provision, along with other provisions of HB 194 that outright prohibit or make optional for poll workers to assist voters, makes no sense, fiscal or otherwise. Counties hire, train, and pay poll workers to run the polls on Election Day. But HB 194 tells those poll workers that they are no longer required to help voters, and, in the case of filling out provisional ballot paperwork, are prohibited from helping voters (unless disability laws otherwise require). It is wholly irrational to hire, train, and pay poll workers and then pass a law the gives those same poll workers discretion *not to help some voters.*

Conclusion

Ohio House Bill 194 includes many provisions that, if they were to go into effect, would harm Ohio elections. Incredibly popular and successful early voting programs would be curtailed.

[15] For example, say you go to your polling place on Election Day, and you're not sure which precinct you are in because the precinct lines were just changed. The poll worker happens to be your next door neighbor who is mad at you for not cutting down a tree leaning into their yard, or the poll worker is a disgruntled former co-worker, or the poll worker is known for openly making racist remarks. If that poll worker is not required by law to direct you to the right precinct, they could simply choose not to. In all probability, most cases of failure to direct the voter to the correct precinct will not be due to evil intent. Say you have a poll worker who wasn't paying attention to the part of training that explains how to identify a voter's correct precinct, because they knew they were not required to do that anyway. In any of these hypothetical scenarios, the voter's ballot is at risk because HB 194 would impose a penalty (the ballot not counting) while at the same time not requiring that the voter be directed to the only precinct where his ballot could count.

Reductions in early voting could be especially harmful in many counties that consolidated precincts, forcing them to either un-consolidate or risk the long lines that plagued Ohio in November 2004. Voters in multiple-precinct polling places would face greater risks of having their vote not count because they were not directed to the proper precinct table in a room full of such tables. In short, Ohioans' ability to cast a vote and have it counted would be negatively impacted by a variety of potential obstacles.

Ohio legislators and voters need to reject HB 194 and the many damaging provisions it contains. Furthermore, Ohio policy-makers are urged to refrain from any more election changes this year. The onslaught of election legislation in 2011-2012 has already caused too much confusion. If Ohio policy-makers truly want to improve elections this year, then they should focus on voter education and poll worker training to help alleviate the confusion caused by all the recent changes and proposed changes.

The League of Women Voters of Ohio, a nonpartisan political organization, encourages Informed and active participation in government, works to Increase understanding of major public policy Issues, and Influences public policy through education and advocacy.

PREPARED STATEMENT OF DALE FELLOWS

TESTIMONY ON OHIO VOTER ID LAW
Dale Fellows

Chairman and members of the Committee, it is an honor and privilege to address you today about Ohio's voter ID law.

By way of introduction, I have been a Board Member of the Lake County Board of Elections here in Ohio for a total of almost 20 years. I began serving with my first appointment in March of 1990, left in January of 1997 to serve as a County Commissioner and returned in 2002 where I have recently been appointed to another 4 year term that started this March 1st. I have had the privilege of serving under several Ohio Secretaries of State; Sherrod Brown, Bob Taft, Ken Blackwell, Jennifer Brunner, and now Jon Husted. I was also selected to serve as one of the two Ohio representatives to the Standards Board of the Federal Elections Assistance Commission as well as Ohio's Board of Voting Machine Examiners by former Secretary of State Jennifer Brunner. I still serve on the later board. Additionally, I have been involved with our bi-partisan Ohio Association of Elections Officials for many years in several capacities, and am the immediate past President of that organization which represents all Board Members, Directors, Deputy Directors, and staff of all 88 county Boards of Elections in Ohio.

Our current voter ID law, passed in 2006, requires only one of the following forms of identification when voting; a current & valid federal or state photo ID that contains the voters current address, a current utility bill or bank statement, a government check or paycheck or other government document. If the voter does not have any of these when voting, or they refuse to provide one, they will be allowed to cast a provisional ballot which allows the voter and the local Board of Elections to verify & validate the voters eligibility to have her/his ballot counted. Since this laws inception, election officials, election-day poll workers, and voters have become very comfortable with the law and appreciate it. Many voters now come to the table with their ID in hand ready to give to the poll worker. It is interesting to note that when this law first went into effect I was shocked at how many people approached me at civic and non-political meetings/events about the new requirements saying in essence, "It is about time." When I inquired further about their comment, most had felt that people were being allowed to vote who were not eligible in Ohio and thus took away their legitimate vote. We must always remember that our most important role as elections officials is upholding the integrity of the voting process. Nothing can be more important than that. We can never disenfranchise an eligible voters right to cast a ballot or abridge a voters rights by allowing a ballot to be counted that should not have been counted. We must always have the voters confidence that our results and our Elections system has not been compromised in any way. This law is about as liberal a voter ID law as one could be with everyone having access to a provisional ballot and every effort being made to have the voter cast a regular ballot.

(at this point I will give some examples of attempted voter fraud in Ohio)

I applaud our system and the people who work it every day here in Ohio. I have heard people say, or infer, that since we do not have any high profile cases of people trying to fraud the system by voting illegally on election day that we do not need a voter ID law or a better voter ID law. To that I say, thank an elections professional as they are the ones responsible for that outstanding result. However, we must have laws in place to allow them/us to protect the system as well as to prevent fraud from ever happening and to, once again, not disenfranchise the legitimate voter here in Ohio. We have insurance policies for healthcare, for our homes, our personal property, our vehicles, and even our life. We certainly do not get rid of them when we are healthy or when nothing has happened to our home, or since no one has taken or damaged our personal property, or because we have never had a car accident, or we have not yet died. Voter ID laws are our insurance for fair and honest elections. The better those laws can be, the more integrity we will have in the system. We certainly would not get rid of our military in a time of peace.

As this relates to Ohio's voter ID law, we certainly do not want to get rid of what is working or weaken it in any way and, in fact, I know some would like to see it stronger by adding the photo requirement that is not part of our current law. If this were to be done we would have to acknowledge the religious rights of our large Amish & Menonite communities as well as any others that forbid personal photographs. There is also the concern of those who do not have a need for a photo ID in any other aspect of their life, and the cost as well as the inconvenience of having to obtain one. Additionally, I have heard the arguments about College students whose photo ID does not have their current/voter registration address. These are all serious considerations that would have to be addressed. Currently you can't do much of anything in your normal, everyday life without a photo ID. I recently had to drop off an annual registration form at Cleveland City Hall for my business and had to show a photo ID before entering the building. When recently making a purchase at a store with a bank issued debit/credit card my wife had to show a photo ID. Also, I see now that when taking the ACT & SAT test(s) for college a student will be required to show a photo ID. This peaked my interest because during the Ohio Senate hearings on a proposed change to the voter ID law last year that I had the opportunity to sit in on, several of the opponents of photo ID were college students or advocates for college students stating that the requirement would be too prohibitive but now a high school student will be required to have a photo ID to take the college entrance exam(s).

Voting is a right, a privilege and a responsibility that we should all take very seriously. It is the essence of our democracy. Election officials, legislators and voters should fight every day to protect that right, that privilege and that responsibility with all the fervor we can muster, and we must help protect every voters rights as well as the integrity of the system so there is the utmost confidence that every election is fair and honest.

Once again Mr. Chairman and members of the Committee, it has been an honor and a privilege to present this testimony today. I look forward to any questions or comments you might have for me.

PREPARED STATEMENT OF GREGORY T. MOORE

Before the Senate Judiciary Subcommittee

on the Constitution, Civil Rights, and Human Rights

Prepared Statement of

Gregory T. Moore,
Campaign Director

of

Fair Elections Ohio,

A state political action committee and
nonprofit organization supporting voting rights in Ohio

Monday, May 7, 2012 9:30 a.m.

Carl B. Stokes United States Federal Courthouse

801 West Superior Avenue

Cleveland, Ohio 44113

Subcommittee Field Hearing:

"New State Voting Laws III:
Protecting the Right to Vote in America's Heartland"

Chairman Durbin, Senator Brown, Congresswoman Fudge, I want to thank you for the opportunity to testify at this important hearing. My name is Greg Moore, and I serve as the Campaign Director of Fair Elections Ohio. Fair Elections Ohio (FEO) is an incorporated political action committee that is coordinating and funding the HB 194 referendum on behalf of the petitioning committee (composed of five members with geographic, racial and gender diversity from throughout Ohio). FEO is co-chaired by Former Secretary of State Jennifer Brunner as well as Cleveland's own, the honorable Rev. Otis Moss, Jr. and Bishop Timothy Clark of Columbus, Ohio.

In conjunction with a number of allies across the state, FEO was successful in preparing and circulating the petitions statewide that resulted in over 500,000 citizens signing to support this effort. As a result the legislation has halted from taking effect on September 29, 2011.

By way of background I have served in a number of capacities over the past 25 years fighting to preserve, protect, defend and expand the rights of voters in this state and across the country. As a native Clevelander, I am proud to be part of this forum which seeks to highlight an issue that I have dedicated many years of my life, going back to the late 1980's. In 2005 I founded an organization called the Ohio Voter Fund, a statewide voting rights organization that grew out of my deep concern for the election debacle that many of us witnessed in 2004. I have also served for over 10 years as the Executive Director of the NAACP National Voter Fund and Chief of Staff to the Honorable Congressman John Conyers, Jr. the Dean of the Congressional Black Caucus and Ranking Member of the House Judiciary Committee.

It was while serving on Capitol Hill where I first met the Honorable Congresswoman Marcia Fudge who at the time was also Chief of Staff of our beloved friend and champion the late Congresswoman Stephanie Tubbs Jones. Congresswoman Fudge, like her predecessor, has been a national champion on the issue of voter suppression and voting rights and we applaud her on the leadership she has shown in support of this effort to repeal HB 194 from the very beginning.

I would also be remiss if I did not mention the dedication of the Honorable Senator Sherrod Brown who has also demonstrated leadership on the issue of voting rights going back to his days as the former Secretary of State of Ohio when we first met during a voter registration drive I was leading at Ohio University in the early 1980's. Thanks to all of you and Senator Durbin for making this issue a priority both here and in the nation's capitol.

I'm here to add my voice to the scores of voting rights, civil rights, civic and labor allies across the state and across the nation who have been working since June of 2011 to stop the passage and implementation of HB 194. Since being formed in July of 2012, Fair Elections Ohio has taken on what seemed like near impossible challenges to overturn this law. Yet we have been able to have

a string of accomplishments for nearly a year toward achieving our primary mission to repeal HB 194 and ensure that the voting rights of the half a million citizens who signed our petition last year are protected.

Since its founding FAIR ELECTIONS OHIO has:

- **Successfully qualified** to circulate petitions despite initial rejection and delays by Attorney General and SOS office;
- **Successfully submitted 318,000 signatures to halt the implementation of HB 194** on September 29, 2011 in only a six and a half week period rather than the 90 days due to those delays;
- **Successfully Prevented the implementation of HB 194** during the 2011 Special elections which aided **allies in labor** and the **We Are Ohio Coalition** in defeating Issue # 2
- **Submitted additional 218,000** signatures in a second wave of collection for total of **503,000** signatures submitted
- **Raised $345,000 for the Fair Elections Ohio** Signature Collection Effort
- **Raised over $1.4 million in contributions and in-kind support**
- In December, 2011 we qualified for placement on the November, 2012 Ballot
- **Built a strong and diverse statewide coalition** of labor, clergy, civil rights, voting rights and civie organizations committed to short and long term protection of voting rights in Ohio
- Finally, after several months of defending HB 194 as a necessary "election reform bill," the very sponsors and supporters have all but admitted that the passage of HB 194 was a major legislative error and have moved themselves to repeal the effort within the legislature.

While many may quarrel over and challenge the motives of the Republican leadership in seeking to remove the issue from the November Ballot through their support of SB 295, the fact remains that it represents one of the few instances, if not the only instance in the US, where the legislature is in full retreat and seeking to repeal voter suppression legislation. Even if it is not a total repeal we must recognize this as a major victory in and of itself and a testament of the success of the Citizen's Veto as an instrument for ensuring government accountability and ensuring that only effective and responsible public policy is enacted in the state of Ohio.

Impact of Fair Elections Ohio Efforts

As you have heard from other witnesses, HB 194 makes it both harder to vote in Ohio and harder for votes to count. It also makes it harder for citizens to circulate referendum petitions. The fact that FEO has stopped the voter suppression provisions of HB 194 from becoming law has led to a number of important victories. As a result of our efforts, the November 2011 election was able to be conducted under the same election rules from 2008 and 2010. Issue # 2, the citizen's

referendum on SB 5 which would have banned public employee collective bargaining, was soundly defeated. By successfully submitting over 318,000 petitions on September 29, 2011, we were able to stop the implementation of HB 194 within the 90 day window. The success of the petition drive is credited with helping labor and its allies across the state to defeat the issue at the ballot box.

The HB 194 referendum's stay of the law has also stopped its implementation during these critical 2012 elections and is now permitting an effort to change redistricting in Ohio to proceed under fair petition circulation rules.

In June of 2011 the House and Senate Republican controlled legislature constructed HB 194, which is now being viewed across the state and across the US by civil rights groups, voting rights experts and scholars as a voter suppression bill. We clearly understood the political motives of moving such an oppressive piece of legislation, but we could never reconcile or understand the moral or even the legal justification for such a move? There is no widespread evidence of fraud in recent election cycles in Ohio.

Limiting the opportunity for voters to vote early is not election reform. It is election suppression. Eliminating the responsibility of election poll workers to inform voters of their correct polling location is not election reform, its voter suppression. There were many reforms that former Secretary of State Jennifer Brunner and several members of the Ohio Legislature and the voting rights community fought hard to secure in the aftermath of the 2004 and 2006 elections. By all accounts, these bi-partisan reforms were necessary to ensure the integrity of the vote in Ohio and went a long way toward reducing long lines, reducing the number of provisional votes cast, and increasing access to the polling place for tens of thousands of voters across the state. HB 194 begins the process of rolling back many of those provisions and attempted to march Ohio back into an era of state sponsored disenfranchisement.

Many people in the civil rights and voting rights community saw HB 194 as a blatant effort to ensure that the voices of African American, Latino, working people in Labor, and students were diminished in the then upcoming vote in November 2011 to Repeal SB 5 and the upcoming 2012 presidential election. They believed that the Ohio Legislature, by taking these actions, was trying to return Ohio to the days of the 2004 election where voters across the state stood in long lines for long hours (many in the freezing rain) trying to exercise our constitutional right.

I was among those people standing in the rain working to assist voters encountering problems. None of us who experienced the horrors of that Election Day can ever forget how we felt. Our democratic system had failed us. We have not forgotten those days and neither have millions of voters from all races and all regions of the state who experienced that day.

If HB 194 was able to become law last year, Ohio voters would find themselves forced back into long lines in the name of "voter integrity" to prevent "voter fraud" when there has never been any substantial evidence that it is occurring widely in Ohio elections.

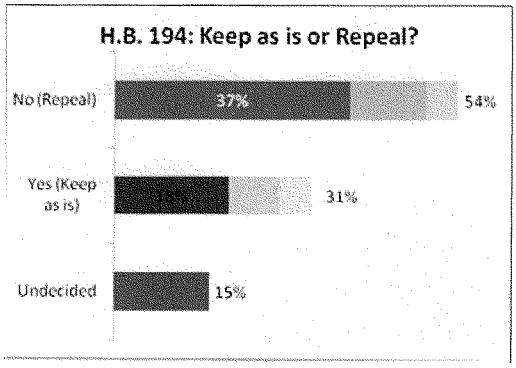
The opposition to the expansion of the right to vote is essentially what happened last June in the Ohio Legislature. To many in the civil rights community it was part of a pattern occurring across the US with an epidemic of similar legislation that was in essence an attempt to return to the days of "Jim Crow" democracy. Voting was again becoming more of a privilege and less of a right. The Ohio Senate and House were presented with clear and unambiguous testimony from non-partisan voting experts and academics who laid out clear cut evidence that many of the so called "reforms" in HB 194 would have a disparate impact on African Americans, students, the elderly and low income Ohioans. Those concerns were brushed aside and HB 194 was passed in both chambers along partisan lines.

Research and Polling

In 2012, Fair Elections Ohio successfully galvanized broad based public support for the repeal of HB 194 as evident in a statewide poll from **Lake Research Partners** demonstrating demographic support for repeal of HB 194 through Lake Research Partner's Poll.[1]

The late January 2012 survey in Ohio reveals a solid majority of likely voters are poised to repeal H.B. 194. *Strong* support alone for repealing the law outnumbers the totality of the opposition and relatively few voters are undecided. Beyond the impressive level of intensity, support for repealing H.B. 194 is noticeably broad as well, with voters supporting repeal by double-digit margins, regardless of gender, age, race, education, and region.

A 54% majority would vote to repeal the law today compared to just 31% who would vote to retain it. Much of the electorate's support for repeal is rooted in intensity, with 37% of voters strongly backing repeal. Only 18% of voters strongly support keeping the law on the books and 15% of voters undecided.



[1] Lake Research Partners, February, 2012 http://www.fairelectionsohio.com/home/2012/2/21/fair-elections-ohio-releases-hb194-poll-results.html

Support for repealing H.B. 194 spans the state, claiming majorities in Northeast (53%), Northwest (52%), Central (57%), and Southern (53%) Ohio. The same is true for women (55%) and men (52%); younger (51%) and older (56%) voters; college educated (56%) and non-college educated (52%) voters; and white (54%) and black (58%) voters alike. The law, which was introduced and passed by Republican members of the State Legislature, even fails to draw the support of Republican voters across the states, which are themselves divided on repeal: 44% "Yes" to 43% "No".

The ALEC Connection

Mr. Chairman I'd like to add for the record the concern we have regarding the role played by powerful out of state interest groups who have sought to impose voter suppression legislation in Ohio and other states across the US. We know that legislation based on the American Legislative Exchange Council (ALEC)'s voter ID model have been introduced in 34 states and passed in seven of those.[2] Ohio nearly joined the latter group, after the Ohio House voted to pass the ALEC-inspired HB 159 only eight days after its introduction. [3]

The connection between ALEC and Ohio's pending voter laws are clear. ProgressOhio, The Center for Media and Democracy, Common Cause, and People for the American Way released a report earlier this year containing a side-by-side comparison of HB 159 and ALEC's Voter ID ACT model legislation.[4] The analysis yielded approximately a dozen points of textual similarity.

The Cleveland Plain Dealer deemed HB 159 "the nation's most restrictive voter identification law."[5] While it has yet to pass in Ohio, the quest to make voting more difficult, particularly for historically underrepresented groups, continues, as evidenced by HB 194.

Legislative Repeal Of HB 194:

This week brings us yet another milestone in the history of this struggle to repeal HB 194. The same Republican led General Assembly that rushed this bill through on a strictly partisan basis is now moving rapidly to "repeal" HB 194 to prevent repeal by the voters. Although the Senate version of the repeal bill, SB 295, has included specific provisions that clearly eliminate the last weekend of early voting again it does represent a major victory for our efforts to convince the legislature and the public at large that the passage of HB 194 and its many harmful provisions was gross error.

Today it no longer appears to be a question of whether HB 194 will be repealed, but rather, a question of how and when. Our efforts last year were designed to gather enough signatures to

[2] http://www.economist.com/node/21529061
http://www.campusprogress.org/articles/new_evidence_of_alec_connections_in_all_successful_voter_id_legislatio/

[3] http://lsc.state.oh.us/coderev/hou129.nsf/House+Bill+Number/0159?OpenDocument

[4] http://site.pfaw.org/pdf/ALEC-in-Ohio.pdf *p.24-28*

[5] http://www.cleveland.com/open/index.ssf/2011/03/ohio_house_approves_legislatio.html

qualify for this November's election ballot, and in that we succeeded. The 500,000+ voters who signed the petition represented a major cross section of the state that we were able to convince that the provisions of HB 194 would harm Ohio voters. In determining how to move forward, here are two major problems with being satisfied with the passage of SB 295:

1) The elimination of Weekend Voting, especially the weekend just before the election, and

2) The protection and preservation of the right of referendum and the Citizens Veto. It is important to Fair Elections Ohio and all of our allies that this right not be weakened in the rush to repeal HB 194 legislatively. We are exploring a number of legal and legislative strategies that will seek to repeal HB 194 without undermining that sacred right.

Tomorrow the Ohio House of Representatives will be taking up a measure, SB 295. Even as it is currently written, SB 295 repeals over 90% of the provisions that make up HB 194. Our allies in the House and Senate will be offering an amendment on behalf of Fair Elections Ohio and the 500,000 citizens who signed the petition to fully restore early voting the weekend before Election Day. If this amendment is accepted and the Senate concurs, we will be able to say that the citizen's veto has been successful. The voice of the people will have been heard and this mighty coalition has been able to completely repeal HB 194 after a long, 11 month battle.

If, on the other hand, we are not able to restore that final weekend of early voting, we may be forced to keep the issue on the ballot and let the people do what the legislature has refused to do. Let me be clear. Even if we were to win the repeal of HB 194 at the ballot box, it would still not restore the last weekend of voting. We therefore will continue our legislative campaign to restore these three days now while the legislature is still in session and while we can repeal this provision also in time for it to take effect in the 2012 elections. We will continue to mobilize churches, campuses, working men and women and communities across the state until all of our voting rights have been restored and the election laws are as they were before the passage of HB 194.

Replacement Legislation After Legislative Repeal of HB 194

From the beginning, the debate on repeal has universally included "replace." With the ongoing advocacy of groups like Progress Ohio, We Are Ohio, The Unity Coalition, The AFL-CIO, the League of Women Voters, the NAACP, CO-OHIO and others we have been able to push back on the Republican leadership's attempt to build bi-partisan support for "replace" legislation. Even our most vocal opponents in the assembly are now conceding that replacement legislation may only be possible if kept to only the most non-controversial provisions.

We are not certain that *any of the* replacement language in SB 295 would withstand a court challenge, since it could be viewed as an attempt to take away the constitutionally guaranteed right to a referendum, which is reserved exclusive to the people of Ohio. We note the weeks of

delay in introducing new legislation beyond SB 295 may even be evidence of insufficient Republican support for replacement legislation.

In short, our efforts in working with one another in these politically difficult situations show significant accomplishment over the past 10 months, with an almost unbroken streak of success since we first began this campaign. The question remains how we leverage our success in working together to successfully and prudently make the next wave of strategic decisions in meeting our responsibility to Ohio voters for fair Ohio elections. We thank this Subcommittee for offering our state a forum for many of the groups who have worked on this issue for several months to submit written testimony. What we all must do now is keep our attention focused on accomplishing the ultimate objective: The full repeal of HB 194 and the return to the election laws as they existed before the passage of the law in June, 2011

It is important to note that no legislature in the last 100 years, since the 1912 Ohio Constitutional Convention adopted the right of statewide referendum on the powers of the Ohio General Assembly to enact laws, has repealed a law that has been certified for a statewide referendum vote. There remains the risk that litigation challenging the effectiveness of the repeal because of this fact, could nullify the efforts of the Ohio legislature to repeal HB 194 as a means to keep the question from the voters of Ohio.

In order for SB 295 to be considered a clean repeal, references to HB 224 would have to be removed through an amendment in either the house committee or on the Floor. If an amendment is not possible, a standalone bill being introduced is another vehicle we are exploring for advocates to support. We will be partnering with our allies in We Are Ohio and the AFL-CIO over the next several weeks to coordinate the campaign to restore the last weekend of early voting.

What transpires through this legislative campaign will have a major impact on how we will proceed in our ongoing campaign to repeal HB 194. Assuming we can achieve a legislative remedy, the central question for the Fair Election's Ohio leadership at that point would be:

If we can accomplish our goal of completely, legislatively restoring pre-HB 194 voting laws with the passage of SB 295 (repealing HB 194) and the restoring provisions of law that remove the last weekend of voting legislatively can we achieve our ultimate objective without a full scale campaign?

The final decision would be need to include an analysis of any legal challenge to the SB 295 legislative repeal of HB 194 to prevent the law from taking effect due to the possibility that the success of such a legal challenge could also usher in the provisions of HB 194 after the November elections with no referendum to stop its implementation.

FEO anticipates that the Republican Secretary of State who also chairs the state ballot board that crafts statewide ballot language, may decline to place the issue on the ballot if HB 194 is

repealed (even if all prior law is not restored), or he may be challenged in court not to do so. FEO must be positioned to litigate this issue if necessary.

FEO believes that no legislative attempt can thwart the constitutionally reserved power of referendum. The state constitution is the voice of the people of Ohio. It is only through that document that the legislature is granted any power to act. At no point does the legislature have the power to diminish rights the people have reserved to themselves, such as referendum. This must be protected, even if litigation is required.

We urge the rejection of SB 295 by the Ohio General Assembly without the changes we have recommended. Overall we urge a return to a more balanced, bi-partisan and forward looking approach to election reform that will expand the right to vote and not disenfranchise voters who simply want to ensure that their voices are heard and that their votes are equally counted.

Before I close Mr. Chairman I think it's important that we acknowledge some of the work that has been done over these past 11 months by members of the Fair Election Ohio Coalition and its partners. One of the keys to the success of Fair Elections Ohio's petition campaign last year was the extraordinary volunteer work that was undertaken by many of our allied partners. These partners are too numerous to name. But I would like to highlight a few. Without their mostly volunteer help in mobilizing voters across the state, we would not be sitting here today as a successful coalition making the best case for a measure that has been qualified for the ballot this November 6th.

Obviously our allies in organized labor were very helpful in their support having already been energized by the historic "We Are Ohio" campaign that successfully overturned the anti-collective bargaining bill SB 5. But also in the voting rights and civil rights community there was the *Ohio Unity Coalition*, a statewide network of many leading organizations from the civil rights, labor, social, fraternal and faith based organizations. Groups like the *NAACP State Conference, the A. Phillip Randolph Institute, and the Coalition of Black Trade Unionists.* Local, as well as faith based organizations like the *Columbus Civic Betterment Committee* and the AME Church.

In the case of the Unity Coalition it offered testimony in opposition to HB194 when it was first introduced co-sponsored tele-town hall meeting with Ohio Legislative Black Caucus, printed and distributed petition booklets for use in minority communities across the state, developed a toolkit for Faith Leaders and established a toll free hotline for voters to access information about the Repeal HB 194 campaign. Even today they have charted a bus from Columbus for voters to participate in this hearing and are taking a leading role in the campaign for the restoration of the last three days of weekend voting in partnership with FEO, *We Are Ohio* and the *AFL-CIO*

Throughout the state the faith based community has played a decisive role in mobilizing churches, synagogues, and other community based organizations. Groups like *Pastors in Mission* in Cleveland, the *Cleveland Voter Coalition, AMOS, ESOP*, and the *Southern Christian Leadership Conference*, and the Bishops of the *Church of God in Christ (COGIC)* all played a

decisive role. In the case of COGIC these sometimes small but very dedicated churches made signature collection a key component of their community service and help spread the word in small towns and rural areas throughout the state. The major highlight of these efforts in the faith community was the coordination of "*Signature Sundays*" in local churches who signed up parishioners before and after services on numerous appeals from their leading clergy. FEO Co-Chairs Rev. Otis Moss, Jr. and Bishop Timothy Clarke have provided the moral and spiritual leadership throughout this entire effort.

There was significant support from more partisan organizations like *Organizing for America, the Ohio Legislative Black Caucus and America Votes-Ohio.* But there was also very significant statewide institutional support from non-partisan networks like *Ohio Voice, the NAACP State Conference and Youth Councils,* the *Ohio Voter Fund,* the *Ohio Organizing Collaborative, the League of Women Votes, Stand Up Ohio, Common Cause, the National Urban League and many others* whose local partner organizations mobilized their members to sign petitions, participate in legislative hearings, rallies and community forums to raise awareness of HB 194 and its potential devastating impact on their communities.

At the national level a major coalition of allied groups called We Are One, was convened by the Leadership Conference on Civil and Human Rights. This coalition of labor, civil rights, women's rights, students and other advocacy leaders placed a special emphasis on Ohio that begin as a commemoration of the 43rd anniversary of the Martin Luther King, Jr. assassination on April 4, 2011. They continued to urge support from their allied partners to activate their networks in Ohio in support of the legislative battles against the passage of SB 5 and HB 194, the petition drive and ultimately the referendum process. They also helped to garner resources in support of the effort.

Voter registration, education and GOTV programs were also a key component to our efforts. While there were ongoing debates and legislative maneuvering in Columbus underway to dilute voting rights and workers rights, our coalition partners were mobilizing voters in response to these assaults. In fact the voter suppression efforts being waged had the opposite effect. People all across the state in all 88 counties flooded mobile drive and sign stations; "Souls to the polls" programs were launched again in conjunction with leading clergy and laypersons.

This was the area where the last weekends of Early Voting, currently prohibited by provisions in HB 194 and HB 224 had been the most successful. Thousands of people of faith from across the state boarded buses and church vans after services on that last Sunday in 2008 and 2010 and voted in record numbers. Thus by cutting off this period of voting we stand the risk of disenfranchising tens of thousands if not hundreds of thousands of people of faith.

Finally, communications and social networking played a key role. Internet issue awareness campaigns launched by *Progress Ohio* helped spread this info out to its over 300,000 on line members. Likewise the Black Press, still a powerful source of information in the African American Community, kept this issue front in center through publications like *the Call and Post*, the *Akron Reporter*, and local community papers like *Ohio Community News.*

Even radio personalities played a key role, whether local DJs who invited us on to educate their listeners, or Tom Joyner of the Tom Joyner Morning Show who provided his listeners with regular updates on the signature drive and critical information about the effects of HB 194 and how they could sign the petition and become more involved.

In short the campaign to stop the enactment of HB 194 was nothing short of a modern day voting rights movement that brought young and old, Black and White, urban and rural voters together. Perhaps most importantly based on our polling and having surpassed our qualifying threshold in over 60 of 88 counties; this campaign against HB 194 brought together Republicans, Democrats and independents who signed together, rallied together, and have continued to stand together all across this state to say a resounding "NO" to any efforts to curtail or suppress their right to vote.

Mr. Chairman, I believe that this is why Republican members of the legislature have come to regret the actions they took in 2011 to enact HB 194 and SB 5 for that matter. They were both unnecessary and unwarranted overreaches of legislative power. It is why we sought to use the most important instrument *we the people* of the state of Ohio have at our disposal,-- the right of referendum, the citizens veto, or as I like to call it the "people's veto." As I wrote in an op-ed last year "This is a right that is not exercised often. It is reserved for times when the people of the state must rise up and utilize this procedure as the only recourse to a state government that has abused its power and acted against the best interest of the people of this state."

I hope and pray that if nothing else comes out of this hearing it would be this: that the United States Senate's Judiciary Committee had the wise judgment to travel to the state of Ohio and get a firsthand account of what happened here in 2011 and what is happening in 2012. Our successful campaigns built from the grassroots up can and should be a model for other states to follow who are battling the imposition of these voter suppression laws.

Tomorrow the Ohio General Assembly has an opportunity to correct a major error in their judgment. We make our final appeal to them today at this hearing: to listen to the voices of the half million citizens who signed the petition, and vote to repeal ALL of HB 194, including the restoration of the last three days of weekend voting. Their only rationale for not doing so is that it puts too much work on the Election Day workers. Mr. Chairman, I would submit that shutting down voting stations because too many people are voting would be the equivalent of shutting down shopping at department stores the last three days before Christmas because too many people are doing last minute shopping. It makes no sense.

The people have spoken, and their message is clear: they want the full repeal of HB 194, not a partial repeal. They want a full repeal not next month, not next year, but they want a full repeal NOW! Repeal it now or we will repeal it for you on November 6th at the ballot box!

Thank you again for the opportunity to speak on behalf of Fair Elections Ohio and the hundreds of thousands of citizens across the state who appreciate your placing a spotlight on our voting rights struggle in this critical stage.

PREPARED STATEMENT OF PROF. DANIEL P. TOKAJI

Statement of Professor Daniel P. Tokaji

U.S. Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights

Field Hearing - Cleveland Ohio
"New State Voting Laws III: Protecting the Right to Vote in America's Heartland"
May 7, 2012

Thank you for the opportunity to testify before you today. By way of introduction, I am the Robert M. Duncan/Jones Day Designated Professor of Law at The Ohio State University's Moritz College of Law and a Senior Fellow at the nonpartisan *Election Law @ Moritz* project, a group of scholars that provides information, analysis, and commentary on election law and policy. I am co-author of the casebook *Election Law: Cases and Materials* (4th ed. 2008), and co-editor of *Election Law Journal*, the only peer-reviewed publication in the field. I also sit on the board of Common Cause Ohio. For the last eight years, my primary area of research and scholarship has been election law and administration, in Ohio and throughout the country.[1]

As this subcommittee is aware, the rules governing voting have precipitated a great deal of legislation and litigation in the years since the tumultuous 2000 election. The State of Ohio, in particular, has seen more than its share of voting-related controversies during this period. The United States Supreme Court has long declared that the right to vote is fundamental because it is preservative of all other rights. Here in Ohio, we have learned that the right to vote is not something that can be taken for granted. We have learned that it is not merely a right, but also a responsibility. We have learned that we as citizens have a responsibility not simply to exercise our right to vote but, just as importantly, to protect it so that everyone has equal access to the ballot.

Unfortunately, here in Ohio as in many other parts of the country, we have seen rules adopted– in the past decade and especially in the past year – that make it more difficult for eligible citizens to vote and have their votes counted. It is for this reason that I am so pleased that this subcommittee has chosen to make new state voting laws a high priority, and I am especially gratified by your attention to Ohio, a state that is almost certain to be pivotal in the 2012 presidential election and probably many more to come. We must never forget that democracy exists, not for the benefit of elected officials or election officials, but for the people of this country. And we must take care to ensure that the equality of all citizens prevails when it comes to our fundamental right to vote.

The remainder of my statement is divided into three parts. First, I provide an overview of the last decade of election changes across the country. Second, I will discuss Ohio's eventful history in recent election cycles. Third, I will address recent developments in Ohio, focusing especially of Amended House Bill 194 (HB 194), which made significant changes to Ohio's voting laws and is subject to a referendum in November 2012.

[1]This statement is offered solely on my own behalf, not on behalf of any other individuals or entities with which I am associated.

I. The National Backdrop

Since 2000, we have seen unprecedented public, scholarly, and legislative attention devoted to the "nuts and bolts" of elections in the United States. Before then, election administration – including voting technology, voter registration, provisional ballots, voter identification, and polling place operations – was a subject to which few election law scholars paid much attention.

More important, election administration was an area that public policymakers mostly neglected. We as a country failed to recognize that the infrastructure of our democracy had decayed, a reality brought painfully to light during the recount and litigation surrounding Florida's 2000 presidential election. However one feels about the resolution of that disputed election, it cannot seriously be questioned that it exposed serious underlying problems with how American elections are conducted. In the wake of these events, it became clear that the problems in our election system resulted in millions of votes being lost – somewhere between four to six million in 2000, according to the respected Caltech/MIT Voting Technology Project report.[2]

In the years that followed, the United States experienced major changes to its election system. At the federal level, the most significant changes were prompted by enactment of the Help America Vote Act of 2002 ("HAVA"), which in turn triggered a number of changes at the state level.

There were unquestionably some improvements that emerged from HAVA, including the replacement of antiquated voting technology. According to one estimate, approximately 1,000,000 votes were saved nationwide in 2004, due to the transition to better technology and better procedures. At the same time, there have been some unintended consequences of voting changes. They include the administrative difficulties arising from the introduction of practices, like provisional voting, that were new in many states, as well as the unexpected challenges arising from the introduction of statewide voter registration lists in places that previously kept their lists at the local level.[3] There have also been laws enacted in a number of states which have imposed new burdens on voting without countervailing benefits, as discussed below.

What's the big lesson to be learned from this recent history? Changes in election law, however well-intentioned, invariably have unanticipated consequences. My colleagues and I have used the metaphor of an "ecosystem" to describe how elections work. The idea is that there is a delicate balance among the various component parts of our election system, which major legal changes tend to disrupt. The tendency of such changes is to destabilize the system in the years that follow. The ultimate lesson is that we should be cautious in making major changes to our election system.

In the last year, we have seen a number of states adopt changes to their voting laws. The most significant changes have been concentrated in three areas: (1) laws imposing stricter identification requirements on voters, (2) laws limiting early and absentee voting; and (3) laws

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[2]Caltech/MIT Voting Technology Project, *What Is, What Could Be* (July 2001).

[3]For an extensive discussion and assessment of HAVA and related voting changes, see Martha Kropf & David C. Kimball, HELPING AMERICA VOTE: THE LIMITS OF ELECTION REFORM (2012).

restricting opportunities for voter registration. This new round of legal changes is in one sense surprising, given that the United States did not experience unusual problems in last year's elections. No election is free from glitches. But on the whole, the 2010 election cycle was much less eventful than those of past years, from the perspective of election administration problems.

What then explains the recent rise in state legislative activity? The most obvious and important change has been a change in the composition state legislatures and Governor's offices. In my opinion, it is partisan politics rather than any genuine problems with our election system that have driven the latest round of changes to state voting laws.

Unfortunately, most of the changes adopted this year have made it more difficult for ordinary citizens to vote and have their votes counted. This is ironic, given that the main problem with American elections is not that too many people are voting; it is that not enough eligible citizens are turning out to vote. In the 2008 presidential election, 62% of the voting eligible population turned out to vote.[4] That is actually higher than in the immediately preceding election cycles, but lower than at some other periods of U.S. history and lower than most other industrialized democratic countries. Turnout in mid-term elections is much lower, and for state and local elections lower still. We should be pursuing changes that will encourage people to register and to vote, not ones that will make participation more of a challenge.

The most prominent example of a law that falls into the latter category is the voter identification laws that have been adopted in several states. In their strictest form, these state laws require voters to produce specified forms of government-issued photo identification in order to vote and have their votes counted. Kansas, Mississippi, Pennsylvania, South Carolina, Tennessee, Texas, and Wisconsin have passed such laws in the past year or so, and Virginia's governor is considering a bill that would impose similar restrictions now.[5]

The best available evidence indicates that approximately 11% of the voting age population does not have the ID that these state laws require.[6] Recent evidence further suggests that stricter voter ID laws have a negative effect on turnout.[7] They are likely to strike hardest against those groups who are already underrepresented in the electorate – specifically, minority voters, people with disabilities, those who are elderly, and poorer citizens.[8] According to one study, African

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[4]Harold W. Stanley & Richard G. Niemi, VITAL STATISTICS ON AMERICAN POLITICS 2011-2012, at 5.

[5]A list of state voter ID laws may be found at http://www.ncsl.org/legislatures-elections/elections/voter-id.aspx.

[6]Brennan Center for Justice at NYU School of Law, *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification*, Nov. 28, 2006; *see also* Norman Robbins, *On Estimating the Number of Voting Age Citizens Who Lack a Drivers License or State ID*, May 24, 2011, available at http://www.nova-ohio.org/Estimating%20number%20of%20voters%20without%20state%20ID.pdf.

[7]Shelley de Alth, ID at the Polls: *Assessing the Impact of Recent State Voter ID Laws on Voter Turnout*, 3 HARVARD LAW & POLICY REVIEW 185 (2009).

[8]M.V. Hood III & Charles S. Bullock III, *Worth a Thousand Words?: An Analysis of Georgia's Voter Identification Statute*, 36 AMERICAN POLITICS RESEARCH 555 (2008); Matt

American voters are over twice as likely *not* to have ID.[9] Another found that African Americans in Wisconsin were half as likely as whites to have photo ID, and that 78% of black men aged 18-24 did *not* have photo ID.[10] Seniors and people of low income are also much less likely to have photo ID.[11] In addition, there is evidence that voter ID laws are *applied* in a discriminatory manner, with minorities more likely to be asked to show ID.[12]

There are legal questions surrounding these laws. While the U.S. Supreme Court upheld Indiana's voter ID bill against a facial challenge in *Crawford v. Marion County Board of Elections,*[13] there was no majority opinion, and the lead opinion by Justice Stevens was extremely narrow. The decision only involved a facial challenge, leaving open the possibility that the law might be struck down as applied to specific voters or groups – like the nuns who were later turned away for having outdated IDs.[14] In addition, there are questions about whether these bills have an impermissible discriminatory effect on minority voters under Section 2 and Section 5 of the Voting Rights Act. The U.S. Department of Justice has denied preclearance of two states' recent ID laws (South Carolina and Texas) under Section 5. Finally, there are questions about voter ID laws under state constitutional laws. In two states (Missouri and Wisconsin), state courts have concluded that photo ID requirements violate the right to vote under the state constitution.

Ohio is not yet among the states that have chosen to implement the most stringent voter identification requirements. This is partly attributable to Secretary of State Jon Husted, who deserves credit for standing up to the more extreme voices in his own party by opposing a voter ID bill (HB 159) proposed last year. His statement on that bill is worth quoting directly:

Barreto, Stephen Nuno & Gabriel Sanchez, *Voter ID Requirements and the Disenfranchisement of Latino, Black, and Asian Voters*, Sept. 1, 2007, *available at* http://faculty.washington.edu/mbarreto/research/ Voter_ID_APSA.pdf; John Pawasarat, *The Driver's License Status of the Voting Age Population in Wisconsin, available at* http://www.inclusionist.org/files/wistatusdrivers.pdf.

[9]Brennan Center for Justice at NYU School of Law, *Citizens without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification*, Nov. 28, 2006.

[10]Pawasarat, *supra.*

[11]Brennan Center for Justice at NYU School of Law, *Citizens without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification*, Nov. 28, 2006.

[12] Rachael V. Cobb, D. James Greiner & Kevin M. Quinn, *Can Voter ID Laws Be Administered in a Race-Neutral Manner? Evidence from the City of Boston in 2008*, 7 QUARTERLY JOURNAL OF POLITICAL SCIENCE 33 (2012)(finding "strong evidence that Hispanic and black voters were asked for IDs at higher rates than similarly situated white voters"); *see also* Antony Page & Michael J. Pitts, *Poll Workers, Election Administration, and the Problem of Implicit Bias*, 15 MICHIGAN JOURNAL OF RACE & LAW 1 (2009).

[13]553 U.S. 181 (2008).

[14]*Nuns with Dated ID Turned Away at Ind. Polls,* AP, May 6, 2008, *available at* http://www.msnbc.msn.com/id/24490932/ns/politics-decision_08/.

> I want to be perfectly clear, when I began working with the General Assembly to improve Ohio's elections system it was never my intent to reject valid votes. I would rather have no bill than one with a rigid photo identification provision that does little to protect against fraud and excludes legally registered voters' ballots from counting.[15]

The proposed Ohio voter ID bill was not supported by any evidence of voter impersonation fraud at the polling place. I have closely studied Ohio's election system for the past eight years, and am not aware of a proven case of in-person voter impersonation fraud – that is, a voter going to the polls pretending to be someone he or she is not. If there are any incidents of in-person voter impersonation in Ohio, they are extremely rare. Yet that is the *only* type of fraud that a government-issued photo ID requirement can even hope to address.[16] This is not surprising. The few people who attempt voter impersonation aren't likely to risk criminal prosecution by showing up at the polling place; they are much more likely to vote by mail. This is consistent with evidence at the national level, which shows that voter impersonation fraud is extremely rare.[17]

Because I know this subcommittee has heard testimony on the subject previously, I will not dwell on other states' voter ID laws here. It is nevertheless important as a part of the backdrop against which Ohio's recent voting law changes have occurred. The recent round of state election laws will make it more difficult for eligible citizens to vote in the 2012 election, particularly some of the demographic groups that are already underrepresented in the electorate.[18]

II. Ohio's Experience

Here in Ohio, we have had more than our share of voting controversies in recent years. The most noteworthy were in 2004, in which the outcome of the presidential race turned on Ohio's vote. Among the areas of controversy were voting machines, voter registration, voter identification, provisional ballots, absentee ballots, challenges to voter eligibility, and long lines at some polling places. All of these areas were the subject of litigation during the 2004 election season.

On the morning after Election Day, President George W. Bush led Senator John Kerry by approximately 136,483 votes out of some 5.6 million cast in Ohio, the state upon which the presidential race ultimately turned. This margin was sufficient to overcome any legal challenges that might have arisen from uncounted provisional votes, ambiguously marked punch card ballots, and lengthy lines that may have discouraged many citizens from voting. That lead

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[15] Secretary of State Husted Statement on Proposed Photo ID Legislation, June 24, 2011, *available at* http://www.sos.state.oh.us/mediaCenter/2011/2011-06-24.aspx.

[16] At the time this bill was being debated, the only documented case of impersonation I could find in recent Ohio elections involved *absentee voting* by a mother pretending to be her daughter. Dean Narciso, *2 Ballots Coast Woman $1,000 Plus Probation*, COLUMBUS DISPATCH, Mar. 29, 2009.

[17] *See generally* Lorraine C. Minnite, THE MYTH OF VOTER FRAUD (2010).

[18] For a more thorough discussion of the national picture, see Justin Levitt, *Election Deform: The Pursuit of Unwarranted Electoral Regulation*, 11 ELECTION LAW JOURNAL 97 (2012).

shrunk by several thousand votes by the time the final tally was in. Had President Bush's morning-after lead been a quarter or perhaps even half what it was, a replay of the legal battles that culminated in *Bush v. Gore*[19] – with the Buckeye State rather than the Sunshine State as the backdrop, Ken Blackwell playing the role of Katherine Harris, and provisional ballots replacing punch-card ballots as the dominant props – would probably have ensued.[20]

One of the most controversial issues concerned Secretary of State Ken Blackwell's September 2004 directive requiring that Ohio registration forms be printed on "white, uncoated paper of not less than 80 lb. text weight" (i.e., the heavy stock paper). Under this directive, forms on lesser paper weight were to be considered mere *applications* for a registration form, rather than a valid voter registration. Voting rights advocates argued that the directive violated the federal law, which requires that "[n]o person acting under color of law" may deny a person the right to vote "because of an error or omission on any . . . paper relating to any . . . registration . . . if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election."[21] In the face of these objections, Secretary Blackwell backed down and announced that registration forms on ordinary-weight paper should still be processed.

Ohio saw significant controversy over provisional voting in 2004. Title III of HAVA requires provisional ballots to for those eligible voters who, due to administrative error or for some other reason, appear at the polls on election day to find their names not on the official registration list. The issue that garnered the most attention is whether provisional ballots may be cast or counted if the voter appears in the "wrong precinct." In Ohio, Secretary of State Blackwell issued a directive in September 2004, providing that voters would not be issued a provisional ballot, unless the pollworkers were able to confirm that the voter was eligible to vote at the precinct at which he or she appeared. A federal district court issued an injunction against this order, on the ground that Secretary of State Blackwell's directive failed to comply with the requirements of HAVA. This injunction was affirmed in part and reversed in part on appeal. The Sixth Circuit upheld the district court's order, insofar as it found that the Secretary of State had not fully complied with HAVA by requiring pollworkers to determine "on the spot" whether a voter resided within the precinct and by denying those not determined to reside within the precinct a provisional ballot altogether. But the Sixth Circuit concluded that HAVA did not require provisional ballots to be counted if cast in the wrong precinct.[22]

In January 2006, then-Governor Bob Taft signed a lengthy bill (Am. Sub. HB 3) enacted by the Ohio legislature, making a variety of legal changes in provisional voting, challenges to voter eligibility, absentee voting, recounts and contests, voter identification, and other subjects. There were some constructive changes in this legislation but, on the whole, it too had a destabilizing effect on our election system, resulting in multiple lawsuits and court orders – not to mention confusion for election officials, poll workers, and voters alike. Among the changes was to extend HAVA's ID requirement to all voters. Fortunately, the vast majority of citizens have one

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[19]531 U.S. 98 (2000).

[20]I discuss these controversies in much greater detail in *Early Returns on Election Law: Discretion, Disenfranchisement, and the Help America Vote Act*, 73 GEORGE WASHINGTON LAW REVIEW 1206 (2005).

[21]42 U.S.C. § 1971(a)(2).

[22]*Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565 (6th Cir. 2004).

of the permitted forms of ID, which include utility bills, bank statements, and government documents with the voter's name and current address. Any negative impact was further mitigated by the fact that it accommodated the few who do not have one of the permitted forms of identification. Still, this change precipitated years of litigation. It took years to sort out this confusion and restore some stability to our system. [23]

In 2007, my colleagues at the Ohio State election law project and I released a comprehensive study of the election systems of five Midwestern states.[24] We ranked Ohio last among these states in terms of the health of its election system. There can be no question, however, that in the years that followed, Ohio made significant improvements in the functioning of its election system.[25] Former Secretary of State Jennifer Brunner deserves credit for engaging in an extensive review of the state's election practices, including elections summits her office hosted, which brought together election officials, legislators, community group leaders, and academics to discuss existing problems.[26] In addition, some of the most serious problems with Ohio's system were resolved through litigation, including court orders in multiple cases. Just as important, the various actors in our election system have become familiar with the election law changes, most notably HAVA and HB 3. All this helped bring a greater level of stability.

That is not to say that Ohio has been without its share of controversies in recent years. Two that occurred in 2008 are especially worthy of mention. The first concerned the five-day window, sometimes referred to as "Golden Week," for simultaneous registration and early voting. This window was made possible by HB 234, signed by Governor Taft in 2005, which allowed no-excuse absentee voting – including in-person absentee voting, or early voting – starting 35 days before the election. Under pre-existing Ohio law, the registration period extends until 30 days before the election, the earliest possible deadline consistent with federal law. That opened up a five day window, between 35 and 30 days before the election, in which any eligible voter could simultaneously register and vote. The Ohio Supreme Court and a U.S. District Court both upheld then-Secretary Brunner's order requiring this window for early voting, holding that it was consistent with Ohio law and required by federal law respectively.[27]

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[23]The lawsuits relating to HB 3 include *NEOCH v. Blackwell* (later *NEOCH v. Brunner*), discussed further below; *League of Women Voters of Ohio v. Blackwell* (later *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463 (6th Cir. 2008)); and *Boustani v. Blackwell*, 460 F. Supp. 2d 822 (N.D. Ohio 2006). By way of disclosure, I was one of the attorneys for plaintiffs in the *Boustani* case, which resulted in a court order permanently enjoining a provision of HB 3 requiring naturalized citizens to produce their certificates of naturalization if challenged at the polls.

[24]STEVEN F. HUEFNER, DANIEL P. TOKAJI, & EDWARD B. FOLEY, FROM REGISTRATION TO RECOUNTS: THE ELECTION ECOSYSTEMS OF FIVE MIDWESTERN STATES (2007).

[25]We discuss these changes in a follow-up book, STEVEN F. HUEFNER, NATHAN A. CEMENSKA, DANIEL P. TOKAJI, & EDWARD B. FOLEY, FROM REGISTRATION TO RECOUNTS REVISITED: DEVELOPMENTS IN THE ELECTION ECOSYSTEMS OF FIVE MIDWESTERN STATES (2011).

[26]*Id.* at 22-23.

[27]*State ex rel. Colvin v. Brunner*, 896 N.E.2d 979 (Ohio 2008); *Project Vote v. Madison Co. Board of Elections*, 2008 WL 4445176 (N.D. Ohio 2008). By way of disclosure, I was part of the legal team in *Project Vote*, representing plaintiffs who successfully brought suit to keep this window open during the 2008 election season

The other significant issue involved the procedures used for "matching" voter registration lists against other information. In *Ohio Republican Party v. Brunner*,[28] a federal district court granted the state Republican Party's request for an injunction against Secretary of Brunner, concluding that HAVA "requires matching for the purpose of verifying the identity and eligibility of the voter before counting that person's vote."[29] Ultimately, however, the U.S. Supreme Court rejected the Republican Party's claims without reaching the merits, concluding that there was no private right of action to enforce HAVA's matching requirement.[30]

While Ohio's 2008 election was not without controversy, the general consensus is that it was a significant improvement over 2004. This is partly the consequence of better administration, from the Secretary of State's office down. It is also a consequence of the fact that the rules were stable. The significant changes that had occurred as a result of changes to federal and state law had, for the most part, been absorbed by election officials, poll workers, and voters. This created a much greater level of stability.

The 2010 election was the most uneventful election – from the perspective of election administration problems – that Ohio has seen in years.[31] While no election is trouble-free, we seem to have had attained a relative level of stability. Again, this is largely a consequence of the fact that the changes of past years have now been absorbed into our election ecosystem.

III. Recent Ohio Voting Changes

Notwithstanding this period of relative stability, the Ohio legislature adopted and Governor Kasich signed Amended Substitute House Bill 194 (HB 194). Like HB 3 in 2005, this is a lengthy bill which yet again overhauls the state's election laws. If it is implemented, this new statute will make it more difficult for eligible citizens to vote, and can be expected to result in many more years of controversy, confusion, and court involvement in our elections. Below is a summary of some of the key changes in this new law and the problems they create.

Reducing opportunities for early voting. Early voting (known as "in person absentee voting" under Ohio law) allows people to vote in person at designated locations prior to election day. This has the advantage of reducing pressure on polling places on election day, including the risk of long lines, without presenting the ballot security concerns that accompany mail voting. One of the best features of Ohio's system has been that it provides people with the opportunity simultaneously to register and vote, in the window between 35 and 30 days before election day. Allowing new voters to register and vote on the same day is the only election reform that

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[28] Documents from this case may be found at http://moritzlaw.osu.edu/electionlaw/litigation/ohiorepublicanpartyv.brunner.php.

[29] Ohio Republican Party v. Brunner, No. 2:08-cv-00913, Opinion and Order at 8–9, (S.D. Ohio Oct. 9, 2008), *available at* http://moritzlaw.osu.edu/electionlaw/litigation/documents/R52Order.pdf.

[30] *Brunner v. Ohio Republican Party*, 555 U.S. 5 (2008).

[31] The major exception is the issue surrounding provisional ballots in a Hamilton County judicial race, at issue in *Hunter v. Hamilton County Board of Elections*, 635 F.3d 219 (6th Cir. 2011). I discuss this case below.

empirical research has consistently shown to increase turnout in a variety of elections.[32] Unfortunately, HB 194 closes this window. ORC § 3509.01. The statute also eliminates early voting on Saturday afternoon and Sunday. This is especially troubling, given the evidence that minority voters are more likely to exercise their right to vote on Sundays.[33] Worse still, the bill eliminates early voting on the three days immediately prior to Election Day (Saturday, Sunday, and Monday), during which approximately 105,000 voters statewide would otherwise vote.[34] Taken together, these provisions reduce the period for early voting from 35 days to 12 days (between 17 days and 4 days before the election, with Sundays excluded).

Eliminating the requirement that poll workers direct voters to the correct precinct. Under past and present Ohio law, ballots cast in the wrong precinct are not counted. Unfortunately, HB 194 eliminates the requirement that poll workers direct voters to the *correct* precinct. Specifically, it deletes language from ORC § 3505.181(C)(1) that, if a voter appears at the wrong polling place,[35] the poll worker "shall direct" the voter to the correct one, replacing "shall" with "may." This is especially problematic in cases where there are many precincts at the same location and voters may appear – or even be directed by a poll worker – to the wrong table. This is a problem so common, it has a name: the "right church, wrong pew" problem. We already have a big problem in Ohio with voters having their votes rejected for casting them in the wrong precinct. There were over 14,000 such votes lost in 2008, many of which were cast in the correct building.[36] HB 194 makes this problem worse. It can be expected to result in more voters voting in the wrong precinct, with a concomitant increase in the provisional ballots. It raises serious due process problems for an eligible citizen to be denied his or her vote, because a poll worker directs a voter to the wrong precinct or refuses to direct the voter to the right one. It also raises an equal protection problem, as poll workers in different counties, at different precincts in the same county, or even at the same precinct may now treat voters differently. In fact, state law gives *the same poll worker* the discretion to treat voters unequally, directing some to the right precinct while failing to do so for others. By opening the door to arbitrary and disparate treatment of voters, HB 194 is inviting litigation, particularly in the event of a close election.

Changing the rules for determining election official error. HB 194 adds ORC § 3501.40, which alters the rules for both administrative review and legal actions. It prohibits any presumption that election officials have made errors, even where that election official "has been found to have committed an error with respect to a particular person or set of circumstances." Thus, even if a

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[32]*See, e.g.*, Craig L. Brians & Bernard Grofman, *Election Day Registration's Effect on U.S. Voter Turnout*, 82 SOCIAL SCIENCE QUARTERLY 170, 176-77 (2001); James White, *Election-Day Registration and Turnout Inequality*, 22 POLITICAL BEHAVIOR 29 (2000); Benjamin Highton, *Easy Registration and Voter Turnout*, 59 JOURNAL OF POLITICS. 565 (1997); Mark J. Fenster, *The Impact of Allowing Day of Registration Voting on Turnout in U.S. Elections from 1960 to 1992*, 22 AMERICAN POLITICS RESEARCH 74, 80, 84 (1994).

[33]Daniel Smith & Michael Herron, *Souls to the Polls: Early Voting in Florida in the Shadow of House Bill 1355*, 11 ELECTION LAW JOURNAL – (forthcoming 2012).

[34]Norman Robbins, Documentation of How HB 194 Restricts Voting or Makes It More Difficult, May 1, 2012.

[35]"Polling place" is defined to mean " that place provided for each precinct at which the electors having a voting residence in such precinct may vote." ORC § 3501.01(R).

[36]Robbins, *supra*.

poll worker is proven to have repeatedly made the same mistake – for example, instructing voters to go to the wrong precinct – that official cannot be presumed to have made the same error again. At some point, probably in the context of a disputed election, this provision is likely to be challenged in federal court on the ground that it improperly supplants the fact-finding and adjudicatory role of courts and violates the due process rights of voters.

Eliminating the period for voters to document their eligibility. HB 194 eliminates the provision allowing voters who have to cast provisional ballots to bring in documentation of their eligibility within 10 days of election day as currently provided by ORC §§ 3505.181(B)(8) and 3505.183(B)(2). This would prevent provisional voters without required identification from later bringing in proof that they are in fact eligible and registered, so their votes may be counted. This provision also threatens to deny due process and equal protection, because it will effectively prevent some voters from producing evidence of their eligibility and election officials from considering that evidence. Again, this is a change that could make a critical difference in a close race, precluding eligible citizens from having their votes counted, and can be expected to result in further litigation.

With one exception, the changes made by HB 194 will not be in effect for the 2012 election. That is because opponents of this law collected sufficient signatures to subject the statute to a referendum. Thus, Ohio voters will be voting in November on whether to approve the changes effected by HB 194. The one exception is the provision of HB 194 that moved up the last day for early voting to the Friday before the election day. This provision will take effect, because of a subsequent bill (HB 224), which added a provision requiring that applications for an absentee ballot (including in-person absentee or early voting ballots) be made by 6:00 pm the Friday before election day. § 3509.03(I). Because of this provision, the Secretary of State has ruled the last day for early voting will be Friday, November 2, four days before Election Day, notwithstanding the referendum on HB 3.

There is one final issue of which this subcommittee should be aware. As noted above, provisional ballots have been a major issue in Ohio elections in recent years. Many voters are denied their right to vote in every election because their provisional ballots are not counted. In the 2008 election, almost 40,000 provisional ballots were rejected. To put this in perspective, our State Attorney General race in 2010 was decided by 48,686 votes (with the winning candidate prevailing by a 47.54% to 46.26% margin).[37]

According to data from the Ohio Secretary of State's office, over one-third of these provisional ballots were rejected because election officials determined that they were cast in the wrong precinct.[38] That includes ballots cast in the correct polling location. As noted above, provisional ballots cast in the wrong precinct are not counted under Ohio law. In Cuyahoga County, 3423 provisional ballots were rejected for this reason in 2008. But the problem is not

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[37]Ohio Secretary of State, Amended Official Results, Attorney General: November 2, 2010, *available at* http://www.sos.state.oh.us/sos/elections/Research/electResultsMain/2010results/20101102ag.aspx.

[38] Ohio Secretary of State, Provisional Ballot Statistics for the November 4, 2008 General Election, *available at* http://www.sos.state.oh.us/sos/upload/elections/2008/gen/provisionals.pdf.

limited to urban counties. In Hardin and Miami counties, for example, more than half the rejected provisional ballots were rejected for this reason.[39]

Under current Ohio law, these provisional ballots are not to be counted. There have, however, been two significant federal lawsuits challenging the refusal to count provisional ballots cast in the correct polling location but wrong precinct, in circumstanees where it appears that poll worker error is responsible for the mistake.

In one case, the failure to count provisional ballots cast in the wrong precinct due to poll worker error was challenged as a violation of the Equal Protection Clause and Due Process Clause of the Fourteenth Amendment. After years of litigation, a U.S. District Court issued a consent decree in that case which requires that provisional ballots be counted if the provisional voter provided the last four digits of his or her Social Security Number and (1) the provisional ballot was cast in the correct polling location but in the wrong precinct due to pollworker error, (2) the provisional ballot application was filled out incorrectly due to pollworker error, or (3) the provisional ballot application was not signed by the pollworker.[40]

In effect, the federal court order in *NEOCH* protects voters from bcing penalized due to a poll worker's mistake. Yet the President of the Ohio Senate and the Speaker Pro Tem of the Ohio House have recently sought to challenge this federal court order – not through the appropriate means of going back to the federal court, but instead through a collateral attack brought in the Ohio Supreme Court. This is a remarkable subversion of the U.S. Constitution's structure of federal-state authority, which provides that federal law is supreme over state law. If one disagrees with a federal district court order, the proper course is not to ask a state court to undermine that order; it is to go back to the federal district court and then the appropriate federal appellate court (in this case the Sixth Circuit). Put simply, the state legislators' lawsuit is nothing less than an invitation to flout a federal court order. This is comparable to the disgraceful tactics to which southern officials resorted decades ago, in an effort to avoid federal court orders in civil rights cases.

I have already mentioned the other case involving the failure to count provisional ballots cast in the right polling place but wrong precinct. That case, *Hunter v. Hamilton County Board of Elections*, involves a disputed judicial election in which candidates were separated by a small number of votes. Some provisional ballots cast in the wrong precinct were counted based on a presumption of poll worker error, while others were not. The Sixth Circuit upheld a district court injunction, based on the Equal Protection Clause of the U.S. Constitution, relying in part on the U.S. Supreme Court's decision in *Bush v. Gore*:

> Constitutional concerns regarding the review of provisional ballots by local boards of elections are especially great. As in a recount, the review of provisional ballots occurs after the initial count of regular ballots is known. This particular post-election feature makes "specific standards to ensure ... equal application," *Bush [v. Gore]*, particularly "necessary to protect the fundamental right of each voter" to have his or her vote count

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[39] *Id.*

[40] *NEOCH v. Brunner*, Consent Decree (S.D. Ohio Apr. 19, 2010), *available at* http://moritzlaw.osu.edu/electionlaw/litigation/documents/NEOCH-Decree-4-19-10.pdf.

> on equal terms.... [D]isparate treatment of voters here resulted, not from a "narrowly drawn state interest of compelling importance," but instead from local misapplication of state law. This discriminatory disenfranchisement was applied to voters who may bear no responsibility for the rejection of their ballots, and the Board has not asserted "precise interests" that justified the unequal treatment.[41]

The lesson from these cases is that Ohio is at risk of continuing to violate the U.S. Constitution, as long as it denies voters equal treatment and fails to direct voters to the right precinct, especially when they go to the correct building on election day. Unfortunately, some of Ohio's leaders seem to have taken the opposite lesson, enacting legislation and bringing litigation that will make it more difficult for eligible voters to vote and have their votes counted. It is difficult to understand these actions as anything other than an attempt to gain partisan advantage by making it more difficult for some of our fellow citizens to vote. If this is not vote suppression, I don't know what it is.

Conclusion

For the most part, the recent round of state election laws have the effect and apparent intent of making it more difficult for eligible citizens to vote. Ohio's recent law is a prime example. If it is allowed to take effect, this statute will sow confusion for voters and poll workers alike, many of whom have just gotten used to current rules. It can be expected to increase the number of provisional ballots cast, including by voters who go to the correct polling location. Ultimately, it will increase the likelihood of voters being denied their fundamental right to vote – and therefore of lawsuits that could potentially throw future elections into doubt. Worse still are the efforts by the leaders of the Ohio legislature to undermine a federal consent order requiring the fair and equal treatment of voters.

For all the complexity of our voting laws, the bottom line is simple: We should be making it easier, not more difficult, for eligible citizens to vote.

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[41] 635 F.3d 219 (6th Cir. 2011). The case went back to the district court which, after a trial, concluded that the Equal Protection Clause had indeed been violated by the disparate treatment of provisional ballots.

PREPARED STATEMENT OF CHAIRMAN DICK DURBIN

United States Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Senator Richard J. Durbin, Chairman

New State Voting Laws III: Protecting Voting Rights in the Heartland
Monday, May 7, 2012 – Cleveland, Ohio

Opening Statement

(As Prepared for Delivery.)

The Right to Vote Is Critical to Participation in a Democracy

There is perhaps no right more essential to a functioning democracy than the right to vote. Show me a person who cannot express their preferences at the ballot box and I will show you a person who is likely to be ignored by those in power. At its best, our great country is one with open and vigorous political debates, followed by fair and transparent elections where all eligible citizens have unobstructed access to the ballot box.

I do not need to remind the people gathered here today that our democracy has not always extended the right to vote fairly and equally to all citizens. For generations, women, African Americans, and those without property were denied the right to vote. Even after the franchise was legally expanded, for close to a century, a well-organized, violent, racist campaign successfully prevented many African Americans from exercising the right to vote.

It took six Constitutional Amendments, civil disobedience, bloodshed, and the loss of too many lives, but – over time – America learned from these mistakes and guaranteed the right to vote, regardless of race, sex, class, income, physical ability, or state of residency.

All of us who now celebrate that progress have a responsibility to remain vigilant in ensuring that America's hard fought progress on voting rights is not reversed on our watch.

That's why we're here today.

Ohio's new law, HB 194, threatens to make it harder for tens of thousands of Ohioans to vote.

Unfortunately, Ohio is only one of more than 30 states that, in the last two years, have introduced bills or enacted new laws that will restrict access to the ballot for millions.

New Voting Laws in Other States

Last September, this Subcommittee held the first Congressional hearing to examine the rash of new voting laws passed in a number of states, including Wisconsin, Texas, Kansas, Florida, Alabama, Tennessee, South Carolina, and right here in Ohio. These laws may have different provisions in each state, but together they threaten to disenfranchise millions of eligible voters nationwide.

Here are some examples:

1. Voter ID Laws

States like Pennsylvania, Wisconsin, Texas, Alabama, Kansas, and South Carolina have passed restrictive photo ID laws. These states acknowledge that hundreds of thousands of their own residents -- who are already registered to vote -- do not currently have a photo ID that would satisfy the strict new ID requirements. Nationwide, the nonpartisan Brennan Center for Justice estimates that laws like these will prevent more than 5 million people from voting in November.

2. Voter Registration Laws

Some states, like Texas and Florida, are subjecting volunteers and nonpartisan organizations, like the Boy Scouts and Rock the Vote, that register voters to onerous fines if they fail to comply with cumbersome and unnecessary administrative burdens. These volunteer organizations are the primary way many African Americans, Latinos, low income, first-time, and new resident voters register. New laws like those in Florida and Texas have led organizations like the League of Women Voters to suspend all voter registration activity.

In January, our Subcommittee conducted its first field hearing in Tampa, Florida to examine Florida's new voting law, which will lead to widespread disenfranchisement of tens of thousands of Floridians.

3. Early Voting Laws

Ohio has joined Florida in rolling back early voting by eliminating about half of the early voting period. Across the country, early voting has become incredibly popular. People vote early because they may not be able to take time off on Election Day, they may need child care, or they may need assistance getting to the polls. In 2008, 30% of all votes were cast before Election Day. Drastically reducing the early voting period will lead to even longer lines on Election Day and cause some people not to vote.

I am pleased that the Department of Justice has objected to the new laws in South Carolina and Texas, and that it is challenging Florida's law in court, but we must remain vigilant.

National Trend Influenced by ALEC

It is not a coincidence that these new voting laws swept the country after Republicans took control of state houses and Governor's offices in 2010. The American Legislative Exchange Council (ALEC), a conservative advocacy group that is funded, in part, by the billionaire Koch brothers, has provided guidance to state legislators on voter ID legislation and encouraged its passage.

One need look no further ALEC's founder, Paul Weyrich, to understand why ALEC and other conservative activists are so aggressively pursuing these laws.

In a moment of honesty, Weyrich said to supporters, "I don't want everybody to vote. ... As a matter of fact, our leverage in elections quite candidly goes up as the voting populace goes down."

Ohio's New Voting Law: HB 194

If the goal is to drive down turnout by causing confusion and erecting barriers to the ballot, then HB 194 will certainly accomplish that goal in Ohio.

Four of the most worrisome provisions of HB 194 include:

- Cutting the early voting period in half, from 35 days to 17 days.
- Eliminating the weekend before Election Day from the early voting period.

- Eliminating the requirement that poll workers direct voters to the correct precinct.

- Preventing counties from mailing applications for absentee ballots to all registered voters.

Ballot Measure

Unlike voters in some other states, Ohioans are fortunate because you have the opportunity to have the last word on HB 194.

Many of the groups and people here today gathered more than 500,000 signatures to place a measure on the November ballot that would repeal HB 194.

And the outcry from across Ohio that led to the ballot measure on HB 194 has persuaded the legislature to consider repealing the law in full. Senator Brown and I call on the legislature to do just that.

As we will learn from our witnesses today, HB 194 threatens to disenfranchise tens of thousands of voters, if it is not fully repealed. In such an important state, where elections are sometimes decided by only a few hundred people, every vote counts and every vote should be counted.

PREPARED STATEMENT OF SENATOR SHERROD BROWN

U.S. Senator Sherrod Brown's Opening Statement to the Senate Judiciary Committee, Subcommittee on the Constitution, Civil Rights and Human Rights "New State Voting Laws III: Protecting Voting Rights in the Heartland" Monday, May 7, 2012 Carl B. Stokes Courthouse, Cleveland, Ohio

Mr. Chairman:

Let me open by thanking you for coming to Ohio to examine a bill that will obstruct Ohioans' ability to exercise one of their most fundamental rights—the right to vote—if it goes into effect.

As we will hear from the witnesses today, there have been numerous recent efforts to erect needless barriers to voting in Ohio.

These efforts, under the guise of preventing fraud and cutting spending, are part of a cynical effort to impede access to the ballot.

Specifically, HB 194 dismantles a number of commonsense, effective bipartisan measures that assist people with voting.

I am here today not only as a Senator of a state often at the center of our national elections, but also as an eight-year, two-term former Secretary of State of Ohio charged with administering those elections from 1983 to 1990.

So I understand what goes into ensuring the fundamental right to vote is exercised. Inherent in that responsibility is ensuring that voting is accessible and free of intimidation and roadblocks.

As a state, over a period of decades, Ohio's legislators undertook a bipartisan – I would underscore that word, bipartisan – effort to help Ohioans vote more easily. When I was Secretary of State, Democrats and Republicans worked together to make voting laws work for huge numbers of people.

When I was Secretary of State, we understood that even civically minded Ohioans had many priorities pulling them in many directions. So we sought to make voting and registration easier.

As Secretary of State, I asked businesses to help out and Ohio's utility companies cooperated by including voter registration forms in utility bill statements. Driver's license bureaus registered people to vote.

And one company housed in the Chairman's state of Illinois, the McDonald's Corporation, at our request, printed 1 million tray liners that were put in McDonald's restaurants all over my state.

People could register to vote on their tray liner, so occasionally someone turned in registration forms with ketchup and mustard stains. We accepted them, and I assume some of them still exist in boards of elections around the state.

But today, instead of protecting the right to vote, we're seeing shameless attempts to undermine it.

In those days, there was a bipartisan recognition that our democracy was stronger, more vibrant, and more representative if we worked to expand access to the vote.

We are being told that HB 194—and laws like it, which significantly reduce the number of early voting days and make it more difficult for Ohioans to exercise their right to vote—will reduce costs and reduce the risk of voter fraud.

However, the overwhelming evidence indicates that voter fraud is virtually non-existent, and that these new laws will make it harder and more costly for hundreds of thousands of Ohioans to exercise their right to vote.

It is symbolically significant that you are holding this second field hearing here following your hearing in Florida. During the 2004 Presidential election, Ohio saw a bit of a rerun of Florida in 2000: a dysfunctional election marred by electronic voting machines improperly tallying votes and Ohioans waiting in line for hours in some cases.

I was at Oberlin College then, in my congressional district, where voters, many of them young voters, waited for six hours to vote. At Kenyon College, just an hour south, not far from where I grew up, voters waited nine hours to vote.

This wasn't a question of voter fraud or of individuals trying to game the system. This was not a question of an individual voting multiple times. Voters aren't going to try to do that; there's nothing in it for a voter to try to vote five times and change an election. The clouds over the '04 election in Ohio were all caused by process and not by individual voters.

Now, eight years later, we see a continuation of the efforts to undo a model election system—created by Republican and Democratic members of the legislature— as Ohio returns to the headlines again for the wrong reasons.

The new election law, HB 194, undermines Ohio's efforts to ensure that all votes are counted. This law dismantles earlier voting laws passed by Democrats and Republicans and signed by a Republican Governor. That is what is disturbing. There was consensus in Ohio about voting, and yet now there is an effort to undercut that consensus.

HB 194 undermines an Ohioan's ability to vote in a number of ways. I will focus upon two of them in the interest of time.

First, the bill significantly reduces the early voting window. Second, the bill no longer requires election workers to redirect voters – who arrive at the wrong precinct – to the correct one.

Let me address these problems in turn:

In a seemingly innocuous manner, HB 194 eliminates early voting on the Saturday, Sunday, and Monday prior to the election, the three busiest days of early voting.

This reduction was made despite the fact that in 2008, a significant number of Ohio voters cast their ballots on that weekend preceding the election. Furthermore, this significant reduction in early voting was made despite the fact that evidence overwhelmingly indicates that limiting early voting will cost money and disrupt efficiency. And this reduction in early voting was made, without any evidence of fraud and despite the fact that only a few years prior, both Republicans and Democrats thought it was a good idea.

HB 194 also eliminates Sunday early voting. Make no mistake, cutting Sunday voting was intentional and it was intended to suppress voting. On the Sunday before the election, particularly in communities of color, Ohioans who work long hours during the week go to the polls after church, fulfilling their civic and spiritual obligations on the same day.

There is no justification for this. For no good reason, HB 194 now limit Boards of Elections' options and increases their costs by mandating that they close shop on Sundays when people are coming from church.

By ending early voting, the lines outside polling stations will only get longer and costs will only increase. This increases frustration and limits voting.

Single parents, shift workers, and busy professionals who work during the week now have unnecessary additional pressures that may prevent them from being able to vote.

Exercising one's right to vote is a sacred duty. It should not be riddled with additional burdens making it harder.

Another burden posed by HB 194 is that it discourages poll workers from performing one of their most basic functions—helping voters find their right precinct. This piece of legislation no longer requires that poll workers assist a confused, elderly, disabled or young voter in getting to their correct precinct.

In essence, Ohio's law discourages neighbors from helping neighbors. This phenomenon is so common that it has a name: "right church, wrong pew".

Given the current consolidation of polling places into fewer voting locations—in Akron, for instance—it is extremely likely that voters will come to the correct building to vote, but then may end up at the incorrect precinct table.

By removing the requirement that poll workers direct voters to their correct precinct, it is more difficult for law-abiding Ohioans, whose only crime is earnest confusion, to cast their ballots.

Chairman, I will conclude with saying that this is a solution in search of a problem. It is not something we need to do. There was consensus in Ohio that things needed to change after 2004, and the changes which were enacted in 2006 led to shorter lines, more clarity and less frustration for voters. And while none of the changes that I have mentioned today make it impossible to vote, as a practical matter, they install burdens to voting – burdens that have no good reason. Ohio deserves better when it comes to protecting our most fundamental constitutional rights.

I thank you very much for coming to Ohio to examine this issue.

QUESTIONS SUBMITTED TO DALE FELLOWS BY CHAIRMAN DURBIN

[Note: At the time of printing, the Committee had not received responses from Dale Fellows.]

United States Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Senator Richard J. Durbin, Chairman

New State Voting Laws III: Protecting Voting Rights in the Heartland
Monday, May 7, 2012 – Cleveland, Ohio

Questions for the Record

Dale Fellow, Republican Central Committeemen
Lake County Republican Party, Executive Committee Member

1. Mr. Fellows, in your oral testimony, you stated that a bipartisan group made a formal recommendation that every voter in Ohio receive an absentee ballot. Please provide additional details concerning the recommendation, including (1) the formal name of the group, if any, that made the recommendation, (2) the names of the individuals and/or organizations that comprised the group, (3) the date the recommendation was proposed, and (4) to whom the recommendation was made. Additionally, please submit for the record a copy of the proposal, if the recommendation was reduced to writing, and please inform the Subcommittee about any action taken by or communication received from the Kasich administration concerning the group's recommendation.

WASHINGTON
LEGISLATIVE OFFICE

May 7, 2012

The Honorable Dick Durbin
Chairman
Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Lindsey Graham
Ranking Member
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ROBERT REMAR
TREASURER

Re: Submission on Wisconsin Voter ID for Hearing: "New State Voting Laws III: Protecting Voting Rights in the Heartland"

Dear Chairman Durbin and Ranking Member Graham:

On behalf of the American Civil Liberties Union (ACLU), the ACLU of Wisconsin Foundation, and the National Law Center on Homelessness & Poverty, we commend the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights for holding another field hearing, shining a light on recently enacted state laws which have severely restricted the fundamental right to vote for millions of Americans.

Attached for the record, please find the Plaintiffs' Motion for Preliminary Injunction in the case of *Frank v. Walker*, filed on April 23, 2012. This case was brought because Wisconsin's photo ID requirement, Act 23, is the most restrictive such law currently in force anywhere in the nation. *Frank* is the only pending case challenging a photo ID requirement for voting under the U.S. Constitution and one of only two attacking such laws as violations of the Voting Rights Act.

The lawsuit asserts that the photo ID law imposes severe and unjustifiable burdens on the right to vote, imposes a poll tax on voters who must pay for documents necessary to acquire an accepted photo ID, and arbitrarily excludes certain photo IDs that are materially indistinguishable from those on the statutory list—all in violation of the U.S. Constitution. Plaintiffs allege that the photo ID requirement has resulted in the arbitrary and disparate treatment of voters struggling to acquire accepted photo ID and rendered the state's electoral system so riddled with public and official confusion, inadequate training, and haphazard administration that it is fundamentally unfair — these constitute violations of the Equal Protection and Due Process

Clauses of the Fourteenth Amendment, respectively. Finally, the suit alleges that the law results in the denial and dilution of the right to vote on account of race in violation of Section 2 of the Voting Rights Act.

The included brief is a portrait of an election system turned upside-down in the wake of this unnecessary and unconstitutionally burdensome voting restriction. Under Act 23, Wisconsin voters must scramble to find or obtain documents needed to obtain a nominally "free" state ID card, travel to and submit applications with multiple local, state, and federal agencies, and pay fees and transportation costs, all in the hopes of obtaining a "license to vote" from the Division of Motor Vehicles ("DMV").

Wholly inadequate notice and implementation as well as widespread confusion amongst voters and election officials have contributed to disfranchisement in the state. Even if voters can understand this bureaucracy navigation test, they are often rejected due to insufficient documentation, arbitrary or undisclosed rules, or misapplication of the law. While no segment of Wisconsin's electorate has been left unharmed, elderly, minority, low-income, and homeless voters are particularly at risk. For example, a survey of nearly 2,000 eligible voters in Milwaukee County uncovered that eligible African-American and Latino voters are, respectively, 182 percent and 206 percent more likely to lack accepted photo ID than their white counterparts. The law will have a dramatic impact on the ability of minority voters to cast ballots that will be counted.

By severely limiting the list of accepted photo IDs and providing no safeguards for those without the means to acquire one, Wisconsin has sought to convert a fundamental right into a mere privilege for some of its citizens.

Thank you so much for your attention to this important matter. Please feel free to contact any of our organizations if you have questions or would like to discuss this matter further. You may also reach Deborah J. Vagins, ACLU Senior Legislative Counsel, at dvagins@dcaclu.org or (202) 675-2335 for any follow-up. Thank you so much for your consideration.

Sincerely,

Laughlin McDonald

Laughlin McDonald
Director, ACLU Voting Rights Project

Enclosure

TO: The Honorable Dick Durbin, Chairman
The Honorable Lindsey Graham, Ranking Member
Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights

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FROM: Christine Link, Executive Director
Mike Brickner, Director of Communications & Public Policy
American Civil Liberties Union of Ohio

DATE: May 2, 2012

RE: ACLU Statement on Ohio Voting Legislation for Senate Field Hearing: "New State Voting Laws III: Protecting the Right to Vote in America's Heartland"

I. 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 Ohio — one of the states that have recently enacted laws severely restricting the fundamental right to vote for millions of Americans.

The American Civil Liberties Union of Ohio ("ACLU of Ohio") is the Ohio Affiliate of the national ACLU, with over 30,000 members and supporters across Ohio. The ACLU and ACLU of Ohio are non-profit, non-partisan membership organizations devoted to protecting basic civil rights and civil liberties for all Americans and all Ohioans. The ACLU of Ohio has been involved in various aspects of protecting voters' rights, from educating the public about their right to vote to defending that right in court. Over the last decade, the ACLU of Ohio has litigated several issues, including:

- Challenged the use of punch card ballots after documenting that voters who used this system — predominantly African American and urban voters — were more likely to be disfranchised than those who used optical scan or electronic voting systems;[1]
- Successfully challenged a provision of state law that would allow poll workers to demand the citizenship papers of naturalized citizens when they cast their vote;[2] and,

[1] *Stewart v. Blackwell*, No. 05-3044 (6th Circuit filed April 21, 2006)
[2] *Boustani v. Blackwell*, No. 1:06CV2065 (Federal District Court for Northern Ohio, Judge Christopher A. Boyko, filed August 29, 2006)

- Filed a lawsuit against the use of central count optical scan ballots in Cuyahoga County because voters who used this technology were unable to check for accuracy and correct potential mistakes on their ballots leading to more ballots in low-income and African American precincts discarded because of these errors.[3]

II. Voting changes enacted in Ohio House Bill 194 in 2011

The Ohio General Assembly passed HB 194 on June 29, 2011, and the bill was to go into effect for the November 2011 general election. The ACLU of Ohio opposed a variety of provisions in HB 194, all of which threatened to disfranchise more Ohioans. Among the most troubling of HB 194's provisions include severe cuts to early voting, changes in how poll workers may assist voters, and new rules for casting provisional ballots that would not favor voters. These changes would most affect voters who are financially disadvantaged, African American, elderly, students, and disabled.

A. CHANGES THAT ARE THE MOST HARMFUL TO OHIO VOTERS

1. Severe Cuts to Early and Absentee Voting

In 2006, the Ohio General Assembly expanded early voting, which has been an overwhelming success. A pair of changes enacted in 2006 expanded early voting options — including no-fault absentee voting, in-person early voting, and allowing Boards of Elections (BOEs) to set up satellite early vote centers.[4] These changes were made to address the long lines voters encountered at polling places in the 2004 presidential election. For instance, students at Kenyon College, in Knox County, Ohio waited as long as 10 hours to cast their vote.[5] Once early voting was made widely available, many more Ohioans case their votes by mail or early in-person. For example, in 2004, early voting only accounted for 10.6% of votes cast, but they accounted for 29.7% in 2008.[6] This led to a reduction of voters casting ballots on Election Day, creating shorter lines and allowing county BOEs to consolidate polling locations and save resources.[7]

Under HB 194, early voting time was drastically reduced. Mail-in absentee voting was slashed from 35 days before the election to only 21 days. In-person early voting was limited from 35 days to only 16 days before Election Day. BOEs were also prohibited from conducting early in-person voting the weekend before Election Day. Voting on the weekend before the election was particularly popular in urban counties, and many African American churches created "Souls to

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[3] *ACLU of Ohio Foundation v. Brunner*, No. 1:08-cv-00145 (Federal District Court for Northern Ohio, Judge Kathleen O'Malley, filed February 8, 2008)

[4] *See* 2005 HB 234 (eff. 1-27-2006) and 2006 HB 3 (eff. 5-2-2006).

[5] Adam Cohen, *No One Should Have to Stand in Line for 10 Hours to Vote*, NEW YORK TIMES, August 25, 2008, *available at* http://www.nytimes.com/2008/08/26/opinion/26tue4.html

[6] *A Study of Early Voting in Ohio Elections*, Ray C. Bliss Institute of Applied Politics, University of Akron, 2010, *available at* http://www.uakron.edu/bliss/research/archives/2010/EarlyVotingReport.pdf [hereinafter Bliss].

[7] *Franklin Co. Board of Elections Consolidates Voting Precincts*, WCMH, June 24, 2011, *available at* http://www.wcmhblogs.com/ohiovotes/comments/franklin_co._board_of_elections_consolidates_voting_precincts/.

the Polls" programs that brought entire congregations to BOEs to vote early.[8] In 2008, voters in Stark and Summit counties waited in lines that snaked around their early voting locations to cast their early ballots.[9]

In addition, Ohio law previously allowed local BOEs to establish satellite locations for voters to cast in-person early ballots, but HB 194 mandated that voters could only cast these ballots at the BOE office. For voters in rural areas or those without transportation, this restriction makes it more difficult for them to cast an in-person early ballot.

Finally, HB 194 also prohibited BOEs from mailing absentee ballot applications to all registered voters. Since 2008, a handful of Ohio counties mailed these applications to all voters in order to encourage additional absentee voting. Proponents of the restriction suggested there is an equal protection problem if some counties send absentee applications to all voters, while other counties do not. However, this logic turns the Equal Protection Clause of the Fourteenth Amendment on its head and codifies a race to the bottom. Rather than raising all counties up to the same level and affording all citizens better access to early voting, this drags everyone down.

Data provides a glimpse into what groups of Ohioans are most likely to utilize early voting. Women were overwhelmingly more likely to vote early, by margins of 62.1% to 48.8%.[10] Similarly, voters who are aged 65 or older were more likely to vote early than other age group.[11] In terms of income, voters who earned less than $35,000 per year were more likely to vote early, while voters who made between $35,000-$99,000 were more likely to vote on Election Day. Wealthy voters who earned over $100,000 were equally likely to vote early or on Election Day.[12] Finally, there was also a difference in terms of education level. Poorly educated voters are less likely to vote overall, but those who have some education beyond high school, but not a college degree were more likely to vote early, while college educated people tended to vote on Election Day.[13]

These restrictions on mail-in absentee and in-person early voting sharply curtail voters' ability to access the ballot at the time, location and manner that is most convenient to them. The net result would likely be a return of long lines on Election Day. As was evidenced in Ohio in 2004, these long lines tend to occur in a few places:

- Communities with colleges, such as Kenyon College in Knox County that experienced lines lasting over 10 hours;
- High population counties, such as Columbus in Franklin County, where an estimated 15,000 voters left polling places without casting their ballots;[14] and,

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[8] *Take Your Souls to the Polls*, AMERICAN CIVIL LIBERTIES UNION, available at http://www.aclu.org/voting-rights/take-your-souls-polls-voting-early-ohio.
[9] *Thousands Voting Early to Avoid Long Lines*, AKRON BEACON JOURNAL, Stephanie Warsmith and Katie Byard, November 2, 2008, available at http://www.ohio.com/news/thousands-voting-early-to-avoid-lines-1.109468.
[10] Bliss, *supra* note 6.
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Long Lines at the Polls Violate Equal Protection and Require Judicial and Legislative Action*, UNIVERSITY OF ST. THOMAS LAW JOURNAL, Boe M. Piras, Volume 6, Issue 3: 2009.

- Communities with people of color — in Ohio in 2004, white Ohio suburbanites waited an average of 22 minutes to vote, while urban African Americans waited on average 3 hours and 15 minutes.[15]

Long lines will mean more minority, financially disadvantaged, young, and elderly voters who will be kept from the ballot as our polling places grind to a halt.

2. Allows Poll Workers Discretion to Choose Which Voters to Direct to the Correct Precinct

Poll workers are there to help voters navigate the process for casting their ballot, and to ensure rules are followed and Election Day runs smoothly — yet HB 194 compels the very opposite. HB 194 removed the requirement that poll workers direct voters to their proper precinct, leaving it to their discretion. This would likely exacerbate Ohio's already troubling use of provisional ballots.

In 2002, Congress enacted the Help America Vote Act (HAVA), which required the states to implement a system of provisional voting. A voter not listed on the precinct rolls can nevertheless cast a ballot that will ultimately be counted if his or her eligibility was later confirmed.[16] The law requires a voter to sign an affirmation that he or she is registered to vote in "the jurisdiction in which the individual desires to vote" and is "eligible to vote in that election."[17] A provisional ballot may be rejected for a variety of specific reasons, most obviously if election officials confirm the voter is not registered in the state at all. Provisional ballots may also be rejected if they are cast in a precinct other than the one in which the voter is registered.

Ohio has been plagued with some of the nation's highest wrong-precinct rejection rates. According to the Advancement Project, in the 2006 general election, 46 percent of the provisional ballots cast in Ohio (approximately 10,610) were rejected for being cast in the wrong precinct.[18] In 2008, 14,335 provisional ballots were discarded in full because they had been cast in the wrong precinct. About half of these rejections — 7,522 provisional ballots — occurred in just four of Ohio's largest counties: Cuyahoga (3,423), Franklin (1,139), Hamilton (1,767), and Lucas (1,193).[19] Similarly, in 2010, 45% of provisional ballots were rejected because they were cast in the wrong precinct.[20]

Some polling places contain just one precinct, but others contain multiple, which substantially increases the potential for voter confusion HB 194 would remove the mandate to direct voters

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[15] *Id.*
[16] 42 U.S.C. § 15482.
[17] *Id.* § 15482(a)(1)-(2).
[18] The Advancement Project, PROVISIONAL VOTING: FAIL-SAFE VOTING OR TRAPDOOR TO DISENFRANCHISEMENT? (Sept. 2008), at 12, http://www.advancementproject.org/sites/default/files/Provisional-Ballot-Report-Final-9-16-08_1.pdf.
[19] OHIO SUMMIT REPORT, at 45 (citing Ohio Sec'y of State, Election Results, General Election 2008, Provisional Ballot Statistics, http://www.sos.state.oh.us/sos/upload/elections/2008/gen/provisionals.pdf).
[20] *See* Ohio Sec'y of State Website, Provisional Ballots Statistics for November 2, 2010 General Election, available at http://www.sos.state.oh.us/SOS/elections/electResultsMain/2010results.aspx.

to the correct precinct, but it does not *forbid* assistance in this context—it just makes it voluntary. This means that a poll worker could lawfully assist some voters, but decline to assist others. This raises the strong possibility that some voters in some counties or polling locations will have assistance casting their ballots, while others will have less assistance or none. Voters who receive no assistance would appear to be more prone to cast their ballots in the wrong precinct and see them rejected. The Constitution forbids such unequal and arbitrary treatment.

While proponents assert that removing the prospect of poll worker error will reduce Election Day problems and lawsuits, the opposite is true. With a greater number of Ohioans facing possible disfranchisement, this will lead to more ballots that are not counted, and likely more lawsuits.

B. ADDITIONAL HARM TO VOTERS

1. Shift Responsibility from Election Officials to Voters

Many of the changes in HB 194 shift responsibility for fair elections off of election officials, whose job it is to administer elections, and onto the voters, who have a fundamental right to vote.

a. Presumption of Voter Error

HB 194 forms a new section of the Ohio Revised Code: RC 3501.40. This section creates a presumption in any legal proceeding or administrative review that any error is the voter's fault and not the election officials' fault.

The effects of this shift could be far-reaching. It carries the potential to apply to all election officials — i.e., the Secretary of State (SOS), SOS staff, BOE members, BOE directors and staff, election judges and poll workers. And it could be applied to all matters of election administration under Title XXXV of the Ohio Revised Code – e.g., processing voter registrations, purging voter rolls, approving petitions, issuing absentee ballots, issuing and counting provisional ballots, etc.

This provision essentially makes voters guilty until proven innocent, by assuming that all errors are voter errors.

b. Disregard Voter Intent

HB 194 instructs election officials to disregard voter intent if a ballot is marked twice, also known as the "double bubble" issue.

The "double bubble" issue comes up if a voter marks more than one choice, or too many choices, for one race. The most common example is where a voter fills in the bubble for their candidate and then also writes in their name, but it also could include stray marks or smudges on paper ballots that the scanner recognizes as overvotes. Prior to the passage of HB 194, Ohio law required the BOE evaluate these technical overvotes and count the vote if the voter's intent was clear. Under HB 194, all overvoted races will not be counted, even if voter intent is clear.

2. Statewide Voter Registration Database

HB 194 made several changes to the Statewide Voter Registration Database (SWVRD). While maintaining accurate voter rolls is important, it is essential that protections are in place to ensure that eligible voters are not accidentally purged and that voters' private information is secured.

a. Data Sharing Jeopardizes Voter Privacy

Currently, the state is required under HAVA to compare the SWVRD against the Bureau of Motor Vehicles (BMV) and Social Security Administration (SSA) databases.

HB 194 expands data sharing to include inter-agency data sharing, for example with the Ohio Department of Job and Family Services (DJFS), and perhaps even inter-state data sharing, with any number of unspecified databases in other states.

While including other agencies in activities such as voter registration and education may be positive, allowing information to be shared between agencies, raises serious privacy concerns. Without strong privacy protections in place, it may increase the likelihood of private data being lost or misplaced, hacked, improperly used, or inadvertently released. It may also allow election officials access to information that has no relevancy to the voter's registration. For example, under HB 194, RC 3503.15(A)(2) provides that the SOS would have access to agency data from the DJFS, including otherwise confidential information. That means that the SOS would have access to information on whether an individual registered voter owed child support or was receiving unemployment–information that is not relevant to a voter's eligibility. Ohio can avoid these privacy and data security problems by limiting data sharing to the two databases required under HAVA, namely, the BMV and SSA.

b. Mismatches Between Voter Records and other Databases Cannot be a Basis to Automatically Disqualify or Challenge

HB 194 requires the Secretary of State to adopt rules for addressing mismatches between the SWVRD and BMV records — and possibly other databases. It also requires that the SWVRD, presumably including mismatch info, be continuously made available to BOEs.

The language of these two provisions is insufficient to protect voters. The code should provide parameters for rulemaking to ensure that mismatches will not be automatically purged or marked for challenge. There are many reasons that a mismatch could occur without implicating the eligibility of a voter – such as data entry errors, use of an abbreviated name or nickname, or out-of-date records. All databases have an error rate; for example, the Social Security Administration database has a 4% error rate.[21] Federal law prohibits purging a voter from the voter rolls due to typographical or other technical errors that are beyond their control.

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[21] Office of Inspector Gen., Soc. Sec. Admin, Congressional Response Report: Accuracy of the Social Security Administration's Numident File, A-08-06-26100, Appendix D (Dec. 18, 2006) ["Inspector General Report on SSA Database"], available at http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-08-06-26100.pdf.

However, the language of HB 194 leaves the door open for many Ohio voters to be erroneously purged from the voter rolls or challenged at their polling location at the next election.

3. Additional Changes to Provisional Balloting Rules Will Increase the Number of Provisional Ballots that are Invalid

Streamlining Ohio's provisional voting rules to eliminate confusion and provide greater clarity is a laudable goal. However, increased clarity should not come at the expense of eligible voters being disfranchised — either by not being allowed to cast a ballot or not having that ballot counted.

a. Elimination of 10-Day Validation Period

Prior to HB 194's passage, Ohioans who cast a provisional ballot had 10 days to provide missing information or cure address problems that could not be resolved on Election Day. Although rarely used, it provides a useful safety net for voters and BOEs.

b. New Restrictions on Voter Affirmation

HB 194 specified that provisional voters who refuse to execute an affirmation will not have their ballot counted, and yet it also says that poll workers cannot help the voter fill out the affirmation.

This is counterintuitive. If poll workers are not allowed to help voters fill out the affirmation, then there is an increased likelihood that affirmations will not be filled out properly. This could be especially problematic for voters with disabilities, who need assistance filling out such forms, and federal law requires that disabled voters receive the needed assistance.[22]

Furthermore, the legislation adds that even if election officials are able to determine that the provisional voter was eligible to cast a ballot, the provisional ballot will not be counted without a properly completed affirmation. Refusing to count a ballot of an eligible voter raises serious constitutional questions.

III. Referendum on Ohio House Bill 194

Civil and voting rights advocates across Ohio expressed deep concern over the passage of HB 194. Almost immediately, a grassroots campaign to hold a referendum on the law began and was supported by the ACLU of Ohio, League of Women Voters Ohio, and National Association for the Advancement of Colored People Ohio. Petition gatherers were coordinated by a coalition called Fair Elections Ohio. According to the state constitution, petition gatherers must collect valid signatures from 6% of registered Ohio voters who cast a ballot in the most recent gubernatorial election, and these signatures must represent at least 3% of voters in the most recent gubernatorial election in 44 of the state's 88 counties.[23]

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[22] 42 USC § 15301, et seq.
[23] Ohio Constitution, Article 2, Sections 1a-g.

By November 2011, Fair Elections Ohio delivered over half a million signatures to the Secretary of State — well over the required 231,147 for the referendum. As a result, HB 194 did not go into effect for the November 2011 election or the March 2012 primary election. The Ohio Constitution requires that referendums be voted on during general elections, meaning the issue will be put to voters in November 2012.

A. Passage of Ohio House Bill 224 and Cuts to Early Voting

In the weeks following HB 194's passage, voting rights advocates aggressively circulated petitions to put the legislation under referendum. Sensing that HB 194 would be placed under referendum, and all of its provisions neutralized, legislators in the Ohio General Assembly amended another proposed bill, HB 224. HB 224 originally only addressed absentee voting rules for overseas and military voters, but was amended to reinforce the elimination of early in-person voting on the weekend before the election that was passed in HB 194.

IV. Repeal of HB 194

On January 26, 2012, Secretary of State Jon Husted publicly called on the Ohio General Assembly to repeal HB 194 and avoid a voter referendum. In March 2012, state Senator Bill Coley (R-Middletown) proposed Ohio Senate Bill 295 to repeal HB 194. However, the move caused controversy because it included an additional provision that would again reinforce the ban on early voting the weekend before the election. After HB 194 was placed under referendum, officials were unsure if early in-person voting was still prohibited because of the passage of HB 224. The repeal legislation would clarify the discrepancy — but not in favor of voters, effectively ending successful early voting programs during the weekend before the election like "Souls to the Polls."

SB 295 was passed by the Ohio Senate, and was headed for passage in the Ohio House on April 25, 2012. However, Fair Elections Ohio approached legislators at the eleventh hour offering a deal to withdraw the referendum from the ballot if the legislators set all voting laws back to pre-HB 194 — including full restoration of early voting. Officials are currently negotiating the deal, and it remains unknown if there will be a compromise or not.

V. Additional Election Law Changes Prior to November 2012

State Senator Bill Coley, who sponsored the repeal legislation, and other state legislative leaders have suggested that they prefer to address the restoration of early voting the weekend before Election Day through additional legislation that would make other changes to election laws before November 2012.

The ACLU strongly opposes the passage of any additional voting laws, other than to reset all election laws to the pre-HB 194 status. With Ohio law in constant flux over the past year and a half, voters would be ill-served by additional changes so soon before the next election. It is not difficult to imagine that the average Ohioan would be confused about their voting rights. In addition, it would be challenging to train poll workers and other election officials on these changes, leaving the proper administration of the election in question. Confusion for both voter

and poll worker is a recipe for disfranchisement and other constitutional problems. Given the highly charged and partisan atmosphere that often infects debates over election legislation, additional changes to election laws should not occur until after the November 2012 election.

VI. Recommendations

In addition, to the changes we recommend above at the state level, Congress should take the following actions:

- 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 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.

- Congress should encourage the Department of Justice to consider litigation under Section 2 of the Voting Rights Act against the State of Ohio if provisions of HB 194 are enacted that will disadvantage racial and language minorities, and against any other states that adopt voting provisions that have similar effect.

- 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

The right to vote is fundamental to our democracy. Unfortunately, Ohio is a prime example of the havoc that is wreaked when access to the ballot box is left up to the partisan whims of legislators. Election laws should always seek to facilitate voting and not make it more difficult to cast a ballot. Not only is disfranchisement an affront to our core liberties, the denial of the vote has a ripple effect on so many more issues critical to all Americans. We commend the Subcommittee for examining Ohio's recent voter suppression legislation and hope it may be instructive in ways to protect the rights of all voters.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

RUTHELLE FRANK, et al., on behalf of themselves and all others similarly situated, Plaintiffs, v. SCOTT WALKER, in his official capacity as Governor of the State of Wisconsin, et al., Defendants.	Civil Action No. 2:11-cv-01128 (LA)

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

Wisconsin's voter photo identification law, 2011 Wisconsin Act 23 ("the photo ID law" or "Act 23"), imposes severe and unjustifiable burdens on Wisconsin voters. This motion seeks a preliminary injunction ordering that Defendants permit several classes of voters (Classes 1, 2, 5, and 6) in Plaintiffs' First Amended Complaint ("FAC") (Doc. 31) to execute an affidavit of identity in lieu of presenting one of the limited forms of photo ID acceptable under Act 23. In the absence of such relief, voters in Classes 1 and 2 will be unlawfully deprived of the right to vote, because Act 23, as applied to them, imposes severe burdens and is not narrowly tailored to achieve a compelling government interest, in violation of the Fourteenth Amendment. Doc. 31, Counts 1 & 2. In order to obtain a Wisconsin state ID card needed to vote under Act 23, voters in Class 5 must pay for a birth certificate, marriage certificate, or other documentation that costs money, in violation of the Twenty-Fourth and Fourteenth Amendments' prohibition on poll taxes. Doc. 31, Count 5. Alternatively, the motion seeks a preliminary injunction ordering Defendants to permit voters in Class 6 to use a Veterans Identification Card ("VIC") to vote. In the absence of such relief, the military veterans in this class will be barred from using a form of identification that is in all material respects indistinguishable from acceptable forms of ID, in violation of the Equal Protection Clause. Doc. 31, Count 6.[1]

The motion further seeks to enjoin the photo ID law, because Defendants treat voters applying for accepted photo ID at a Division of Motor Vehicles ("DMV") office in an arbitrary and disparate manner – a direct consequence of the lack of standards governing the documentary

[1] Plaintiffs' Motion for Preliminary Injunction as to Eleven Named Plaintiffs (Doc. 32), filed on March 2, 2012, sought similar relief on Counts 1, 2, 5, and 6 of the FAC and remains pending. This memorandum assumes the Court's familiarity with that motion, memorandum (Doc. 33) and reply (Doc. 41) and other supporting documents, and will not resubmit exhibits or reiterate all of the prior arguments. Previously filed documents are referred to by their docket numbers.

proof requirements (and exceptions) for the issuance of driver's licenses and Wisconsin state IDs. Defendants' exercise of unfettered discretion and arbitrary treatment of voters violates the Fourteenth Amendment's guarantee of equal protection. Doc. 31, Count 7. Similarly, this motion seeks to enjoin Act 23 as a violation of substantive due process, until such time as the systemic problems created by this law are corrected. In addition to the burdensome requirements and arbitrary treatment voters face at DMV offices, failures by the DMV and Government Accountability Board ("GAB") Defendants to inform the public about the voting changes in Act 23, train election officials, and ensure the law's uniform implementation have resulted in widespread confusion among voters, election officials, and DMV employees and rendered the election system fundamentally unfair. Doc. 31, Count 8.

Finally, this motion seeks a preliminary injunction barring enforcement of the photo ID law in Milwaukee County, where it will result in the denial and abridgement of the right to vote on account of race in violation of Section 2 of the Voting Rights Act ("VRA"). Doc. 31, Counts 9 & 10. This motion is filed concurrently with a motion to certify Classes 1 through 7.

Defendants do not dispute that Plaintiffs are Wisconsin residents who are entitled to vote, or that the photo ID law will have the effect of preventing certain voters from exercising their right to vote. Defs.' Br. Opp. Prelim. Inj. (Doc. 38) at 3. Act 23 imposes the same burdens on many other voters, including the numerous Wisconsin voters, especially African-American and Latino voters, who lack photo ID. *Infra* Sec. II.B.6. Nor do Defendants dispute that Act 23 has vested significant control over the franchise in the hands of DMV employees with no voting or elections experience, making the right to vote, for those who lack photo ID, contingent upon the ability to navigate a series of bureaucratic procedures at multiple local, state, and federal

agencies. Nevertheless, Defendants insist that no "special treatment" can be provided: regardless of hardship, no one should be allowed to vote without ID. Doc. 38 at 29.

In the absence of injunctive relief,[2] named Plaintiffs and the class members they represent will be deprived of the right to vote. In contrast to this undeniable harm to voters' fundamental rights, the "harm" Act 23 purports to address is truly illusory: in the past *three decades*, not a single individual has been found to have committed voter impersonation fraud in Wisconsin, and only a handful of voters have been found to have unlawfully voted at all.

I. STATEMENT OF FACTS

A. The Photo ID Law

Act 23 imposed the most far-reaching election law changes in Wisconsin since the 1970s. Doc. 34-1 (KK 122:9-21); MH 130:20-131:8.[3] The law requires Wisconsin voters to present one

[2] In March 2012, two Wisconsin state courts enjoined enforcement of the photo ID law on state constitutional grounds. *See Milwaukee Branch of NAACP, et al. v. Scott Walker, et al.*, Appeal No. 2012AP000557- LV, Dane Co. Circ. Ct. No. 11-cv-5492; *League of Women Voters of Wisconsin et al. v. Scott Walker et al.*, Appeal No. 2012AP000584, Dane Co. Circ. Ct. No. 11-cv-4669. Defendants appealed and sought stays of the injunctions pending appeal. On March 28, 2012, the Courts of Appeals certified both cases to the Wisconsin Supreme Court, which, on April 16, 2012, declined to take the cases. Thus a preliminary injunction in this case is necessary only to the extent that *both* state court injunctions are stayed or reversed.

[3] Excerpts from the following depositions, listed in alphabetical order by last name, are submitted with this memorandum:

Attach. A: Defendant Kristina Boardman, Director, DMV-Bureau of Field Services ("BFS") (hereinafter "KB");
Attach. B: Patrick Fernan, Deputy Administrator, DMV ("PF");
Attach. C: Michael Haas, GAB Counsel ("MH");
Attach. D: Ross Hein, GAB Elections Supervisor ("RH");
Attach. E: Jeremy Krueger, Driver Eligibility Unit, Lead Transportation Customer Representative, DMV ("JK");
Attach. F: Allison Lebwohl, Section Chief, Qualifications & Issuance Section, DMV ("AL");
Attach. G: James Miller, Chief of Technical Training Section, DMV-BFS ("JM");

form of photo ID from a limited statutory list in order to cast a ballot. Wis. Stat. §§ 6.79(2)(a); 5.02(6m). For most voters, Wisconsin's law provides *no* exceptions to the photo ID requirement for in-person voting. Doc. 33 at 4. Wisconsin's law also provides few exceptions for absentee voters, most of whom must still obtain and submit a copy of accepted photo ID. *Id.*

As discussed *infra* Secs. I.C., II.B.1.b, for many voters obtaining accepted photo ID in Wisconsin is a complex and burdensome process. For most Wisconsin voters, the photo ID will be a Wisconsin driver's license or state ID card, although some voters will use one of the seven other forms of accepted photo ID, such as military, tribal, and certain college ID cards. Wis. Stat. § 5.02(6m); Doc. 33 at 3-4. A voter lacking accepted photo ID when attempting to vote must cast a provisional ballot which will be counted only if the voter can manage to obtain and present one of the required forms of ID to a local clerk during the clerks' limited office hours by 4 p.m. on the Friday after the election. Wis. Stat. §§ 6.79(3)(b), 6.97; RH: 43:8-44:14.

Despite Defendant Kennedy's express recommendation, and in contrast to Indiana's practice, the Wisconsin photo ID law does not permit Veterans Identification Cards to be used for voting. Doc. 34-1 (KK 11:6-18); Doc. 34-12 at 2; Doc. 34-13 at 3. Also contrary to Kennedy's recommendations, the law fails to include reasonable alternatives to enable eligible voters who lack photo ID to vote, such as by completing an affidavit of identity at the polling place, even though an affidavit of identity would be as effective as the photo ID law in deterring voter fraud and prosecuting any perpetrators of voter fraud. Doc. 33 at 20; Doc. 34-1 (KK 25:8-27:20); Doc. 34-12 at 6, Doc. 34-13 at 8-9, Doc. 34-14 at 1.

Attach. H: Nathaniel Robinson, GAB Elections Division Administrator ("NR"); and
Attach. I: Janet Turja, Team Leader, Waukesha Customer Service Center, DMV ("JT").
Exhibits introduced during depositions are identified by their deposition exhibit numbers.

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B. Wisconsin's Regulatory Scheme Governing Elections

Although the GAB Defendants have general oversight of the electoral process, Wisconsin operates one of the most decentralized electoral systems in the country. MH: 46:14-17. The actual operation of elections, including registration, poll worker training, and election administration, is in the hands of 1,851 municipal clerks, 62% of whom work part-time and are not "professional" elections workers. NR 83:5-16; MH 46:18-47:9, 49:24-50:2. The clerks supervise 2700 to 5000 chief election inspectors ("chiefs") and 20,000 to 30,000 elections inspectors ("poll workers"). Wis. Stat. § 7.15(1); RH: 31:5-17; NR 73:21-25, 82:2-18; Ex. 109 at ii. This structure presents significant challenges for election administration. MH 47:5-48:1; *infra* Sec. II.B.5.

The sweeping election law changes combined with decentralized administration have led to widespread misapplication of Act 23's requirements. *See infra* Sec. II.B.5. Yet GAB has no statutory authority to mandate that current clerks or chiefs undergo specific training on the photo ID law.[4] Wis. Stat. §§ 7.15(1m), 7.31 & 7.315; RH 23:6-25, 25:17- 29:25; NR 82:8-15, 127:16-23. The poll workers, many of whom are volunteers, are trained by municipal clerks, not the GAB. NR 73:21-25, 81:11-18. As a result, local election workers are confused and ill-informed about Act 23. NR 79:25-81:23; Attach. R (D6087-89) (village clerk referring to photo ID law as "so convoluted"). GAB also has little authority to enforce election law compliance. While it can try persuasion, it has no inherent enforcement authority or direct disciplinary tools over clerks,

[4] New municipal clerks and chiefs are required to take three hours of "core" training, which may include topics set by GAB, but once that requirement is fulfilled, these officials take only six hours of classes of their choosing every two years. RH 23:6-25, 25:17-27:25.

chiefs or poll workers, MH 141:22-143:2; NR 91:6-92:7, and some clerks ignore its orders. NR 96:5-9.

C. Wisconsin's Regulatory Scheme Governing the Issuance of Driver's Licenses and State ID Cards

The photo ID law requires DMV to issue Wisconsin state ID cards free of charge if the applicant is a U.S. citizen, will be at least 18 years old by the next election, and asks that the card be provided free for voting purposes. Wis. Stat. § 343.50(5)(a). However, procuring a Wisconsin photo ID is an unreasonably complicated and costly task that disfranchises many voters. The process is not as easy as walking into one office and walking out with an ID. DMV's "bureaucracy navigation test" mandates that most voters lacking ID must: (1) access one of 92 DMV offices statewide during weekday, daytime hours; (2) produce at least three separate documents, at least one of which bears a cost and at least two of which often cannot be obtained without other forms of identification; and (3) have a residence street mailing address.

Original-issue applicants, *i.e.*, persons who have never before held a *Wisconsin* driver's license or state ID, and those who have not held such ID in more than 8 years, must present: (1) proof of name and date of birth, (2) proof of citizenship, (3) proof of identity, (4) proof of Wisconsin residency, and (5) a Social Security Number, Wis. Admin. Code Trans. (hereinafter "Trans.") § 102.15(2), using at least three separate documents.[5] These stringent requirements, particularly the proof of citizenship requirement, were not designed to regulate voting, but to implement "REAL ID" anti-terrorism laws. Doc. 33 at 5-6; KB 21:4-25. Applying DMV's requirements to voting will disfranchise many eligible voters. In Milwaukee County alone,

[5] The Indiana photo ID law upheld in *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008) required the production of just *one* document to obtain photo ID. *Id.* at 198 n.17.

approximately 21,500 eligible voters who do not have accepted ID also lack one or more of the documents that DMV requires to obtain a photo ID, including 20,000 voters who lack documentary proof of citizenship. Attach. J, Matt Barreto & Gabriel Sanchez, *Rates of Possession of Accepted Photo Identification, Among Different Subgroups in the Eligible Voter Population, Milwaukee County, Wisconsin* [hereinafter "Barreto/Sanchez"], Table 8; *see infra* Sec. II.B.6.

Further, while DMV purports to apply a set of documentary proof requirements with clearly enumerated items that satisfy each of the requirements set forth in Trans. § 102.15, it arbitrarily allows some driver's license and ID card applicants to use alternative documentation or exceptions procedures that are contradictory, not publicly disclosed, sometimes unwritten, and inconsistently applied. The determinations as to who may use these alternatives and whether or not to approve these applications are characterized by standard-less discretion that predictably yields inconsistent outcomes. *See infra* Sec. II.B.4.

1. Proof of Name and Date of Birth

For the majority of voters, the only document listed in the DMV rules to prove name and date of birth is a certified copy of a birth certificate. Trans. § 102.15(3m); JM 54:19-22. However, numerous Wisconsin voters were never issued birth certificates, lack accurate birth certificates, or have difficulty obtaining certified copies of the same.[6] *See infra* Secs. II.B.1.b,

[6] In contrast, the Indiana law at issue in *Crawford* allowed voters were allowed to use Medicaid and Medicare cards, Social Security printouts, and other reasonable alternative documents *in lieu of* birth certificates, to secure photo ID. 553 U.S. at 199 n.18. DMV's Deputy Administrator also knows of states that allow the use of documents instead of birth certificates, or that exempt persons born before 1940 from producing birth certificates. PF 11:4-5, 35:19-36:7. Although Wisconsin also used to be less stringent with documentation requirements, DMV has no plans now to liberalize its requirements for proving name, date of birth, and citizenship. PF 34:12-25.

II.B.4. When a birth certificate exists, DMV requires a voter to obtain it, regardless of legal, practical, or financial difficulties. JM 76:1-17; KB 43:20-44:23; 131:11-17; JM 180:18-24.

If the applicant is unable to provide accepted proof of name and date of birth because the needed documents are "unavailable," the applicant may petition DMV to consider alternative forms of proof. Trans. § 102.15(3)(b). "Unavailable" documents do not include those the applicant forgot to bring or that have been lost or destroyed if a replacement may be obtained. *Id.* § 102.15(1). Even persons who were never issued birth certificates must obtain documentary proof that no birth record exists, using a form known as the MV3002 with supporting documentation. KB 46:12-48:3. Information on the use of this form and the process of using alternate proof is largely hidden from the public and has not been adequately communicated to DMV staff who interact with voters or to vital records offices. *See infra* Sec. II.B.4. The alternative process does not necessarily or routinely prove successful, and does not help voters who have a birth certificate that contains errors. *See infra* Secs. II.B.1.b., II.B.4.; JM 136:18-21.

2. Proof of Citizenship

Wisconsin statutes and DMV's regulations require that applicants provide documentary proof of U.S. citizenship. Wis. Stat. §§ 343.14(2)(er)1, 343.50(4). For most voters, the only document listed in the DMV rules to prove U.S. citizenship is a certified copy of a birth certificate. Trans. § 102.15(3m). A recently adopted DMV policy (Ex. 47) may allow persons for whom birth certificates do not exist to use an MV3002 to prove citizenship, but that also appears to be a matter in dispute within the agency. *See infra* Sec. II.B.1.b. & n.10.

3. Proof of Identity

DMV's proof-of-identity rules are also unduly burdensome. For applicants who do not have a driver's license or state ID card in their physical possession, a Social Security Card ("SSC") is often the only document available to prove identity under DMV's official rules. Trans. § 102.15(4); JM 186:9-13. However, Social Security Administration ("SSA") employees often tell voters they need photo ID to obtain SSCs. KB 145:18-20; Ex. 56; JT 80:7-17. Defendants do not assist voters in obtaining an SSC. Doc. 33 at 10; JM 35:11-13; JT 80:7-81:9. Other forms listed in the rules for proof of identity are either not widely held, such as military discharge papers, or not publicized, such as the digital image look-up procedure set forth in Trans. § 102.15(4)(e). *See infra* Sec. II.B.4.

4. Proof of Residency

DMV also requires applicants for a Wisconsin driver's license or state ID card to provide proof of "a current acceptable Wisconsin residence street address," not a P.O. Box or commercial mail-receiving agency. Trans. §§ 102.15(2)(c); 102.15(4m). While DMV has recently adopted policies to expand the documents an applicant can use to prove Wisconsin residency, the revised policies fail to cover all Wisconsin residents, such as unsheltered homeless individuals who are unaffiliated with any social service agency, *see* Doc. 34-22, and DMV does not provide public notice of any alternatives to this requirement. *See infra* Sec. II.B.4.

5. DMV Access

The burdens of obtaining photo ID are compounded by the difficulties of traveling to DMV offices. There are only 92 DMV Customer Service Centers ("CSCs") in the state. Voters without accepted photo ID, who generally do not drive and are often low-income, must often walk, ride the bus, or pay for a cab or paratransit to get to a CSC and other offices to secure

documents for the ID card application. Doc. 33 at 11-12; Doc. 35 at ¶ 7; Doc. 33-9 at ¶ 5; Doc. 33-10 at ¶ 14; NR 32:19-33:17; Attach. R (D11114) (GAB Help Desk call log entry reflecting voter would need to pay $125 for taxi to CSC), (D14802) (elderly couple can walk to polls, but would need a ride to CSC). Some voters simply cannot make it to a CSC. Marcella Althof, an 81-year-old woman who lives in Stoddard, has no way to access the DMV office in Onalaska, as there is no regular bus service and no taxi service. Althof Decl ¶ 10. The transportation barriers in rural communities, for seniors and persons with disabilities, and even in the inner city, are well-known to Defendants. NR 35:15-25, 50:7-18, 58:22-59:8. Yet neither DMV nor GAB has plans to deploy mobile units to serve voters with DMV access problems, or to transport voters to DMV. Doc. 33 at 11; Doc. 34-2 (LJ 102:3-105:20); RH 138:20-139:12.

II. ARGUMENT

A. Legal Standard for Preliminary Injunction

Plaintiffs seeking a preliminary injunction must demonstrate that: (1) they are "likely to succeed on the merits"; (2) they are "likely to suffer irreparable harm in the absence of preliminary relief"; (3) "the balance of equities tips in [their] favor"; and (4) "an injunction is in the public interest." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). "These considerations are interdependent: the greater the likelihood of success on the merits, the less net harm the injunction must prevent in order for preliminary relief to be warranted." *Judge v. Quinn*, 612 F.3d 537, 546 (7th Cir. 2010). "In each case, courts must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Winter*, 555 U.S. at 24 (internal citations and quotation marks omitted). The

standards for proving each element are discussed in greater detail in Plaintiffs' prior Memorandum. Doc. 33 at 12-15. Plaintiffs' claims satisfy each of these four elements.

B. Application of *Winter* Standard

1. The Photo ID Law Imposes Severe Burdens on the Right to Vote for Members of Classes 1 and 2 and Is Not Narrowly Tailored to Serve a Compelling Government Interest [Counts 1 & 2]

a. Legal Standard: The Fourteenth Amendment Balancing Test

The right to vote is protected by the Fourteenth Amendment's Equal Protection and Due Process Clauses. *Anderson v. Celebrezze*, 460 U.S. 780, 786-87 n.7 (1983). To resolve constitutional challenges to a state election procedure, a court:

> must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests; it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights. Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional.

Anderson, 460 U.S. at 789; *see also Burdick v. Takushi*, 504 U.S. 428, 434 (1992). *Crawford* confirmed that there is no "litmus test for measuring the severity of a burden that a state law imposes on . . . an individual voter, or a discrete class of voters. However slight that burden may appear . . . it must be justified by relevant and legitimate state interests *sufficiently weighty to justify the limitation*." 553 U.S at 191 (internal citations and quotation marks omitted; emphasis added). Thus *Crawford* in fact *requires* this Court to consider the state interests and the burden as applied to discrete classes of voters and evaluate whether the state interests justify the burden imposed on those voters. Even if the state has a legitimate interest, a statute that imposes a significant burden on the right to vote is not "necessary" if the state's interest could be achieved

in a less restrictive way. *Anderson*, 460 U.S. at 789. Where, as here, a law imposes "severe restrictions" on the right to vote, those restrictions must be "narrowly drawn to advance a state interest of compelling importance." *Burdick*, 504 U.S. at 434 (internal citations and quotation marks omitted).

b. The Severity of the Burdens

The Supreme Court expressly recognized in *Crawford* that, although Indiana's photo ID law, which was significantly less restrictive than Act 23, was not unconstitutional on its face, a law that imposed "excessively burdensome requirements" would be subject to an as-applied challenge. 553 U.S. at 199-202 (noting possibility of "heavier burden" or "special burden" on specific classes of voters, but denying facial invalidation where record lacked evidence of extent of burdens); *id.* at 202 ("[O]n the basis of the record . . .we cannot conclude that the statute imposes excessively burdensome requirements on any class of voters." (internal citations and quotation marks omitted)).

i. Class 1 [Count 1]

The photo ID law and the DMV regulatory structure it incorporates impose a severe and unjustifiable burden on voters. "Ordinary and widespread burdens, such as those requiring nominal effort of everyone, are not severe. Burdens are severe if they go beyond the merely inconvenient." *Id.* at 205 (Scalia, J., concurring) (internal citations and quotation marks omitted). The combined effects of the burdens imposed by the photo ID law go far beyond "merely inconvenient." Further, Act 23, unlike the Indiana statute at issue in *Crawford*, imposes a *total* deprivation of the right to vote if voters cannot obtain a photo ID. None of the Plaintiffs or class members fit within the limited statutory exemptions for in-person or absentee voting, and

there is no fail-safe procedure for voters who are simply unable to obtain accepted photo ID.[7] Wisconsin ignored the recommendations of its own chief elections official, Defendant Kennedy, to provide an affidavit –of identity alternative. Doc. 34-1 (KK 25:8-26:24). Local election officials who met with GAB in January 2011 also wanted an affidavit of identity and argued for a broader list of accepted photo ID – they too were ignored. Attach. R (D7189) (suggestion was made that photo ID law include "ID items that were recommended by GAB" such as Veterans Identification Cards, *see infra* Sec. II.B.2., and driver's licenses or state IDs from any state; and nearly one third of clerks in attendance wanted an affidavit of identity procedure for elections).

By making a state ID card issued by DMV the photo ID of last resort, Act 23 renders the process of obtaining an ID for voting far more complex and burdensome than is necessary to achieve its purported ends. Act 23 forces voters to interact with DMV[8] and often with multiple other bureaucracies in order to obtain the documents needed to secure that ID. These systemic barriers are the direct consequence of inserting the burdensome process of acquiring a Wisconsin photo ID card between a voter and the ballot. Had Wisconsin created a separate form of voter ID rather than interposing DMV and its unreasonably stringent documentation requirements, it could have made the process much less burdensome by relaxing or eliminating some of the

[7] Unlike Act 23, the law in *Crawford* did not apply to mail-in absentee voting. Also unlike Act 23, the ballots of in-person Indiana voters without ID will be counted if they sign an affidavit of indigency within 10 days of the election. 553 U.S. at 185-86.

[8] DMV has become a gatekeeper to the ballot for voters who do not already possess accepted photo ID. AL 28:24-29:14 ("Like it or not, we are in the voting business."). But from central management to field offices, DMV staff do not perceive there to be any significant change in their obligations to customers. *Id.*; PF 14:24-15:16; JT 15:2-16:5.

documentary requirements that are mandatory for DMV-issued licenses and IDs. JM 30:11-32:7, 37:4-8.[9]

Some voters, especially homeless, elderly, disabled, minority and rural voters, have barriers to accessing DMV offices at all. *Supra* Sec. I.C.5. Many voters also have barriers to obtaining the documents DMV demands. For example, many voters who lack photo ID also lack certified copies of their birth certificates, Barreto/Sanchez, at 22-24, Tables 7 & 8, which can be difficult to obtain because many vital records offices require an official photo ID or other documents from a restrictive list to obtain a birth certificate, and many voters lack the documents their birth states require. *See, e.g.,* Doc. 33 at 8-9; Doc. 34-3; Doc. 33-2; Doc. 33-6. DMV provides no assistance to voters in obtaining birth certificates from their birth states, other than, occasionally, providing contact information for vital records offices. JM 58:1-16.

There also are Wisconsin voters who were never issued birth certificates. KB 72:1-12 (no birth record is exception, but not "extremely rare"); Althof Decl. ¶ 8; Doc. 35 ¶¶ 4-7; Wilde Decl. ¶¶ 9-12. DMV's alternative procedure for persons whose birth records are unavailable requires a voter to send an "MV3002" form to the birth state to certify that no birth record exists.[10] JM 58:17-59:2, 83:22-84:17. But DMV has not coordinated with vital records offices,

[9] *Contrast Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1346 (11th Cir. 2009) (no birth certificate or other identification required for photo ID; "each county [must] issue free of charge a 'Georgia voter identification card' . . . obtained by producing evidence that the voter is registered to vote in Georgia and by swearing an oath that the voter does not have another acceptable form of identification").

[10] There also has been significant controversy among DMV management about whether the MV3002 procedure can be used to prove citizenship as well as name and date of birth. PF 140:9-141:15 (as of Dec. 1, 2011, did not know could be used for citizenship); Doc. 34-24 (Fernan email to DMV staff requesting public presentation stating "no exceptions" to birth certificate or passport to prove citizenship); JM 89:21-91:3, 93:13-24 (recommending use of MV3002

and even in Wisconsin those offices are unfamiliar with the form, JM 34:13-35:3, 140:9-141:14; KB 53:23-54:6; Attach. R (D10233-34) (Wisconsin Vital Records Program Supervisor has "never seen one"). Some – apparently including Wisconsin's – decline to complete it. Wilde Decl. ¶¶ 13-16 & Attach. A thereto (sent MV3002 and supporting documents to Wisconsin Vital Records Office, which did not complete it and instead sent letter requiring her to submit birth certificate application and fee or complete a request for delayed birth registration with fee and documentation); Althof Decl. ¶¶ 12-15 (Iowa vital records office will not complete MV3002 without Iowa birth certificate application and fee; she also lacks photo ID that Iowa requires with birth certificate application).

Further, DMV leadership has chosen not to publicize the MV3002 process. JM 87:19-88:10, 103:19-24, 119:2-120:1; *infra* Sec. II.B.4. Even if voters learn of the form and surmount the burdens of getting a vital records office to complete it, they also must present additional documents such as baptismal certificates or early medical or school records, that they may not possess or have any realistic way to obtain and that may or may not satisfy the DMV officials reviewing their applications. Ex. 47; Ex. 66 at 6-7, Driver Licensing Manual ("DLM") Ch. 215; *see infra* Sec. II.B.4. Voters who lack both records of their birth and SSCs, such as many in the

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certification of absence of birth record with other documents to satisfy proof of citizenship, but unaware of legal authority for such use); Attach. R (D10205-10212) (emails among DMV personnel debating whether an exception can be made to legal presence requirement). *Compare id.* at D10209 ("I am not aware of any exceptions to our legal presence requirement.") *and id.* at D10210 ("I asked a TL about exceptions to the proof for Legal Presence and I was told there was none."), *with id.* at D10205-06 (head of DMV Bureau of Field Services directing acceptance of MV3002 plus baptismal certificate as proof of citizenship). Although that controversy appears to have been resolved for now, the change has not been adequately communicated to DMV field staff. The Driver's License Manual ("DLM") – the "primary resource" and "reference guide" for DMV field agents and Team Leaders ("TLs") who deal directly with applicants – still describes the MV3002 as an exception for proving *name and date of birth* where no birth certificate exists, but not as proof of *citizenship*. JT 48:20-55:1; Ex. 66; Ex. 107.

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Amish and Mennonite communities, are unable to obtain ID cards. JM 131:8-132:22; Ex. 51 (D1981).

DMV's requirements also impose severe burdens on voters whose birth certificates do not exactly match their current names, a problem that DMV knows is relatively common. JM 64:12-16. Although DMV will at times, without public notice or uniform standards, accept birth certificates with names that vary from those on other documents, DMV often insists voters go through a birth certificate amendment or name change before it will issue an ID. DMV has said that Bridget Marion Nowak, whose birth certificate bears the name "Marion Bridget Nowak," and Plaintiff Eddie Lee Holloway, Jr., whose birth certificate bears the name "Eddie Junior Holloway" and his father's name, "Eddie Lee Holloway," must amend birth certificates to obtain ID. JM 154:13-156:12, 172:20-174:23; Nowak Decl. ¶¶ 8-9; Doc. 33-8 at ¶¶ 7-8; Doc. 40-12, No. 3; *infra* Sec. II.B.4. At the local level, the process is unforgiving even for minor errors. JT 37:3-7, 72:13-16, 75:18-76:21 (if birth certificate has errors, must either amend birth certificate or change documents like SSC to conform to birth certificate, before ID will be issued).

DMV's other documentation requirements also burden voters. DMV staff routinely tell voters they need an SSC to obtain a photo ID, while SSA staff often tell voters they need a photo ID to obtain an SSC – resulting in voters obtaining neither. Doc. 33 at 10; Doc. 33- 9 at ¶¶ 5-6; Doc. 33-10 at ¶¶ 10-12; JM 52:25-53:4; Ex. 56. DMV imposes this burden even though it could utilize the Social Security Online Verification ("SSOLV") process to electronically compare an individual's SSN to the SSN and identifying information in SSA's database. JM 59:5-13 ("[Using SSOLV], we can determine whether or not they've got a legal Social Security card . . .

."). Voters who have recently moved to Wisconsin often lack proof of residency.[11] JT 87:21-88:7. DMV is also aware that some voters, such as unsheltered homeless persons without ties to a social service agency, will simply be "out of luck" and unable to obtain an ID card. JM 207:21-24. Further, DMV staff do not routinely or uniformly share information on alternative methods to prove identity or residency. *See infra* Sec. II.B.4.

ii. Class 2 [Count 2]

It is clear that obtaining photo ID also imposes financial hardships on many voters, especially because lower-income voters are significantly less likely to have either accepted photo ID or the birth certificates needed to obtain ID than higher-income voters. *See infra* Sec. II.B.6; Barreto/Sanchez, at 30-32, Table 19 & Fig. 11. Yet there is no indigency exception to the photo ID requirement, and there is no indigency exception to DMV's birth certificate requirement. JM 76:1-17; KB 43:20-44:23, 131:11-17; 185:2-12 (no exception for penniless homeless voters). Defendants are aware of the financial burdens that obtaining birth certificates impose on homeless, disabled and minority voters, among others. NR 26:1-27:1, 50:2-51:1, 59:3-23; Attach. R (D12487-88) (DMV noting that State Rep. Meyer raised issue that "some constituents cannot afford the fee to obtain a notarized copy of a birth certificate"). *Contrast Crawford*, 553 U.S. at 201, 202 n.20 (no evidence of "the difficulties faced by indigent voters," including how many indigent voters lacked copies of their birth certificates).

While, for some voters, the cost of obtaining required documentation may not be burdensome, for lower-income individuals subsisting on public benefits, such as Plaintiff Dukes,

[11] Voters who live in Wisconsin for 28 consecutive days are eligible to vote. Wis. Stat. § 6.02(1). Since it often takes new residents more than a month to obtain proof of residency needed for a Wisconsin license or ID, JT 87:21-88:7, Act 23 could keep new residents from voting.

who receives SSI disability benefits, and Plaintiffs Holloway and Ellis, who receive only food stamps; and the working poor, such as Plaintiff Ginorio, the burden is severe. Doc. 33 at 9-10. Even applicants without birth certificates must generally pay a fee to complete the MV3002, JT 60:8-61:3, or to search for records, whether or not those records exist. Doc. 33 at 9-10; JM 55:3-5, 92:23-93:2; Althof Decl ¶ 14; Wilde Decl. ¶¶ 13-17. Defendants do not even make exceptions for voters who would have to go through a costly birth certificate amendment process to obtain the documents DMV requires to issue photo ID. JM 154:13-156:12, 172:20-174:23. And finally, transportation costs incurred in gathering documents and visiting various agency offices also impose financial burdens on many voters. *Supra* Sec. I.D.5.

c. The Lack of a Compelling Government Interest

These severe burdens must be weighed against the state's rationales for requiring photo identification. Defendants claim that photo ID is necessary to prevent fraud and increase voter confidence. Defendants do not claim that photo ID increases public confidence other than by preventing fraud. Doc. 38 at 19-20. Yet, instances of any kind of voter fraud in Wisconsin are exceedingly rare. Doc. 33 at 18-19 & n.15. As Defendant Kennedy acknowledged, the fraud "problem" is "rhetoric . . . based on perception, but not really based on any actual facts." Doc. 34-1 (KK 37:17-38:15); Doc. 34-17. Further, comprehensive election reforms over the past decade have addressed vulnerabilities in the system far more effectively than a photo ID requirement and without imposing unnecessary burdens on voters. Doc. 33 at 21-22.

While Defendants claim that impersonation fraud may exist but go undetected, Doc. 38 at 17-18, Kennedy was unaware of a single voter impersonation fraud prosecution in Wisconsin in the more than 30 years he has been the state's top election official. Doc. 34-1 (KK 40:10-25).

Allegations of impersonation fraud have turned out to be greatly exaggerated and typically caused by administrative errors, such as a poll worker erroneously noting that an individual voted on the wrong line of a poll book. Doc 33 at 22; Doc. 41 at 8-9; Doc. 34-1 (KK 51:21-53:24); NR 102:3-25 (aware of only about three cases where person incorrectly marked as having voted, likely clerical errors). Act 23's requirement that voters sign the poll book will substantially reduce such errors and facilitate prosecution of any person who tries to fraudulently sign the book, 2011 Wis. Act. 23 § 36 *amending* Wis. Stat. § 6.36(2)(a); Doc. 33 at 22; Doc. 34-1 (KK 65:17-66:9), NR 103:19-104:3, while other laws requiring those voters to provide dates of birth and driver's license, ID card or Social Security Numbers ("SSNs") when registering make any effort to vote under another's name very difficult. These verification procedures are a less restrictive means of fraud prevention than requiring photo ID from voters who experience burdens in obtaining it.

Defendants also claim that photo ID prevents and deters felons and non-citizens from voting. Doc. 38 at 19. Such forms of fraud are also nearly non-existent, but, more importantly, photo ID cannot prevent or deter them, since Wisconsin allows felons and non-citizens to obtain driver's licenses and ID cards. Doc. 41 at 9; KB 24:12-14; Trans. § 102.15(3m) (requiring "proof of citizenship, legal permanent resident status, conditional resident status or legal presence"). At the same time, in recent years the GAB Defendants have implemented numerous anti-fraud procedures, including matching SVRS against lists of felons which dramatically reduce the likelihood of felon voting. Doc. 33 at 20-21.

Defendants also assert, again without explanation or evidence, that photo ID would prevent voters who move out of Wisconsin from voting. Doc. 38 at 19. There is no evidence of this occurring and no explanation of how photo ID would prevent it.

Finally, Defendants claim photo ID would prevent or deter double voting across state lines. Doc. 38 at 19. There have been only a few isolated cases of double voting within Wisconsin, Doc. 34-1 (KK 79:13-15), and none known across borders, and Defendants cannot explain how the photo ID law would prevent either kind of double voting. Doc. 34-1 (KK 76:15-78:15, 79:8-15); NR 101:24-102:2; RH 164:14-165:6. Moreover, when a voter registers in a new state, that state is supposed to notify Wisconsin, NR 118:11-16; enforcing that requirement is a less burdensome alternative. Here as well, Wisconsin has taken other steps to investigate, deter, and prosecute any such fraud. Doc. 33 at 21; Doc. 41 at 9.

At the same time, less restrictive ID requirements, including affidavits of identity, have worked well in other states. Doc. 33 at 22-23. Defendants' failure to provide evidence to support assertions of such improper voting or to explain how Act 23 would deter such conduct, shows that the state's interest is conjectural. *See, e.g.*, *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 664 (1994) ("[The government] must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way."); *Bernal v. Fainter*, 467 U.S. 216, 228 (1984) ("Without a factual underpinning, the State's asserted interest lacks the weight we have required of interests properly denominated as compelling.").

d. The Other *Winter* Equitable Factors

The injury voters in Classes 1 and 2 will suffer without injunctive relief is irreparable. Plaintiffs and other similarly situated voters will be deprived of their right to vote, and no post-election remedy can redress that loss. The remedy Plaintiffs seek – an affidavit of identity in lieu of photo ID at the polls – is one that Defendants themselves have recommended. Doc. 33 at 20. It will alleviate burdens on voters, while promoting electoral integrity and public confidence in elections by ensuring that eligible Wisconsin voters are not wrongfully denied the franchise.

2. The Photo ID Law Arbitrarily and Unreasonably Burdens the Voting Rights of Veterans [Class 6, Count 6]

Act 23's exclusion of VICs from the list of accepted photo IDs for voting places a distinct burden on veterans who lack accepted photo ID, but have this secure, cost-free photo ID card issued by the U.S. Department of Veterans Affairs. Doc. 33 at 25-26. There is no state interest, let alone an "important" one, that can justify this burden. *Burdick*, 504 U.S. at 434 (citing *Anderson*, 460 U.S. at 788); Doc. 33 at 26; Doc. 41 at 11. For the members of Class 6, a VIC is their sole form of identification, and like Plaintiffs Bulmer, Ellis, and Harmon, more than 600 veterans in Wisconsin alone are homeless. Doc. 33 at 26; Doc. 34-11. The state has articulated no interest in forcing these veterans to expend time and money obtaining a different photo ID to vote, other than hypothesizing that the lack of an expiration date on VICs might justify their exclusion. Doc. 38 at 21. But Act 23 in fact authorizes the use of other forms of photo ID that lack expiration dates, including some tribal and military ID cards. Wis. Stat. § 5.02(6m)(a)(3), (e); Doc. 41 at 10; Doc. 43, Doc. 44; MH 42:16-43:4, 44:7-13, 119:19-120:5; RH 63:21-64:13.

The other equitable factors also weigh in favor of granting relief. Veterans, especially homeless veterans, with no other accepted photo ID and limited resources, are likely to suffer irreparable harm if the exclusion of VICs is not enjoined. Since such disfranchisement is

irrevocable and the state would suffer no meaningful hardship in accepting these IDs, the balance of equities clearly tips in favor of the members of Class 6. Finally, the public interest favors allowing these voters to use their VICs. They pose no threat to electoral integrity and disfranchising those who served our country undermines the legitimacy of our elections.

3. The Wisconsin Photo ID Law Unconstitutionally Imposes a Poll Tax or Other Material Burden on Voters in Class 5 [Count 5]

The Twenty-Fourth Amendment provides that the "right of citizens of the United States to vote in any primary or other election for" federal offices "shall not be denied or abridged by . . . any State by reason of failure to pay any poll tax or other tax." It prohibits states from conditioning the right to vote in federal elections on the payment of a tax or fee, or imposing any additional condition that would not apply if they paid. *Harman v. Forssenius*, 380 U.S. 528, 538-39 (1965). The Fourteenth Amendment similarly prohibits poll taxes in state and local elections. *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966); Doc. 33 at 27-29; Doc. 41 at 12-14.

Because of Act 23, voters like Ruthelle Frank, Shirley Brown, and Marcella Althof, who have gone their whole lives without birth certificates but were able to vote nonetheless, now must pay a fee in order to continue voting.[12] Wisconsin has no cost-free alternatives to paying for a birth certificate to acquire photo ID, such as allowing the use of an affidavit of citizenship or of free documents like SSA printouts. *Contrast Crawford*, 553 U.S. at 199 n.18 (Medicaid and Medicare cards, SSA statements, and other alternative documents acceptable *in lieu of* birth certificates to obtain ID); *Common Cause*, 554 F.3d at 1346 (photo ID for voting issued with evidence of voter registration and affidavit that voter has no other accepted photo ID). DMV

[12] For voters like Eddie Lee Holloway, Jr., and Bridget Marion Nowak, who would have to amend birth certificates by court order, the costs would be much greater. JM 172:20-174:23.

rules requiring documents that cost money, as applied to voting, violate the poll tax ban. At least one court has squarely held that forcing voters to pay for birth certificates to obtain photo ID is an unconstitutional fee imposed on the right to vote. *Weinschenk v. Missouri*, 203 S.W.3d 201, 213-14 (Mo. 2006); Doc. 41 at 13-14.

Voters in Class 5 are compelled to pay for documents such as birth certificates and marriage certificates, or certifications that necessary records do not exist, in order to obtain a "free" state ID card. Doc. 33 at 28; Doc. 41 at 11-12; JT 60:8-61:3; Wilde Decl. ¶¶ 14-16; Doc. 33-2 ¶ 9; Doc. 33-3, ¶ 3; Doc. 33-4 ¶ 8; Doc. 33-6 ¶ 5. As applied to them, Act 23 constitutes an unconstitutional poll tax. Defendants concede that it would be unconstitutional to charge money for the ID needed to vote, that a certified copy of a birth certificate is generally required to obtain an ID card, and that a birth certificate costs money. Doc. 38 at 10-11, 14-15, 27-28.

The other equitable factors also favor granting the relief sought. Absent an injunction, numerous voters will be unable to vote altogether or will be forced to expend money to obtain birth certificates or other records and documents so they can obtain photo ID and vote. That disfranchisement is irrevocable. Again, the state would suffer no meaningful hardship in implementing an affidavit – of identity procedure. Thus, the balance of equities clearly tips in favor of injunctive relief for Class 5. The public interest also favors this outcome.

4. The Photo ID Law Confers Unconstrained Discretion on DMV Employees Which Results In Inconsistent and Arbitrary Treatment of Voters in Violation of Equal Protection [Count 7]

Elections must be governed by objective and publicly disclosed rules. In contexts ranging from voter eligibility to the mechanics of casting and counting ballots, courts have insisted upon the uniform application of objective criteria. Without such objective and

consistently applied rules, officials who interact with voters are left to make arbitrary decisions, leading predictably to constitutionally impermissible unequal treatment of similarly situated voters. Act 23 subjects eligible voters to DMV decision-making and control over whether or not they will be able to vote. While DMV purports to apply clearly enumerated documentation requirements to applicants for its products, in practice it treats voters in an arbitrary and disparate manner.

In *Baker v. Carr*, 369 U.S. 186, 208 (1962), the Supreme Court stated: "A citizen's right to a vote free of arbitrary impairment by state action has been judicially recognized as a right secured by the Constitution . . . ." Thus literacy, constitutional understanding, and similar "tests" were struck down on the grounds that they gave election workers unfettered discretion to judge whether a voter was qualified to vote. *See, e.g.*, *Davis v. Schnell*, 81 F. Supp. 872, 878 (S.D. Ala. 1949), *judgment aff'd*, 336 U.S. 933 (1949). In *Louisiana v. United States*, 380 U.S. 145, 153 (1965), the Court, citing *Davis*, wrote that the "cherished right of people in a country like ours to vote cannot be obliterated by the use of laws . . . which leave the voting fate of a citizen to the passing whim or impulse of an individual registrar. Many of our cases have pointed out the invalidity of laws so completely devoid of standards and restraints." The Supreme Court's 2000 decision in *Bush v. Gore*, 531 U.S. 98 (2000), reaffirming that the Equal Protection Clause prohibits "arbitrary and disparate treatment" which "value[s] one person's vote over that of another," is a direct descendant of this line of precedent. *Id.* at 104-05. Only "specific standards" and "uniform rules" provide "sufficient guarantees of equal treatment." *Id.* at 106-07.

In *Black v. McGuffage*, 209 F. Supp. 2d 889 (N.D. Ill. 2002), the court rejected a motion to dismiss an equal protection claim challenging the use of ballot-counting equipment that led to

the differential treatment of voters depending on where they live:

> [The election system] leaves the choice of voting system up to local authorities. But that choice necessarily means that some authorities will choose a system with less accuracy than others. As a result, voters in some counties are statistically less likely to have their votes counted than voters in other counties in the same state in the same election for the same office. Similarly situated persons are treated differently in an arbitrary manner.

Id. at 899; *see also Stewart v. Blackwell*, 444 F.3d 843, 846 (6th Cir. 2006), *vacated as moot*, 473 F.3d 692 (6th Cir. 2007) (allowing equal protection claim against error-prone punch card machines to go forward); *Hunter v. Hamilton County Board of Elections*, 635 F.3d 219, 234-36 (6th Cir. 2011) (counting certain provisional ballots cast in wrong precinct on finding of poll worker error, while failing to consider evidence of the same errors for similarly situated ballots, violates equal protection); *Pierce v. Allegheny Cnty. Bd. of Elections*, 324 F.Supp.2d 684 (W.D. Pa. 2003) (allowing voters in some counties but not others to have absentee ballots delivered by third parties violates Fourteenth Amendment and could dilute votes of voters in county where such delivery not allowed).

To obtain photo ID, voters must produce multiple, accurate documents, but those unable to do so are subjected to the ad hoc judgment calls of DMV officials. DMV sometimes allows applicants to satisfy its requirements with alternative documents or makes exceptions based on policies or practices that are concealed from the public, not reduced to writing, contradictory, and not well-known to or consistently applied by DMV staff. In fact, its Deputy Administrator believes it is not "appropriate" to publicize exceptions. PF 131:16-25. Thus determinations as to who may use alternatives and whether to approve applications often appear to be based on whether and to what extent a voter is able to appeal successfully to DMV management, GAB, or legislators. *See also Briscoe v. Kusper*, 435 F.2d 1046, 1052-56 (7th Cir. 1970) (failure to issue

specific rules or policies setting standards for signing petition, and then applying stringent interpretation of the law to disqualify some petition signers, violates due process).

Arbitrary decision-making appears most clearly with respect to voters who either lack birth certificates or whose documents bear non-matching names. Inconsistent treatment is not only possible, but probable. Whether or not such voters will be able to obtain a photo ID is left to the discretion of DMV field agents and CSC supervisors, unconstrained by written rules, policies, standards, or procedures. JM 108:5-19, 136:5-10, 142:21-143:4, 149:6-18, 169:6-16.

As to voters for whom there is no birth record, DMV lacks any consistently disseminated or applied policy or practice to determine whether it will allow an individual to obtain an ID card with an alternative certification and documentation. A voter who has no record of birth on file may (or may not) be able to obtain a completed MV3002 from a vital records office to certify this fact. *See infra* Sec. II.B.1.b.i. And the chance of obtaining an executed MV3002 will only occur if the voter learns of this exception, which DMV refuses to publicize. It was kept out of public presentation materials, PF 136:3-140:8, Doc. 34-24, is not publicly available on DMV's website, JM 87:19-88:2, Attach. R (D10375), and is not mentioned in DMV's customer handout of acceptable documentation. JK 19:1-9; Ex. 30. DMV field offices do not keep paper copies of the form, JT 44:7-17, it is not reproduced in the DLM, JM 89:7-19; Exs. 66-68, Ex. 107, and CSC supervisory staff are largely unfamiliar with it.[13] JM 64:17-25; JT 43:14-21 (TL did not know name of the form until the day before April 2012 deposition, and could not recall if it was discussed at team meeting); *id.* at 44:3-6, 45:1-22. This nearly secret process is not offered

[13] At least one TL knows the form exists but has never used it, even though her office helped Hurricane Katrina victims with destroyed birth records. JT 32:17-24, 44:18-45:17.

consistently to voters, since DMV's practice is to emphasize the need for a birth certificate, not explain any exceptions, even to applicants who present documents other than a birth certificate. JT 21:14-22:10; JT 61:9-20 (if someone pulled out baptismal certificate, field agent would tell customer "You need a certified birth certificate"); KB 82:16-83:1.

DMV is also inconsistent about whether the MV3002 may be used to prove citizenship, or only to prove name and date of birth. *See supra* Sec. II.B.1.b.ii. A November 28, 2011 Technical & Training Services Update ("TTSU"), Ex. 47, extended use of the MV3002 to prove citizenship, but in the months between Act 23's effective date and the TTSU's issuance, voters who contacted or visited DMV were told there were no exceptions for proof of citizenship. JM 89:7-91:15. Moreover, DMV only sent the update directly to supervisors and TLs, not to field staff, and there has been no training on the MV3002's use since its circulation. JT 12:21-13:5; JM 113:14-23.

Unsurprisingly, DMV has applied the MV3002 process in inconsistent ways. For example, two months ago, DMV's document expert told a TL for four northwestern Wisconsin CSCs that the MV3002 "should be . . . probably reserved for those over 80," Attach. R (D10375), a policy that exists nowhere in DMV materials. Individual voters pay the price for such haphazard guidance. In January 2012, more than a month after the TTSU was issued, Plaintiff Brown, an elderly voter with no birth record, went to DMV with an affidavit from her childhood school district in Louisiana, which attested to her name, date and place of birth, and parents' names, but DMV denied her photo ID application without telling her of the MV3002 procedure. Doc. 35 ¶¶ 4-7; Doc. 40-16, Nos. 3, 5, 8. In contrast, DMV suggested that if Plaintiff Wilde and Marcella Althof could obtain no-birth-record certifications on MV3002 forms, they

might be able to obtain ID cards without birth certificates, although DMV did not give them the forms or any instructions on completing these, and the process has thus far not been successful. *See supra* Sec. II.B.1.b.i; Wilde Decl. ¶¶ 9-13; Doc 40-15, Nos. 3, 8; Althof Decl. ¶¶ 12-15; Exs. 25, 50, & 86; KB 78:15-82:1; JM 125:4-127:12; JK 35:18-36:1.

Even when DMV tells voters about the MV3002 process, DMV may require them to provide additional documentation. If required, this additional documentation may be restricted to those items DMV announced in the TTSU and the amended DLM,[14] JM 62:18-21, 115:2-117:5, or may be expanded, at CSC supervisor and TL discretion, to embrace additional documents, JM 115:2-117:5 (SSA printouts may be accepted); Ex. 25 (SSA history printouts communicated as option to voter); JK 40:4-8 (same), 28:1-25. Again, no rules or policies guide decisions on accepting unspecified forms or when to accept or not to accept one of the listed alternatives. JM 113:14-17, 116:22-117:5. In the absence of any policies, DMV personnel make arbitrary decisions as to whether to accept items on the list. JM 62:21-63:24 ("[I]f a 21-year-old brings in a 3002 and brings in the family Bible and says, I have no birth certificate, they're going to probably need to get some more documentation. If a 90-year-old does it, then we're looking at it a little differently."); *id.* at 124:11-22 (some baptismal certificates might not be acceptable); JK 36:11-37:11 (if individual brings in no-record letter from birth state, it can be accepted *without* an executed MV3002).

DMV also lacks policies or procedures on how to reconcile discrepancies where the name on the birth certificate varies from the name listed on other documents presented, such as an

[14] The list of additional documentation includes: (1) baptismal certificate; (2) hospital certificate; (3) delayed birth certificate; (4) census record; (5) early school record; (6) family bible record; and (7) doctor's record of post-natal care. Ex. 47.

SSC. Decisions are made on a case-by-case basis by field supervisors or officials who are not guided by formal rules, policies, or criteria. Ex. 52; Doc. 39, ¶ 1; Attach. R (D10119-34); KB 88:9-92:22, 101:19-102:6, 105:16-18, 114:5-24; JM 136:5-10, 149:12-150:4. This, too, is a recipe for the inconsistent treatment of voters. JM 136:11-17, 142:4-23. Nor is there even a consistent understanding, much less any formal policy, as to who within DMV actually has decision-making authority on these issues. *See* KB 94:12-20 (asserting she or DMV document expert could overrule CSC supervisors and TLs); Ex. 53 ¶ 1 ("final call" lies with CSC supervisor); Ex. 48 ("Exceptions may be made by the TL or supervisors . . . ."); JM 107:8-108:19, 138:24-139:18. DMV officials know that field agents might reject applications with name discrepancies without even talking to a supervisor. JM 108:20-109:10, 152:10-14.

Predictably, given the lack of policies, the treatment of applications with non-matching names varies significantly, and the outcomes are irreconcilable. DMV's Director of the Bureau of Field Services claims that voters could obtain ID in their "assumed" names despite incorrect birth certificates, KB 88:17-90:11, while a DMV TL testified that the name on the birth certificate *must* be on the license or ID card, and if there is a discrepancy, the voter must obtain a corrected birth certificate before an ID will be issued. JT 37:3-7; 72:13-17. Defendants rejected Plaintiff Holloway's birth certificate, which erroneously bears the name "Eddie Junior Holloway," because other documents, including his SSC list his name as Eddie Lee Holloway Jr., and told him that he had to amend his birth certificate by court proceeding. Doc. 33-8 at ¶¶ 9-10; JM 154:13-25, 172:20-174:23. DMV's document expert also would refuse to accept the birth certificates of Bridget Marion Nowak (first and middle names transposed, but correctly spelled) and John Krajewski (last name recorded as "Kraske"), Nowak Decl. ¶ ¶ 8,10; Ex. 33; JM 142:4-

23, 155:16-156:12, 161:15-164:10, while the BFS Director might accept those documents, KB 120:7-121:8, 125:14-126:17.

By contrast, Plaintiff Frank's birth certificate contains misspellings of her maiden name and her parents' names, and correcting those errors would cost hundreds of dollars. While DMV rejected the baptismal certificate she proffered instead, other DMV officials now claim they might accept her incorrect birth certificate. Doc. 33-3, ¶ 10, 13; Doc. 34-23; Ex. 53, Miller Decl. ¶¶ 6, 8. DMV also ultimately accepted birth certificates for Rose Mary Dorothea Theissen ("Marie Rose D. Schaefer" on her birth certificate), Shirley Mendel Simon ("Genevieve Shirley Mendel"), Andrew Trokan ("Andreo"), Genevieve Winslow ("Genava"), and Leo Peter Navulis ("Leo Packus Nevwulis"), but only after DMV's initial rejection of these applications led family members to complain to Wisconsin state legislators. Doc. 34-23; Doc. 39; Ex. 52; JM 136:22-142:3, 143:12-147:20, 156:24-157:24; Anderson Decl. ¶¶ 8-11; Simon Decl. ¶¶ 3-16; Trokan Decl. ¶¶ 7-12; Winslow Decl. ¶¶ 1-15; Attach. R (D10119-134). Notably, these voters, whose applications DMV rejected on the first trip, brought the same or almost the same documents on their subsequent, successful visits. Anderson Decl. ¶¶ 9-11; Simon Decl. ¶ 14 (same documents plus marriage certificate); Trokan Decl. ¶ 11; Winslow Decl. ¶¶ 8-15. Attach. R (D10133-34) (regarding Navulis, DMV document expert stated: "[W]e decided he has enough documentation to get the ID card issued . . . . There is no doubt that both the BC and SS card belong to him"). DMV also appears to have arbitrarily allowed some persons with changed names, including those with married names and assumed religious names to obtain ID in those names without such supplemental documentation such as marriage certificates or name change court orders. KB 98:1-99:19; Anderson Decl. ¶¶ 9-11 (issued state ID without presenting marriage certificate); Ex.

32; Attach. R (D10133-34) (Navulis), (D8256-58) (advocating exception for woman with no marriage certificate, due to her advanced age). DMV has made no effort to harmonize its treatment of these voters.

With respect to DMV's proof of identity requirement, there is again inconsistent treatment and inconsistent understanding of DMV policies. *See* Docs. 33-9 & 33-10 (DMV field staff told voters that SSC mandatory); Attach. R (D12490) (SSC not acceptable "because the signature was printed and not cursive"); KB 159:24-160:9, 161:19-24 (BDS 316 is exclusive list of documents to prove identity); JM 72:11-74:2, 74:25-75:14, 80:21-81:3, 100:6-14 (manager discretion on proof of identity); JK 51:1-52:11 (combination of documents *not* on list may be acceptable); JT 81:10-12 (has accepted Medicare cards); JM 190:19-191:3 (Medicare cards not acceptable alone, but possibly with other documents); JT 83:13-18 (will not accept library cards); JM 73:8-17 (library card may be acceptable); Ex. 48 (internal confusion over accepting credit cards); JT 82:16-20 (will not accept credit cards); JT 79:15-80:6 (SSA print-outs not acceptable); Attach. R (D6690-91) (SSA print-out may be acceptable); JM 189:18-190:3 (SSA print-out, plus library card or credit card, may be sufficient); JK 63:19-66:21 (Department of Corrections and Milwaukee County ID cards, though not on lists and not officially permitted, may nevertheless be accepted). The public is unaware of any flexibility that may exist, as DMV withholds that information. JM 73:24-74:7. DMV also refuses to publicize its ability to compare applicants' photos with its digital image records, Trans. § 102.15(4)(c), instead of requiring those voters to produce other forms of proof of identity, Exs. 30, 57; KB 151:16-156:15; JK 56:21-58:6; JM 104:10-105:16, 195:11-196:5. DMV specifically told one voter it could not use the digital image procedure, and DMV also, inexplicably, required him to present a birth certificate to obtain a

replacement for a stolen ID. [15] Young Decl. ¶¶ 6-8.

Regarding DMV's proof of residency requirement, local TLs and field supervisors have discretion to accept alternative documentation or to allow vouching by another person, but they do not apply these alternatives consistently and refuse to disclose them publicly. Exs. 49, 55, 61; JK 80:20-81:1 (ability to use other documents not made public); KB 176:9-177:6 (vouching allowed but not publicized); JM 202:16-203:13 (same); JT 97:15-98:22 (with a marriage certificate, one spouse can vouch for another, but that practice is "off list"); JK 71:21-73:3 (review mail with applicant to see if residency can be established, a judgment within supervisor's discretion). DMV rules also explicitly state that an applicant may not use a P.O. Box as an address, but DMV officials at times bend these rules, JM 206:25-209:23; KB 181:22-182:11, or make other exceptions, KB 189:19-190:14 (accepted outdated residency proof for applicant whose front door moved to different street after remodeling). Information as to the requirements and procedures for DMV's homeless residency documentation policy also varies. Doc. 34-22; JM 203:14-206:24; KB 178:12-179:1, 180:14-181:6.

The other equitable factors also weigh in favor of granting injunctive relief. Until DMV establishes clear documentation policies and procedures and ensures their uniform implementation, eligible voters will suffer the irreparable harm of disfranchisement as they are denied photo ID by the arbitrary exercise of DMV employees' discretion. Allowing eligible voters to vote without accepted ID in the interim will not harm GAB's operation of elections, especially in light of the suspension of the photo ID law during the most recent election.

[15] Voters getting "duplicate" ID cards to replace lost or stolen IDs need only show proof of identity, not proof of name, date of birth, or citizenship. *See, e.g.,* Ex. 30 (listing "proof of identity" as only form of proof necessary for duplicate license or ID card.)

Reverting now to a photo ID requirement for the approaching elections is likely to increase voter and poll-worker confusion. NR 151:19-152:7. Finally, the public interest favors the consistent and transparent administration of all aspects of the electoral process, including the issuance of accepted photo ID to eligible voters.

5. Act 23 Has Rendered Wisconsin's Electoral System Fundamentally Unfair In Violation of Substantive Due Process [Count 8]

An electoral system marked by fundamental unfairness violates the due process guarantees of the Fourteenth Amendment. *See, e.g., League of Women Voters of Ohio v. Brunner*, 548 F.3d 463 (6th Cir. 2008) (structural electoral dysfunction based on a lack of uniform rules, standards and procedures for such election administration matters as registration lists, polling places, absentee and provisional ballots, and assistance for disabled voters, combined with inadequate poll worker training, could lead to widespread disfranchisement and state a substantive due process claim based on a "system . . . devoid of standards and procedures . . . ." *Id.* at 468-70, 477-78. Similarly, in *Griffin v. Burns*, 570 F.2d 1065, 1078-79 (1st Cir. 1978), the court held that "due process is implicated where the entire election process . . . fails on its face to afford fundamental fairness." Although isolated and inadvertent election errors may not rise to constitutional deprivations, when "an officially-sponsored election procedure" is "in its basic aspect . . . flawed" and unfair, it violates substantive due process. *Id.* at 1078. *See also Black*, 209 F. Supp. 2d at 901 ("What is challenged . . . is not an unforeseen human or mechanical irregularity which results in a diminution of someone's voting rights, but rather a statutory scheme which, depending upon the choices made by local election jurisdiction officials, will necessarily result in the dilution of an entire group of citizens' right to vote.")

The implementation of Act 23 has foreseeably rendered the state's election system

fundamentally unfair. In addition to the burdensome requirements and arbitrary treatment voters face under the photo ID law, *see supra* Sec. II.B.4., Act 23's underfunded and scattershot implementation will result in widespread disfranchisement. These are not garden variety or *de minimis* irregularities. Rather, Defendants' inability to ensure uniform implementation of Act 23 by local elections officials, the systemic lack of adequate training and monitoring of those officials, and systemic failures of public notice and voter assistance have already harmed, and will continue to harm, voters with and without photo ID. Voters and elections officials alike remain profoundly confused about the photo ID law's requirements, caveats, and exemptions. NR 81:20-23.

The effects of this sea change in Wisconsin election law are magnified by the structure of Wisconsin's election administration system. Wisconsin has created a statutory scheme in which DMV – an agency with no experience in voting – has been tasked with the responsibility for determining whether and how eligible voters can actually obtain the ID they need to vote, without giving the GAB – the agency responsible for administering elections – any authority over these relevant rules, policies, and procedures that impact voting. MH 117:16-25; RH 67:16-20. Wisconsin's decentralized elections system – in which GAB has little legal authority over the municipal clerks who operate elections, *see supra* Sec. Sec. I.B. – further exacerbates the problems associated with implementing a complex piece of legislation in nearly 2,000 municipalities. Voters with and without photo ID suffer the consequences.

Election officials are not prepared to uniformly and properly implement the requirements and exemptions of Act 23.[16] RH 49:19-50:12. Other than knowing that voters are supposed to

[16] The failure to ensure uniform standards for counting ballots may also constitute an Equal

show ID, many local elections officials do not understand even basic aspects of implementing the law – which will determine whether or not eligible voters, even voters *with* proper ID, are able to cast ballots. NR 73:13-19, 81:20-23; RH 19:12-21, 23:3-5. The head of GAB's Elections Division stated the problem clearly: "This is a new sweeping law with a lot of nuances, and for poll workers who do not do this as a matter of their daily jobs . . . the facts that should be known, the basic facts, in fact, are many times not known. And it does adversely affect the voter . . ." NR 74:1-8. The significance of these foreseeable errors is profound, because Act 23 provides no meaningful remedy: when clerks and poll workers get it wrong, eligible voters are likely to be denied the right to vote, or give up on voting.[17] NR 81:24-82:1; RH 50:23-51:11,124:24-125:11.

Clear examples of disfranchisement have already occurred and will continue if Act 23 is permitted to go into effect. Some polling sites, for example, incorrectly refused to allow even accepted photo ID if those IDs did not exactly match the examples on GAB handouts. Attach. R (D10328-30). Many elections officials incorrectly apply the law regarding whether a voter's name on the photo ID must be identical to the name on the voting list (it does not), which has already led to the improper denial of ballots to at least five voters in just the low-turnout February 2012 election.[18] NR 74:9-75:21, 77:11-24, 80:18-20; *see also* Attach. R (D8923)

Protection violation. *See, e.g., Bush v. Gore*, 531 U.S. 98.

[17] A voter without accepted photo ID can cast a "provisional ballot." Wis. Stat. §§ 6.79(3)(b) & 6.97. However, that ballot will not be counted unless the voter returns to show accepted photo ID to the municipal clerk by 4 pm on the Friday after the election. Wis. Stat. § 6.97(3)(b). Local elections officials are not always offering provisional ballots to voters who should receive them. Attach. R (D10328-30). Moreover, voters who have already been told by elections officials – even incorrectly – that their ID is unacceptable are unlikely to return to show the same ID that elections officials have already told them they cannot use.

[18] DMV emails also reveal a recently married employee stating that, after "some creative

(potential for name-matching problems with nicknames, especially Spanish-language nicknames). There is also a widespread misperception that an address on the photo ID presented must be the voter's current address. GAB staff know of more than 10 and as many as 50 cases in which election officials improperly ordered voters to re-register and vote using the outdated address on their licenses or ID cards. RH 141:18-25, 142:23-143:9, 144:17-145:11; Attach. R (D4508, D10328, D8343). Other voters are likely to have been denied the ability to vote due to an address mismatch. RH 142:23-143:9, 144:17-145:11; NR 87:9-22. GAB is also concerned about vote denial due to local officials' improperly requiring a photo on the ID to exactly resemble the voter. NR 79:25-80:12.

If elections officials themselves have difficulty understanding these complex election law changes, the lack of knowledge and confusion is even greater for voters. Voters who, for example, are subject to improper name, address, or photo matching by elections officials will often assume the poll workers are the experts, NR 87:6-21, and they may well become discouraged and give up on voting. RH 124:24-125:11. *See also Hoblock v. Albany Cnty. Bd. of Elections*, 487 F. Supp. 2d 90 (N.D.N.Y. 2006) (voters who should have been required to reapply to receive absentee ballots reasonably relied on election officials' erroneous issuance of absentee ballots and experienced a deprivation of their voting rights when election officials refused to count their votes).

Providing adequate public notice could, perhaps, have lessened the anticipated problems. Yet, despite having the names and addresses of all registered voters in its SVRS database, GAB has sent no individual notices to inform voters of Act 23's existence, its requirements and

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discussion," she was allowed to vote (improperly) on February 21 with a photo ID bearing her new surname. Attach. R (D1518-19).

exceptions, or how to obtain the ID necessary to vote, RH 151:11-17; NR 45:11-15, nor has it required local officials to do so. NR 44:21-45:15. In enacting the photo ID law, the legislature did not provide GAB a budget for individual notice, RH 151:23-152:7, but that is no defense to a constitutional violation. *See, e.g., Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 217-18 (1986) ("[c]osts of administration" and "administrative convenience" cannot justify infringing constitutional rights). And while GAB is making some public outreach efforts, its presentations to only approximately 100 groups are wholly inadequate to communicate complex election law changes to millions of voters statewide. NR 36:9-15, 62:10-21, 142:1-5. GAB is aware of particular and persistent difficulties in ensuring that low-income, elderly, disabled, rural, and minority voters understand Act 23. NR 39:3-40:22, 45:16-25, 54:11-56:22, 57:20-58:8.

Act 23 also contains complex, though limited, exemptions, and because GAB has omitted information on these exemptions from its public service announcements, failed to individually notify nursing homes, group homes and other residential care facilities, or homebound voters of the exemptions, otherwise-exempt voters may believe they need to obtain ID and may give up on voting due to their inability to obtain it. RH 20:13-21:5, 148:13-151:10, 151:18-22; Ex. 20 (GAB official calling exemptions "incredibly complex"); NR 40:12-22, 41:15-23, 43:12-15; Obermeyer Decl. ¶¶ 7-12.

Nor have officials adequately informed student voters of the changes wrought by Act 23. Many students rely on college administrators, some of whom do not understand the law themselves. Plaintiff Meszaros, a freshman at Carthage College, was issued a student ID her school led her to believe would be acceptable under Act 23. Meszaros Decl. ¶¶ 10-12. However, the ID card lacked an expiration date, which she – and, apparently, the college - did not realize

Act 23 required. *Id.*

The confusion surrounding Act 23 itself overlays the arbitrary and difficult process of obtaining photo ID. *See supra* Sec II.B.4. Voters may not be able to surmount the hurdles DMV imposes, RH 104:9-105:4, while DMV's inevitable errors can result in denial of the right to vote.[19] RH 131:7-17. Yet only extremely limited assistance is provided to voters trying to navigate these complicated systems. As a consequence of the arranged marriage of two agencies with different missions, GAB itself is often ill-informed about DMV's policies and procedures and thus cannot provide accurate information, RH 93:20-94:1, 97:8-16, while DMV does not even believe its staff need to know much more about Act 23 than that it involves providing free photo ID. PF 109:19-25. Voters who encounter problems obtaining photo ID and manage to contact GAB are typically just re-routed back to DMV. RH 92:8-16. Neither the GAB nor the DMV have consistent procedures or protocols to ensure that eligible voters are actually able to obtain the ID they need to vote. Exs. 81, 83; RH 90:19-24, 91:19-92:16, 102:24-103:13, 104:9-105:4, 129:5-20, 154:3-20, 156:15-157:8. As a result, voters must fend for themselves, figure out if their cases are being mishandled by DMV and/or election officials, complain, and be lucky

[19] For example, as recently as December 2011, some DMV staff were still wrongly telling voters that there was no free state ID card. RH 121:22-122:4, 122:23-124:23. The problem is not just that errors are made, but that Wisconsin has created a legal structure that provides no alternatives if DMV errors lead to denial of photo ID, and where the result of those errors is thus likely to be disfranchisement of voters. *See, e.g.*, Attach. R (D15006) (legally blind senior denied state ID card at DMV CSC "because neither [his] birth certificate or SS card had a photo of him on it"); RH 121:22-122:4, 122:23-124:23 (as recently as December 2011, some DMV staff still informing voters that there was no free state ID card); Young Decl. ¶ 6 (in January 2012, contrary to DMV's own rules, staff told voter he could not replace his stolen ID without showing a birth certificate that he did not have); Attach. R (D15138) (in March 2012, 92-year-old woman told by DMV staff that "they did not have a camera to take her photo"); Ex. 81 (DMV employees wrongly required 17-year-old girl who did not live with her parents to obtain parental permission in order to secure an ID card).

enough to locate an individual at GAB or DMV who can provide meaningful assistance. If an applicant does not escalate a problem to a supervisor or legislator, that voter may well be disfranchised. RH 129:24-130:4, 132:2-11.

Meanwhile, DMV engages in no significant education or outreach related specifically to Act 23. In forcing voters without accepted photo ID to pass through yet another layer of bureaucracy on their way to the ballot, Defendants have subjected them to the foreseeable risk of error, malfunction, or misconduct – and, ultimately, disfranchisement. Moreover, because DMV requires the mailing of licenses and ID cards to voters, address mistakes or a postal worker's inability to verify an address are leading to the return of as many as 100 licenses and ID cards per week. Attach. K; JM 208:20-209:2 (many products being returned because of voters who rely on P.O. Boxes). If voters do not receive those licenses and ID cards, they will be disfranchised.

Again, the other relevant equitable factors favor enjoining Act 23's photo ID requirement, at least until GAB and DMV have developed adequate policies and procedures to implement the law fairly, adequately trained those who will implement it, and adequately informed the public about the law's requirements and exceptions.

6. The Photo ID Law Violates Section 2 of the Voting Rights Act [Claims 9 & 10]

Section 2 of the Voting Rights Act ("VRA") mandates that "[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color . . ." 42 U.S.C. § 1973(a). The photo ID law is unquestionably a voting standard, practice, or procedure under § 1973(a).

> A violation [of Section 2] . . . is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less

> opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

Id. § 1973(b). In 1982, "Congress substantially revised § 2 to make clear that a violation could be proved by showing discriminatory effect alone and to establish as the relevant legal standard the 'results test'. . . ." *Thornburg v. Gingles*, 478 U.S. 30, 35-36 (1986).

Section 2 prohibits both vote denial and vote dilution. *Burton v. City of Belle Glade*, 178 F.3d 1175, 1197-99 (11th Cir. 1999). "The right to vote can be affected by a dilution of voting power as well as by an absolute prohibition on casting a ballot." *Allen v. State Bd. of Elections*, 393 U.S. 544, 569 (1969). "[I]n voting rights parlance, vote denial refers to practices that prevent people from voting or having their votes counted. . . . Vote denial cases challenge practices such as literacy tests, poll taxes, white primaries and English-only ballots." *Simmons v. Galvin*, 575 F.3d 24, 29 (1st Cir. 2009) (citations, quotation marks, and alterations omitted). "By contrast, vote dilution challenges involve 'practices that diminish minorities' political influence,' such as at-large elections and redistricting plans that either weaken or keep minorities' voting strength weak." *Id.*

For vote denial, the disfranchisement of individual voters on account of race or color, the question is whether, under the "totality of the circumstances," the challenged standard, practice, or procedure denies minority voters the franchise on account of race or color. *Burton*, 178 F.3d at 1197-98; *see also Farrakhan v. Gregoire*, 590 F.3d 989 (9th Cir. 2010), *rev'd on other grounds*, 623 F.3d 990 (9th Cir. 2010) (*en banc*) ("Vote denial claims . . . challenge laws . . . that directly exclude otherwise qualified voters from participating.") (internal citations and quotation marks omitted). Act 23 "denies" the voting rights of African-American and Latino voters in Milwaukee County by requiring a "license" to vote. Those who do not have the required ID are denied the

ability to cast a ballot, just as earlier generations who could not pass literacy tests, pay poll taxes, or speak English were prevented from voting.

For vote dilution, Plaintiffs must establish that the challenged practice or procedure disproportionately impairs minority voters' ability to participate in the political process and to elect candidates of their choice and that there is an alternative election scheme that safeguards the equal electoral opportunities of all racial groups. *Thornburg*, 478 U.S. at 50-51; *Burton*, 178 F.3d at 1198-99 & n.24. Vote dilution due to a photo ID requirement, which will lead to a substantial percentage of eligible voters failing to cast a ballot that will be counted, is analogous to the claims recognized in punch-card voting technology cases. *See, e.g.*, *Black*, 209 F. Supp. 2d at 895 ("[T]he injury here alleged, is . . . the higher probability of that vote not being counted as a result of the voting systems used, *i.e.*, vote dilution."); *Common Cause v. Jones*, 213 F. Supp. 2d 1106, 1110 (C.D. Cal. 2001); *Stewart v. Blackwell*, 444 F.3d 843, 877-79 (6th Cir. 2006), *vacated as moot*, 473 F.3d 692 (6th Cir. 2007) (*en banc*). Act 23 dilutes the voting rights of African-Americans and Latinos in Milwaukee County by creating a faulty, error-prone "practice or procedure" that will lead to uncast and uncounted ballots for minority voters.

The overarching question for each claim is whether the challenged law or practice denies minority voters "an equal measure of political and electoral opportunity." *Johnson v. De Grandy*, 512 U.S. 997, 1013 (1994). Both claims require the court to consider evidence that a particular voting standard, practice, or procedure has a disproportionate negative impact on minority voters, and that under the totality of the circumstances the electoral system is "not equally open to participation by" them. 42 U.S.C. § 1973(b); *Thornburg*, 478 U.S. at 43-44. To guide rulings on vote denial and vote dilution cases under Section 2, the Senate Report that accompanied the

1982 VRA Amendments set forth 9 factors, commonly known as the "Senate factors." S. REP. NO. 97-417, 97th Cong., 2d Sess., at 28-29 (1982). Among the Senate factors are (5) the extent to which members of the minority group bear the effects of discrimination in such areas as education, employment, and health, which hinder their ability to participate effectively in the political process; (6) whether political campaigns have been characterized by overt or subtle racial appeals; and (9) whether the policy underlying the use of such voting law is tenuous. *Id.*[20] "The cases demonstrate, and the committee intends that there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other." *Id.* at 29; *Thornburg*, 478 U.S. at 45 (noting the list is "neither comprehensive nor exclusive"); *id.* (quoting S. REP. NO. 97-417, at 30 & n.120 (1982) ("[T]he Committee determined that the question whether the political processes are equally open depends upon a searching practical evaluation of the past and present reality, and on a functional view of the political process." (internal citations and quotation marks omitted)).

As Plaintiffs' expert report establishes, black and Latino voters in Milwaukee County disproportionately lack accepted photo ID when compared to their white counterparts. The experts surveyed nearly 2,000 eligible voters in Milwaukee County and found statistically significant disparities in the possession of accepted photo ID between white, African-American

[20] The other Senate factors are: (1) the extent of any history of official voting discrimination; (2) the extent to which voting is racially polarized; (3) the extent to which the state or political subdivision has used voting practices or procedures that may enhance the opportunity for discrimination against the minority group; (4) whether minorities have been denied access to any candidate slating process; ... (7) the extent to which members of the minority group have been elected to public office in the jurisdiction; and (8) whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group. *Id.*

and Latino voters. Barreto/Sanchez at 12, 18-19, Table 1, Fig. 6.[21]

The expert survey showed that 14.9% of eligible Latino voters and 13.2% of eligible African-American voters, but only 7.3% of eligible white voters, lack accepted photo ID. *Id.* at 18, Table 1, Fig. 6. The correlation between race or ethnicity and the lack of accepted photo ID is "statistically significant at a very rigorous level utilized in social science research," a 99% confidence level. *Id.* at 16. Eligible Latino voters are 206 percent more likely to lack, and eligible African-American voters are 182 percent more likely to lack, accepted photo ID than eligible non-Hispanic white voters.[22] *Id.* at 16-17.

Amongst the subset of registered voters in Milwaukee County, these statistically significant disparities remain consistent. Only 6 percent of registered white voters in Milwaukee

[21] Survey research is often used to assess and establish the racially disparate impact of voting laws in prior VRA cases. *See, e.g., Spirit Lake Tribe v. Benson County, N.D.*, Civil No. 2:10-cv-095, 2010 WL 4226614, at *2-3, 5-6 (D.N.D. Oct. 21, 2010); *Oregon v. Mitchell*, 400 U.S. 112, 235 (1970) (Brennan, J., concurring in part, dissenting in part) ("The United States Commission on Civil Rights reported a survey of the Northern and Western States which concluded that literacy tests have a negative impact upon voter registration which falls most heavily on blacks and persons of Spanish surname." (internal citations and quotation marks omitted); *LULAC v. Clements*, 999 F.2d 831, 877 (5th Cir. 1993) (in Section 2 challenge to single-district system of electing state trial judges in Texas, "expert testimony and surveys showed that less than 2.0% of the lawyers in Dallas County [were] both eligible to serve as district judges and black"); *Mississippi State Chapter, Operation Push, Inc. v. Mabus*, 932 F.2d 400, 410-11 (5th Cir. 1991); *Large v. Fremont County, Wyo.*, 709 F.Supp.2d 1176, 1201, 1231 (D. Wyo. 2010) (relying on "thorough" survey-backed expert testimony concerning socioeconomic disparities on Native American voters. The U.S. Department of Justice has also used phone surveys to assess the scope of voting problems. *See, e.g., U.S. v. Wisconsin*, 771 F.2d 244, 245 (7th Cir. 1985) ("Voting Section of the Civil Rights Division . . . conducted a telephone survey of Wisconsin county and municipal election officials to determine when those officials began mailing absentee ballots to overseas voters.").

[22] By comparison, the U.S. Department of Justice recently objected to Texas's photo ID law under Section 5 of the Voting Rights Act, noting that "according to the state's own data, a Hispanic registered voter is at least 46.5 percent, and potentially 120.0 percent, more likely than a non-Hispanic registered to lack this identification." U.S. Dep't of Justice, Letter from Asst. Att'y Gen. Thomas Perez to Keith Ingram (Mar. 12, 2012), at 3. Attach. L.

County lack an accepted photo ID, compared to 15.3% of registered black voters and 11.3% of registered Hispanic voters. *Id.* at 19-20, Table 5. The disparity for registered black voters is statistically significant at the 99% confidence level, and the for registered Latino voters at the 95% confidence level. *Id.*, Table 5.

Milwaukee's African-American and Latino voters also have greater difficulty than white voters in fulfilling DMV's documentary proof requirements. For example, among all eligible voters, 18.9% of eligible Latino voters, 14.1% of eligible black voters, and 11.2% of eligible white voters lack documentary proof of citizenship.[23] *Id.* at 21, Table 3. Among eligible voters *without accepted photo ID* – a group that, as noted above, disproportionately includes African-Americans and Latinos – blacks and Latinos are *also* less likely than white voters to have all the documentary proof needed to obtain a photo ID. *Id.* at 22-23, Table 7. For example, only 28.7% of eligible white voters, but 34.3% of eligible African-American voters and 39.8% of eligible Latino voters who lack accepted photo ID *also* lack documentary proof of citizenship. *Id.*, Table 7. Thus, the expert report concludes that 2.4% of all white voters lack acceptable ID and one or more of the underlying documents necessary to obtain the "free" ID card; 4.5% of Black voters lack acceptable ID and one or more of the required underlying documents; and 5.9% of Latino voters lack acceptable ID and one or more underlying documents. *Id.* at 23-24, Fig. 7B. These disparities are statistically significant. *Id.* These documented racial disparities demonstrate that

[23] A significant part of the disparity is attributable to the fact that DMV does not accept Puerto Rican birth certificates issued prior to July 1, 2010 as proof of citizenship. KB 66:1-13. Milwaukee County has 10,076 residents who were born in Puerto Rico. U.S. Census Bureau, 2006-2010 American Community Survey 5-Year Estimates, Place of Birth by Citizenship Status [B05002]. Thirty-eight percent of eligible Puerto Rican voters in Milwaukee County lack birth certificates, compared to 12.9 % of eligible white voters. Barreto/Sanchez at 20-21 & Table 3.

the photo ID law will deny the franchise to tens of thousands of African-American and Latino voters, and also reduce the probability that votes cast by these minority residents of Milwaukee County will be counted.

A Section 2 violation is also supported by the disparities in socioeconomic conditions and political participation for black and Latino voters in Milwaukee County. *See Thornburg*, 478 U.S. at 47 ("The essence of a § 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by [minority] and white voters to elect their preferred representatives."); *id.* at 70 ("Both this Court and other federal courts have recognized that political participation by minorities tends to be depressed where minority group members suffer effects of prior discrimination such as inferior education, poor employment opportunities, and low incomes."); *Rybicki v. State Bd. of Elections of State of Ill.*, 574 F. Supp. 1147, 1151-52 (D.C. Ill. 1983); S. REP. NO. 97-417, at 29 n.114 ("Where these conditions are shown, and where the level of [minority] participation in politics is depressed, plaintiffs need not prove any further causal nexus between their disparate socio-economic status and the depressed level of political participation.").

Thus the totality of the circumstances inquiry evaluates evidence of minority political access as well as the social, economic, and historical background for that participation.[24] As to Factor (5), census and American Community Survey (ACS) data confirms the existence of significant income and educational disparities between Latino and white residents and African-

[24] Plaintiffs intend to present additional expert testimony on these matters for dispositive motions and trial of this case. Because that expert report is being prepared in compliance with this Court's original scheduling order, it is not available for submission with this motion.

American and white residents of Milwaukee County.[25] For example, 9.5% of non-Hispanic white residents of Milwaukee County have incomes below the federal poverty level ("FPL"), a significantly lower rate than that for African Americans (36.4%) and Latinos (25.9%).[26] African-American (15.4%) and Latino (9.9%) residents also were far more likely than whites (4.2%) to be in extreme poverty, with incomes below 50% of the FPL.[27] The mean income of non-Hispanic white residents is more than double that of African-Americans and roughly 2.5 times that of Latinos.[28] These profound income and poverty disparities are linked to an official unemployment rate for African American residents more than triple (18.0%), and a Latino unemployment rate more than double (12.4%) that of non-Hispanic white residents (5.7%).[29]

Other socioeconomic indicators confirm the extensive disparities. African-American and Latino residents 25 years of age and over also have significantly lower levels of educational attainment, with 21.6% and 42.9%, respectively, having less than a high school degree compared

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[25] Courts routinely take judicial notice of Census data under Federal Rule of Evidence 201. *See General Electric Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1084 (7th Cir. 1997); *U.S. v. Bailey*, 97 F.3d 982, 985 (7th Cir. 1996).

[26] U.S. Census Bureau, 2006-2010 American Community Survey 5-Year Estimates, Poverty Status in the Past 12 Months [Dataset S1701]. Similar disparities exist regarding white, black and Latino families. [Dataset S1702]. This and Tables of other ACS data cited are included as Attach. M.

[27] U.S. Census Bureau, 2006-2010 American Community Survey 5-Year Estimates, Selected Characteristics of People at Specified Levels of Poverty in the Past 12 Months [S1703].

[28] U.S. Census Bureau, 2006-2010 American Community Survey 5-Year Estimates, Mean Income in the Past 12 Months (In 2010 Inflation-Adjusted Dollars) [S1902].

[29] U.S. Census Bureau, 2006-2010 American Community Survey 5-Year Estimates, Employment Status [S2301].

to 8.37% of their non-Hispanic whites.[30] African-American residents comprise only 17.9% of those driving alone to travel to work, but nearly half of those relying on public transportation, while Latinos are also more likely than whites to depend on carpooling or public transportation,[31] facts that help explain the racially disproportionate lack of driver's licenses. Barreto/Sanchez, Tables 1 & 5.

African-Americans also make up a disproportionate share of Milwaukee County's homeless population. The 2011 point in time survey for Milwaukee City and County identified 63% of the homeless persons as African-American. Attach. N.[32] Similarly, data reported to HUD in 2009 showed that blacks comprised 68% of individuals staying in emergency shelters, and 64% of individuals staying in transitional housing. Among homeless families, the racial disparity is even more stark: Blacks made up 91% of persons in families staying in emergency shelters, and 85% of persons in families staying in transitional housing. Attach. O.[33] Moreover, the U.S. Census Bureau has determined that the Milwaukee-Waukesha Primary Metropolitan Statistical Region is overall the most racially segregated region in the United States for African Americans, and in the top third of large metropolitan areas for residential segregation of

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[30] U.S. Census Bureau, 2006-2010 American Community Survey 5-Year Estimates, Sex by Educational Attainment for the Population 25 Years and Over (Black or African American Alone) [C15002B]; (White Alone, Not Hispanic or Latino) [C15002H]; (Hispanic or Latino) [C15002I].

[31] U.S. Census Bureau, 2006-2010 American Community Survey 5-Year Estimates, Means of Transportation to Work by Selected Characteristics [Dataset S0802].

[32] Milwaukee Continuum of Care, 2011 Annual Point in Time Survey of Milwaukee's Homeless Citizens 11 (Dec. 2011).

[33] U.S. Dep't of Housing and Urban Development, 2009 Annual Homeless Assessment Report, Demographic Characteristics of Sheltered Homeless Persons in Milwaukee County [Exhibit 3.1].

Latinos.[34] Twenty-eight percent of Latinos and 14.2% of African-Americans lack health insurance, compared to 7.9% of non-Hispanic whites.[35]

These disparities are related to longstanding and ongoing systemic discrimination against African-Americans and Latinos in the Milwaukee area. Governmental entities frequently engage in discriminatory conduct. *See, e.g., Baldus v. Members of Wisconsin Government Accountability Bd.*, 2012 WL 983685 (E.D. Wis. 2012) (legislative redistricting plan violated VRA by failing to create majority-minority district for Latinos; also finding racially polarized voting); *United States v. City of New Berlin*, No. 11-CV-608 (E.D. Wis. filed April 11, 2012) (proposed consent decree settling allegations of intentional race discrimination, as well as racially discriminatory effect, in housing by Milwaukee suburb) (Attach. Q); *Kimble v. Wis. Dep't of Workforce Development*, 690 F. Supp. 2d 765 (E.D. Wis. 2010) (state agency discriminated against supervisor on basis of race and gender); *Davis v. Wis. Dep't of Corrections*, 445 F.3d 971 (7th Cir. 2006) (evidence sufficient to support jury verdict of intentional racial discrimination by state agency against employee); *Sch. Dist. of Shorewood v. Wausau Ins. Companies*, 170 Wis.2d 347 (Wis. 1992), *overruled on other grounds by Johnson Controls, Inc. v. Emp'rs Ins. of Wausau*, 264 Wis.2d 60 (Wis. 2003) (insurance coverage dispute noting settlement in underlying action alleging "racial segregation and the resulting inequality of educational opportunity and metropolitan-wide racially dual structure of education created and maintained by defendants in the Milwaukee metropolitan area"); *U.S. v. City of Milwaukee*, 441 F. Supp. 1377 (E.D. Wis. 1977) (denying

[34] U.S. Census Bureau, "Racial and Ethnic Residential Segregation in the United States: 1980-2000" (Dec. 2004), Chs. 5 & 6 (excerpts), *available at*: http://www.census.gov/hhes/www/housing/housing_patterns/pdftoc.html. Attach. P.

[35] U.S. Census Bureau, 2008-2010 American Community Survey 3-Year Estimates, Health Insurance Coverage Status [S2701].

motions to vacate consent decrees integrating Milwaukee police force); *Armstrong v. O'Connell*, 451 F. Supp. 817 (E.D.Wis. 1978) (record established that defendants intentionally segregated black students); *Amos v. Bd. of Sch. Directors*, 408 F. Supp. 765, 818 (E.D. Wis. 1976) ("[S]chool authorities engaged in practices with the intent and for the purpose of creating and maintaining a segregated school system, and that such practices had the effect of causing current conditions of segregation in the Milwaukee public schools.").

There is also a long history of race discrimination in the region by private business. *See E.E.O.C. v. Target Corp.*, 460 F.3d 946 (7th Cir. 2006) (evidence could support finding of race discrimination in refusal to hire African-American applicants for managerial jobs); *U.S. v. Security Management Co., Inc.*, 96 F.3d 260 (7th Cir. 1996) (insurance coverage dispute arising out of Fair Housing Act (FHA) race discrimination claims in various Wisconsin location, including Milwaukee county, which had been resolved by a consent order); *U.S. v. Balistrieri*, 981 F.2d 916 (7th Cir. 1992) (evidence sufficient to support finding of pattern of race discrimination by owners of Milwaukee apartment complex); *NAACP v. Am. Family Mut. Ins. Co.*, 978 F.2d 287 (7th Cir. 1992), *cert. denied*, 508 U.S. 907 (1993) (FHA claim of racially discriminatory insurance redlining in Milwaukee area); *Sherman Park Cmty. Ass'n v. Wauwatosa Realty Co.*, 486 F. Supp. 838 (E.D. Wis. 1980) (racial housing segregation related to steering and other actions by real estate agents).

Senate Factor (6) invites the Court to consider whether the jurisdiction's political campaigns have been characterized by overt or subtle racial appeals. The most notable, and recent, Wisconsin example was the 2008 Supreme Court campaign of African-American Justice Louis Butler, who ran for reelection against Judge Michael Gabelman. Gableman's campaign

approved and paid for a television ad that juxtaposed Justice Butler's face with that of an African-American convicted rapist in an overt racial appeal to voters. Marcus Decl. ¶ 7 & Ex. A. Ms. Marcus, Justice Butler's then-law clerk, vividly recalls the "hostile" and "hateful" phone calls that flowed from that ad and third-party ads listing the chambers' phone number, including one stating "I didn't know we had a black on the Court. That's so disgusting." Marcus Decl. ¶¶ 5-10. This Court also previously noted that a 1996 Milwaukee County Circuit Court election, in which white candidate Robert Crawford defeated African-American Judge Russell Stamper, "appear[ed] to have involved racial appeals." *Milwaukee Branch of the NAACP v. Thompson*, 935 F. Supp. 1419, 1433 (E.D. Wis. 1996).

As to Senate Factor (9), the policies and justifications proffered in defense of the photo ID law are tenuous and not supported by the evidence. *See supra* Sec. II.B.1.c.

The expert survey evidence of statistical disparate impact of Act 23's photo ID requirement on Milwaukee County's African American and Latino voters, along with the evidence of current and historical discrimination in employment, education, housing and health and of racial appeals in elections, demonstrate that Plaintiffs are likely to succeed on the merits of their claims that Act 23 "results in" a "denial or abridgement of the right . . . to vote on account of race or color," in violation of Section 2 of the VRA. The other equitable factors also weigh in favor of granting the relief sought. The harm of disfranchisement of African American and Latino voters is, of course, irreparable. An injunction will not harm GAB's election administration operations, especially in light of the suspension of the photo ID law during the most recent election.

CONCLUSION

For the reasons set forth above, Plaintiffs request that this Court grant the preliminary injunctive relief sought in the motion.

Dated this 23rd day of April, 2012.

Respectfully submitted,

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To:
The U.S. Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights & Human Rights

Submitted by:
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On May 2, 2012
In preparation for the Subcommittee's Field Hearing , to be held in Cleveland, OH on May 7, 2012, regarding nationwide and Ohio's new election laws

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I appreciate this opportunity to offer this written testimony about the actual and probable negative impacts to Ohio's young, elderly, poor and already overly-busy, middle-class working voters, created by the current right wing majority in Ohio's 129th General Assembly and by the Ohio Secretary of State, since 2011, with their rushed, confusing and often secretively made proliferation, since 2011, of ever-changing, biased election laws and policies.

After reading the invitation to this hearing, I am aware that this Committee is already very aware of the many and various angles that the creators of Ohio's HB194 have tried to address, in order to suppress both equal access to the ballot and the ability for the votes of the above-noted segments of society to be counted; and aware that you'll be hearing more about those most often noted at the May 7, 2012 Hearing in Cleveland, Ohio.

I too am alarmed at this bill's greatly shortened early voting periods; elimination of evening and Sunday early voting hours along with shortened Saturdays; and elimination of the early voting the weekend before elections – all negatively affecting those who historically have been the majority of early voters – minorities (particularly after church,) the young, the elderly, the poor and too busy working families – including those who don't have the time, transportation or freedom to go to the polls on election day, and who possibly lack secure enough mailboxes or above normal postage to use the mails for absentee ballots. I will, however confine my comments to other harmful portions of HB194 not as often spoken about.
I will also comment briefly on closely related election bills and actions this Ohio legislature has taken, beginning in 2011, most in a confusing and a secretive rush, and all demonstrating the same single-minded partisan game playing strategy of how to win in November and long after, by continuing to make laws that not only dismantle fair accessible elections, facts, but otherwise quiet the voices and equality of anyone who does not agree with their entire agenda. This conduct is unbefitting of legislators charged

with representing all their constituents and upholding democracy and the US Constitution.

Though such strategy is not spoken about as often as the substance of what they put forth, their unrelenting, often sneaky methods further serve to make citizens of Ohio feel increasingly powerless and/or cynical, thus increasingly disinterested and unable to even try to follow what government is doing. Thus, their created milieu also helps their desired result of disengaging a thinking and willing electorate's turnout.
For example, immediately before and almost concurrent with HB194's introduction, was their introduction of poorly drafted HB159, their voter ID law similar to, and possibly more restrictive than others being passed across the nation, which people quickly termed the "poll tax law." As attempts at sorting out and making thoughtful protest were turned to HB159, which additionally included such provisions as mandating a person provide a full, 9-digit social security number in order to register to vote, thus undermining privacy, up popped HB194's massive, multi-frontal attack on equal access to a counted ballot, which included and seemed to correct some of 159, but which went dramatically and broadly negatively further. With hardly time to comprebend all of HB194 to put forth thoughtful input, those who did offer input were completely ignored before its quick passage.
Now, the voter ID law, HB159, still sits in Senate committee, and is certainly not off the table. In fact HB194 contains a provision that allows that if other voter ID laws are passed, those will control.

Given our lawmakers' seeming substitution of "a cat and mouse game" before they pounce passage of their discriminatory, partisan bills, with at times a one or two day public "consideration" before passage, and often with huge or hugely impacting, last minute, embedded amendments, the many who are interested, remain on constant alert for more surprise attacks, including with HB159, ready to have to scramble to find out what our legislators are doing to us next.

Shortly after passage of HB194, and as that referendum effort was just beginning, also came passage of HB224, represented as an innocent and good military absentee voting law, but which again got last minute, slipped in, zinger amendments, which sealed the elimination of last weekend voting for everyone no matter what happened to HB194's referendum. HB224 was passed on emergency, though there was none, but which allowed them to avoid anotber referendum protest.

The point of this telling is to demonstrate that our Ohio legislators know that what they are creating is not what most would consider "good law," or reasonable law that can be accepted by a majority of reasonable people who dearly hold the rights afforded by our Constitution for everyone. Rather, our legislators seemingly see this as their own big game, with the ability to make up the rules so that eventually they can never lose an election – or money making and power gaining opportunities they control - making up disinformation along the way to quiet the masses, until they can also eliminate the "bother" of having to listen to all those lives they crush along their way. With such role models of "success," and whom should be called " The Honorable" and not, it's no

wonder so many of our youth are cutting themselves off from today's culture or turning to violence to get what they want.

A few of HB194's lesser talked about provisions also clearly demonstrate Ohio's conservative legislators' above-stated intent:

• **HB 194 forbids boards of elections from mailing unsolicited applications** for absentee ballots and from pre-paying postage for absentee ballot applications, removing a valuable tool election administrators have used to reduce long lines on Election Day (Section 3509.03(I) and Section 3509.031(D)). The reasons given are, instead of assuring equal funds for all counties, they say to gain"equal protection" for those counties who can't afford to do same. They also state that providing postage is not allowed, because that's giving voters something of value to vote.

• **Absentee ballots can be rejected for failure to include the voter's printed name on the identification envelope** (Section 3509.07) The same applies for provisional ballots, though often the signature and all other information matches a duly registered voter. The reason given is that these are "legal documents." I find this amazing when the legislators themselves, and with all their tax-paid help, produce such sloppy, incoherent and internally inconsistent legal works for the public to consider.

• **Provisional ballots envelopes - ORC Section 3505.182 previously specified the required affirmation for a provisional ballot and required that a form "substantially as follows" be used.** HB194's amended Section 3505.182 simply says that "the secretary of state shall prescribe the form."

Because there has been such a high percentage of provisional ballot rejection in Ohio in the past, a great deal due to errors or omissions on this affirmation; and this acceptance or rejection can be left to arbitrary decisions of those in power, it is imperative that the provisional ballot envelopes be as clear and easy as possible for voters to complete, and for board of election staffs to verify. Also, because it is most often that the segments of society targeted by this bill are the ones who lack the requisite knowledge or papers, thus forcing them into provisional voting, this "design" responsibility should not be left up to a partisan Secretary of State, possibly inviting making provisional voting harder and harder to be able to count.

In Ohio, the Secretary of State's office has already redesigned the envelope once, for the March Primary, and mandating that going forward no other changes can be made, except by his office. Yet in Cuyahoga County, the largest voting district in Ohio, where both Spanish and English are required on all voting materials, the print will have to become so small to become illegible and impossible to fill in, And the current design misleadingly suggests that the back of the envelope is optional for filling in, though it's where the pertinent identifying information is found. This will cause a nightmare for board staffs, and highly probably will result in many more uncounted ballots than necessary, for those unable to be properly verified.

• **HB194 shortens the time to nearly impossible for citizen petition drives for gathering sufficient signatures on statewide issues**, such as with the petition drive for the referendum on HB194 that gathered more than 300,000.

• **HB194 requires minimum precinct sizes only in urban areas,** the home of many minorities, poor, students and elderly, causing longer voting lines there, and more reasons to leave or just not go to vote.
• **And HB 194 relatedly specifies that long voting lines cannot extend in front of businesses adjacent to polling locations,** a situation often found in polling locations in poorer neighborhoods.

One portion of HB194 I find most telling is this legislature's unrelenting backwards attempts to cure the conflict between R.C. § 3505.181(C)(1) mandating the duty of poll workers to properly direct voters to their correct precincts and R.C. § 3505.183(B)(4)(a)(ii) which provides that provisional ballots shall not be counted under any circumstance, even where it's apparent that poll workers have failed and/or misdirected in that duty, which happens in a huge number of cases. HB 194 does not insist on better training and supervision of poll workers in this regard, though they are the ones who are given the tools and training needed, are the ones whose directions voters are instructed and expected to follow, and are the only ones who can hand the voter the proper precinct's ballot. HB194 attempts, however, to solve this conflict by *removing all such duty* from poll workers, and placing the entire often difficult, confusing duty for knowing and finding the correct precinct table, especially among many precinct tables inside the same polling room, and amidst changing precincting and locations between elections - a voting activity which even the most active voter engages in only two or three times in a year (considering some special elections.)

Thus, HB 194 also places the entire impossible responsibility on the voter, for being handed the correct precinct's ballot, on ballots where it's often hard to know about or even find the precinct designation, so their ballot can count.

Further, as I've been an official Election Observer at the polls for all major elections in Cuyahoga County since 2005, I can attest that many minority, student, elderly, and first time voters enter the polling locations with a hint of trepidation, not promulgated by the county, but still demonstrating willing compliance with often changing and complicated rules they know they might not fully understand, but want to.
The last thing on their minds is to start a public argument with a poll worker, to insist they were led to the wrong table, or given the wrong ballot. To place such a duty on voters flies in the face of all historical data and custom in Ohio's voting locations. Where poll workers are advised to take such relief seriously, (though no poll worker has been or is intended to be legally prosecuted) this will assure the disenfranchisement of many more – potentially at times, by pre-planned design.

Further HB194 specifies that even where a poll worker demonstrates that s/he did not properly fill in even their part of a provisional envelope, or that they do not understand how to properly find and direct a voter to their proper precinct, they cannot be presumed to be in error; and that if that person is found to make one error, they cannot be presumed to have made similar errors.

One case that recently has brought this to light, has been Hunter v. Hamilton County, brought by Tracie Hunter, a black woman who lost her 2010 juvenile judgeship race by an announced 23 votes - while hundreds of provisional ballots remained uncounted.

After many procedural battles and removing to federal court, finally Chief Judge Susan J. Dlott, of the The US District Court of Southern Ohio, Western Division, in February, 2012, gave her ruling, ordering many of those uncounted provisional ballots to be counted on equal protection grounds. The Hamilton County board of elections then, in a party line vote, tied as to whether to appeal, and GOP Secretary of State Husted, as indicated by law broke the tie, in favor of the GOP's wishes to further appeal. Just weeks ago, in mid-April, it was announced that the indicated ballots were finally counted, and Hunter won by 71 (provisional) votes, which is still subject to a recount because the totals were so close, and as I understand it, with the appeal still in place.
Further, two Ohio legislators, Blessing and Niehaus, who were sponsors of the election bills in question, have taken a complaint to the Republican dominated Ohio Supreme Court, about the ability of the courts to dictate Ohio election law that they believe is under their sole purview. This complaint questions the Consent Decrees formulated in a 2008 suit, the Northeast Ohio Coalition for the Homeless (NEOCH) against the former Secretary of State. The Consent Decree formulated by Judge Algenon Marbley in the Southern District Court, Eastern Division, allowed in part that people who only provided the last four digits of their Social Security Number for ID, could have their ballots counted if it was found that poll worker error caused them to end up in the wrong precinct/with the wrong precinct's ballot., due to poll worker error. (NEOCH also filed an amicus brief with Hunter.)

Bottom line, the main aims of the GOP partisan fights in both these cases appear to be to keep court and constitutional decisions out of their own election rule making, especially when it comes to being able to throw out, or selectively pick many provisional votes for counting or not.
The heart of these essentially due process arguments have centered mainly around "right church, wrong pew" votes, where voters have gotten themselves to the correct location, only to be mis- or non-directed by poll workers to the wrong precinct table; and about what constitutes poll worker duty/error that ends up harshly disenfranchising many of the most historically discriminated against voters. Though I don't immediately have the numbers of uncounted provisional votes in Cuyahoga in 2010, if my memory serves correctly, the second largest reason for provisional ballots not being counted was the voter had the wrong precinct's ballot, though over 50% of those voters had made it to the right, multi-precinct polling room.

Some facts from the Hunter case, as quoted from the February Hunter opinion include:

> " Election day in Hamilton County was November 2, 2010. On that day, there were 680 precincts and 438 polling locations in the County. Outof those 438 polling locations, 169 locations were multiple precinct voting locations. One location had six precincts reporting — the highest number of precincts reporting to any one location in Hamilton County. More than 2000 poll workers worked the precincts in Hamilton

County that day.
Fifty poll workers from 47 different precincts testified at the permanent injunction hearing about their conduct and experience on Election Day. Those 50 poll workers processed 248 of the approximately 10,500 provisional ballots cast that day. Seventeen voters also testified about their experience on Election Day. This evidence showed that many problems arose with respect to provisional voting at polling locations on Election Day.
First, some voters believed that if they were in the correct location, then they were in the correct precinct. A poll worker who worked one of four precincts stationed in the same location testified that her table was closest to the door and that "whenever anyone came in [to the building], they assumed they were at the right precinct." Another voter called the Board of Elections to find out where to vote and was told only a voting location, not a precinct. When she arrived at the location, she approached one of two tables, and a poll worker looked up her address. (*Id.*) The poll worker told her she was at the correct precinct table, and the voter cast her ballot. (*Id.*) In fact, the voter's correct precinct table was across the room.
Second and more important, the testimony revealed that some poll workers failed to recognize the significance of voting at the correct precinct table, did not understand how to process a voter whose name did not appear in the signature pollbook, and failed in their statutory duty to direct voters to their correct precinct. At the outset, the testimony revealed that many precincts did not have a single poll worker who understood that his or her role was to act as the provisional judge. Poll workers often alternated roles at the precinct table and, consequently, multiple poll workers processed provisional voters at various times."

Later, from page 42 of that opinion:
In at least one instance, a poll worker appeared to be unable to distinguish between even
and odd numbers. When asked whether the house number 798 was even or odd, the poll worker responded:
A. Odd.
Q. And why do you think that's odd? I'm sorry. Why do you think her address is an odd address?
A. Because it begins with an odd number.
Q. It starts with an odd number?
A. Yes. Nine is an odd number. Eight's even.
Q. . . . So on Election Day, if somebody came in with an address 798 and you had two ranges to choose from, you would choose the odd for them?
A. Yes.
Q. Okay. And is that how you did it for all the ballots that you looked up on Election Day?
A. To determine if they were even – yes.
Q. To determine if they were even or odd, you looked at the first digit of the address?
A. No. I looked at the whole address.

Q. And you chose however many – if there were more odds than even numbers, it would be an odd address?
A. Yes.

The testimony also revealed that many poll workers failed to follow proper procedures
after giving the provisional ballot envelope to the voter. Rather than directing voters to complete Steps 1 through 8 on the front of the envelope, multiple poll workers testified that they filled in much of this information for voters.
Many poll workers failed to sign as a witness on both the front and back of the envelope. "

And from page 59 of that opinion, also recounting testimony from evidence shown in the lower court:

"The Board then conducted the official count that included all ballots approved for counting to date. The Board voted to count 8999 and reject1537 provisional ballots. The rejected ballots fell into eight categories: voter not registered in the state (440 ballots), voter registered in the state but voted in wrong precinct (849 ballots), failed to provide acceptable identification (67 ballots), no voter signature on envelope (60 ballots), no printed name on envelope (62 ballots), voter already voted (22 ballots), and other reasons (25 ballots). (JX 33.) Thus, the largest category of rejected provisional ballots, which is the primary focus of this case, were those that had been cast in the wrong precinct. "

And finally from that opinion:

For example, R.C. § 3505.181(C)(1) delegates to poll workers the duty to ensure that voters vote in the correct precinct:
(C)(1) If an individual declares that the individual is eligible to vote in a jurisdiction other than the jurisdiction in which the individual desires to vote, or if, upon review of the precinct voting location guide using the residential street address provided by the individual, an election official at the polling place at which the individual desires to vote determines that the individual is not eligible to vote in that jurisdiction, *the election official shall direct the individual to the polling place for the jurisdiction in which the individual appears to be eligible to vote*, explain that the individual may cast a provisional ballot at the current location but the ballot will not be counted if it is cast in the wrong precinct, and provide the telephone number of the board of elections in case the individual has additional questions.
R.C. § 3505.181(C)(1) (emphasis added).

Conversely, R.C. § 3505.183(B)(4)(a)(ii) provides
that provisional ballots cast in the wrong precinct shall not be counted under any circumstance:
(4)(a) If, in examining a provisional ballot affirmation and additional information under divisions (B)(1) and (2) of this section, the board determines that any of the following applies, the provisional ballot envelope shall not be opened, and the ballot

> shall not be counted:
> * * *
> (ii) The individual named on the affirmation is not eligible to cast a ballot in the precinct or for the election in which the individual cast the provisional ballot.
> R.C. § 3505.183(B)(4)(a)(ii) (emphasis added).
>
> Thus, to the extent that R.C. § 3505.181(C)(1) delegates to poll workers the duty to direct voters to the correct precinct and R.C. § 3505.183(B)(4)(a)(ii) provides that provisional ballots cast in the wrong precinct shall not be counted under any circumstance, those provisions, as applied to situations where evidence of poll-worker error exist, are fundamentally unfair to voters. Thus, the Court cannot hold that the Board's correct application of Ohio law, that is, not counting ballots cast in the wrong precinct due to poll-worker error, is unconstitutional without passing upon the constitutionality of these provisions."

(I add here that such passing on the constitutionality of the provisions of law was prohibited in this pleading because of a lack of Civil Rules of Procedure 5.1 Notice to the Ohio Attorney General.)

The above section of this opinion importantly concludes:

> **"Although not previously addressed by this Court, such a result was also contemplated by the Sixth Circuit, which noted:**
> **[W]e have substantial constitutional concerns regarding the invalidation of votes cast in the wrong precinct due solely to poll-worker error. Ohio has created a precinct-based voting system that delegates to poll workers the duty to ensure that voters, provisional and otherwise, are given the correct ballot and vote in the correct precinct. Ohio Rev. Code Ann. § 3505.181(C). Ohio law also provides, as the Ohio Supreme Court recently held in *Painter*, that provisional ballots cast in the wrong precinct shall not be counted under any circumstance, even where the ballot is miscast due to poll-worker error. Ohio Rev. Code Ann. § 3505.183(B)(4)(a)(ii); *Painter*, 941 N.E.2d at 794. Arguably, these two provisions operate together in a manner that is fundamentally unfair to the voters of Ohio, in abrogation of the Fourteenth Amendment's guarantee of due process of law. *See Warf v. Bd. of Elections of Green Cnty.*, 619 F.3d 553, 559–60 (6th Cir.2010) (bold added)**

All of the above is to make clear, that HB194 and other actions by this conservatively controlled Ohio Legislature, particularly regarding election laws are directly aimed, in many both blatant and subtle ways, to effectively disenfranchise and otherwise quiet and ignore the people of segments of Ohio's communities, most dissatisfied, and most in non-agreement with this legislature's partisanly-motivated, pushed-through agendas.

Though this Field Hearing seemingly concentrates on HB194,and as bad as that bill is, it is only a symptom of the lengths and tactics these legislators are willing to unceasingly stoop to, in order to reach their partisan goals. Whether or not this bill is now legislatively repealed by their SB295, before it reaches the ballot in November - in now an Ohio Constitutionally questionable action, so they can avoid another humiliation at the ballot box - the Federal and State Constitutional dangers to Ohio voters still do not disappear. This right wing Ohio 129th General Assembly, as stated before, demonstrates they appear unrestrained and unrelenting in their untrustworthy tactics to get whatever they want and to win it all, as directed by their contributors and leaders organizing these attacks on elections across the US.

Thank you again for this opportunity,

Adele Eisner
[redacted]
Cleveland, OH 44118

Statement of Donita Judge
Advancement Project

Ohio Field Hearing on Voting Rights

Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights
Cleveland, Ohio
Monday, May 7, 2012

Chairman Durbin, Senator Brown and Congresswoman Fudge, thank you for the opportunity to provide a statement today about the potential barriers to the ballot in Ohio that threaten to undermine our democracy.

My name is Donita Judge. I am Advancement Project's lead voter protection attorney for Ohio. Advancement Project is a national civil rights organization that advances universal opportunity and a just democracy. Since 2004, Advancement Project has had a Voter Protection Program in Ohio that works to eliminate barriers to voting through legal and legislative advocacy.

Advancement Project has challenged barriers to the ballot in every federal election in Ohio since 2004. In 2004, Advancement Project intervened in *DNC* v. *RNC*,[1] which stopped the Republican National Committee from challenging voters of color based upon an illegal voter caging program. In 2008, Advancement Project uncovered the potential for challenges to 600,000 Ohio voters that would have resulted in these voters being removed from the voter rolls without due process. Advancement Project successfully advocated against such removal resulting in the Ohio Secretary of State issuing a directive requiring notice and hearing to voters before they are removed from the voter rolls.

Most recently, Advancement Project has been engaged in legislative advocacy addressing proposed changes to the state's election code, including advocacy opposing Ohio HB194 and SB 295. Ohio HB 194 is a voter suppression bill that is currently on the November 2012 ballot; SB 295 has been introduced by Ohio legislators to repeal HB 194.

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[1] *DNC* v. *RNC*, No. 81-3876 (DRD)(NJ 2006).

This backdrop on Advancement Project's voter protection work in Ohio provides us with significant knowledge of potential barriers to the ballot. We welcome this opportunity to share our concerns with you.

True the Vote

A well-coordinated effort stands to threaten and intimidate Ohio voters, in advance of and on Election Day, which could lead to massive voter suppression at the polls in November 2012. In 2009, Catherine Engelbrecht, head of the Houston Tea Party group King Street Patriots, created True the Vote (TTV), an organization designed to turnout a legion of volunteer poll watchers. Their initial effort resulted in a campaign of trained poll watchers placed at strategic polling sites in Harris County, Texas. TTV used pattern recognition software to sort the voter registry to identify precincts for voter challenges. In 2010, they used this process to target Texas' 18th Congressional District, which contains much of inner-city Houston and is 43.5 percent Hispanic and 36.1 percent Black. Leading up to the 2010 general election, TTV trained and registered over a thousand volunteers as poll watchers in predominantly minority neighborhoods in Harris County. During early voting, the *Houston Chronicle* reported that TTV poll watchers in predominantly minority neighborhoods were harassing voters by blocking or disrupting those waiting in line or hovering around people as they were voting.

This year, utilizing the pattern recognition software used in Texas in 2010, TTV launched a similar campaign in Ohio to validate existing voter registration lists. TTV is partnering in this effort with Judicial Watch[2], the Ohio Voter Integrity Project[3] and the Cuyahoga Valley Republicans (CVR)[4] to train and register volunteers to "scrub voter rolls of individuals who should not be registered to vote in Ohio in the 2012 general election" and to train Ohio volunteers as poll workers.[5] Based on our experience, we believe that this effort is likely to both intimidate voters of color in Ohio, and it may also improperly prevent eligible registered voters from casting a ballot due to overly aggressive and unverified eligibility challenges.

Judicial Watch

On February 6, 2012, Judicial Watch on behalf of TTV sent a letter to Ohio Secretary of State Jon Husted regarding "apparent violations of Section 8 of the National Voter Registration Act, 42 U.S.C. § 1973gg-6."[6] In this letter, Judicial Watch alleged that the Ohio statewide voter registration database appears to contain the names of ineligible voters who may no longer reside in the State of Ohio. Judicial Watch requested that Ohio provide information on steps they intend to take to comply with Judicial Watch's request to remove ineligible voters from the list. Additionally, Judicial Watch threatened a potential lawsuit under the National Voter Registration Act (NVRA), if Ohio failed to "correct these violations within 90 days of receipt of the February 6 letter." *Id.*

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[2] http://www.judicialwatch.org/projects/2012-election-integrity-project/.

[3] See http://ohiovip.org. Ohio VIP is involved in a non-partisan research effort that partners with True the Vote (TTV) to validate existing voter registration lists utilizing the software developed by TTV. All researchers are trained by TTV.

[4] http://cuyahogavalleygop.com/node/600.

[5] *Id.*

[6] Judicial Watch letter of Feb. 6, 2012 (on file with Advancement Project).

The Ohio Secretary of State's Chief Legal Counsel replied to Judicial Watch's letter on March 2, 2012, and provided the procedures that Ohio county boards of elections follow to maintain accurate voter rolls. These procedures require Ohio to perform an extensive and exhaustive program to remove ineligible voters from the list. By law, Ohio is required to perform this list maintenance in odd years, and it was conducted in 2011. Nothing in Ohio law or the NVRA requires that Ohio voters be purged from the voter list because Judicial Watch alleges that voters remain on the rolls that "may have moved." In fact, the NVRA provides specific guidelines under these circumstances. Specifically, the NVRA prevents states from removing voters from the voter registration list simply because a voter has moved unless the voter confirms, in writing, that he has changed his address or he has failed to respond to a forwardable notice verifying his address and has not voted in two federal elections or made any contact with the election officials during this period. 42 U.S.C. § 1973gg-6(d). We believe that Judicial Watch's efforts could form the basis for improper voter challenges before and at the polls on Election Day.

Ohio Election Integrity Project

Ohio Election Integrity Project (Ohio VIP) is partnering with TTV to recruit volunteer researchers to identify and submit inconsistencies in voter registrations to county boards as challenges and to recruit and train thousands of volunteers as poll workers for the November 2012 election. These poll workers will be stationed in polling locations throughout the state.

Ohio's pre-Election Day challenge law require that individuals making application for pre-Election Day correction of the precinct list or challenges to a voter be a registered voter in that county. Additionally, Ohio law provides that is not enough to bring forth a list of voters who *you believe* should not be on the list-- instead challengers must have "clear and convincing" evidence[7] that the voter should be removed from the rolls. This standard was established in a directive issued by the SOS in 2008.[8] We, therefore, recommend that any pre-Election Day challenges brought to remove voters from the voter rolls be based on the challenger's personal knowledge.

Ohio VIP's collaboration with TTV to recruit poll workers for Election Day provides the group with a second opportunity to scrub the voter rolls by challenging voters' eligibility to vote on Election Day. Since poll workers in Ohio are the only persons who can mount challenges in the polls against Ohio voters on Election Day, it is not difficult to imagine the chaos that could erupt if VIP trains and places significant numbers of poll workers with an affirmative agenda related to voter challenges in the polls on Election Day. It is the Election Day challenges that may have the greatest impact and chilling effect on Ohio voters.

Challenges at the polls could lead to considerably long wait times and long lines—a situation with which Ohio voters and election officials are all too familiar—by engaging in a time-consuming task of re-verifying a voter's eligibility when challenged. Voters challenged at the polls who are unable to resolve the challenge are required to cast provisional ballots. Ohio has a troubled history of casting and not counting significant numbers of provisional ballots, many

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[7] *See* Middleton v. McGee, 39 Ohio St., 3d 284, 286, 530 N.E. 2d 902 (1988) (stating that clear and convincing proof cannot be satisfied by mere conjecture or speculation).

[8] Ohio Secretary of State Directive 2008-79. Required Procedures in Administering Voter Challenge Statutes R.C. 3503.24 and 3509.19. Sept. 5, 2008.

disproportionately cast in urban areas and by people of color. We therefore believe this initiative could potentially disenfranchise many eligible Ohio voters.

A recent analysis by the *Cincinnati Enquirer* of the November 2011 general election concluded that Ohio's problems with provisional ballots are only getting worse. The number of provisional ballots cast in this election was greater than the number of provisional ballots cast in the November 2009 election.[9] More disconcerting is that the number of provisional ballots counted was smaller in the 2011 election than in 2009. Secretary Husted recently acknowledged that 2012 will see an increase in provisional ballots and provisional ballots may actually determine the outcome of the race. A lawsuit surrounding the counting of provisional ballots from a 2010 juvenile judge seat in Hamilton County was recently decided "one year, five months and 25 days after voters cast their ballots."[10]

Cuyahoga Valley Republicans

The Cuyahoga Valley Republicans (CVR) have organized a team of volunteers, and working in concert with TTV, they are seeking additional volunteers to scrub Ohio voters rolls to remove individuals they allege should not be registered to vote in Ohio and in the November 2012 election. This aggressive "scrub" effort could result in the removal of valid and eligible voters from the rolls.

* * *

Advancement Project is extremely concerned about and opposes any attempts to suppress the vote in Ohio initiated by Judicial Watch and/or TTV campaigns that scrub the Ohio voter lists prior to the November 2012. Thus, any attempts by Ohio election officials to remove voters from the voter list at the request of Judicial Watch and/or TTV in violation of the NVRA will be met with strong resistance by Advancement Project on behalf of Ohio voters.

Additionally, Advancement Project is extremely concerned with the potential for widespread challenges on Election Day by poll workers trained by VIP and the rippling effect of substantial numbers of provisional ballots being cast and potentially not counted. Advancement Project recommends that any remedial poll worker training conducted by VIP be reviewed and approved by Ohio election officials to guarantee that the training program is consistent with Ohio law. We also recommend that Ohio officials review and revise as needed their poll worker training related to the processes for voter challenges and the appropriate responses to them.

The resulting impact of these actions, singularly or collectively, by Judicial Watch, True the Vote, Ohio Voter Integrity Project, and Cuyahoga Valley Republicans will have a chilling and intimidating effect on Ohio voters, particularly voters of colors.

* * *

[9] http://www.pewstates.org/research/analysis/provisional-ballots-in-ohio-85899380042. The Pew Charitable Trusts. Provisional Ballots in Ohio, April 3, 2012.

[10] Hunter v. Hamilton Cty. Bd. of Elections, Case No. 12-3224 (6th Cir. 2012).

Thank you for your kind consideration of my statement and for ensuring that all Ohio voters have the opportunity to vote, have their vote counted and receive equal protection under the law.

Respectfully submitted,

Donita Judge, Esq.*

*Licensed in New Jersey and District of Columbia

Statement for the Record
Submitted to the Senate Judiciary Committee's Subcommittee on the Constitution, Civil Rights, and Human Rights
United States Senate

Cleveland, Ohio Field Hearing

Submitted by Pierrette "Petee" Talley
Secretary Treasurer, Ohio AFL-CIO

May 7, 2012

In the past, the administration of elections in Ohio had been tainted by the voluminous number of provisional ballots cast, long lines, the disqualification of voter registration forms on certain weight paper, and most recently the passage of a voter suppression bill that is currently the subject of a citizens' referendum. However, because of the collaborative efforts of legislators, election officials and voting rights advocates in the state, laws governing elections in Ohio resulted in major strides forward, even rendering the most recent presidential election (2008) almost void of real problems and litigation.

The Ohio AFL-CIO continues to raise its voice along with other voting rights advocates in the state, often in opposition to laws that create barriers to voting, including testifying in opposition to HB159, the photo identification bill passed in the lower chambers of the Ohio House of Representatives; and HB194, the bill that was signed into law in 2011 that restricts local Boards of Election from mailing absentee voter ballot request unsolicited to voters; prohibiting poll workers from directing voter to the correct precincts; and significantly cuts the absentee voting period, including the elimination of the last weekend and Monday voting prior to Election Day.

Most recently, when citizens exercised their constitutional right to overturn HB194 by submitting the required number of signatures to qualify for the 2012 ballot, the legislature moved expeditiously to pass SB295, characterizing it as a straight repeal of HB194. They claimed that they were doing nothing more than giving the citizens what they wanted.

This is not what the citizens want. In fact, SB295 will not reset election law to the former state election code prior to passage of HB194.

We have encouraged the 500,000 members of the Ohio AFL-CIO to urge their state legislators to restore the last weekend of early voting, a provision that is not currently being considered in amended sub SB295; and one that impacts approximately 90,000 Ohioans who voted during the last weekend and Monday prior to Election Day in 2008. At the time of this writing over 12,000 voters have expressed their desire to have weekend voting restored through a sign-on pledge.

In addition to the draconian roll back on voting rights by those on the conservative right, they are calling for new voter legislation that could have the impact of further disenfranchising voters.

We are now approximately 150 days from the day the first votes are cast in this election cycle. It is likely that voters could be voting under two different sets of rules for the primary and general election in the same year. Instead of making it less difficult for voters, these rushed, partisan bills stand to complicate things for voters, poll workers and even election officials.

The Ohio AFL-CIO commends the US Senate Judiciary subcommittee on Constitution, Civil and Human rights for holding the field hearing in Ohio to bring attention to this important issue. The adverse impact of these laws on one of our most precious rights, the right to vote, is unacceptable in a democratic system.

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1301 East Ninth St., Suite 1710
Cleveland, OH, 44114

Re: Field Hearing: "New State Voting Laws III: Protecting the Right to Vote in America's Heartland"

Dear Senator Brown,

My name is Deborah Wang. I am policy and communications staff for Asian Services In Action, Inc. (ASIA), serving the Cleveland and Akron areas of Ohio. I'm also the daughter of naturalized citizens from Taiwan. My parents and my grandparents have called Ohio home for about thirty years. ASIA is the only comprehensive health and social services agency in Northeast Ohio serving families like mine. On behalf of ASIA, I would like to express concern regarding the suppressive impact of H.B. 194 on Asian American voters.

The majority of the community members whom ASIA serves are both economically vulnerable and LEP—that is, they are limited English-proficient, meaning they speak English "less than very well". H.B. 194 and similar voter suppression legislation around the country makes it more difficult for these members of our community to exercise their right to vote in two main ways: by exacerbating issues of language access and exacerbating issues of free time.

H.B. 194 states that poll workers are no longer required to inform a voter if he or she is in the wrong precinct, and that consequently their ballot will not be counted. As proponents of the bill tout this as a time-saving measure, obviously it is not uncommon for completely English-fluent voters to end up in the wrong precinct. One can expect LEP voters to make the same mistake at much higher rates, given that they likely do not read or speak English well enough to determine their precinct, or even understand that they must vote in a certain location.

According to 2000 Census data, almost 38% of the state's voting-age Asians are LEP. Since the state's Asian population has grown 40% from 2000 to 2009, we expect that the number of individuals who match that description has only increased. Considering these numbers, we can see how, if poll workers are not required to help Asian voters get their ballots counted when they are in the wrong precinct, a significant share of the Asian American vote could be suppressed.

Furthermore, we know that older adult members of our community would like to exercise their right to vote, but can find the process anxiety-inducing, even intimidating. This is especially true if they are LEP or if it is their first time. These are the sorts of voters who need the most encouragement to participate in our democracy. They should not have their efforts frustrated by a law like H.B. 194. To the contrary, election officials should be actively reaching out to LEP voters—for example, by publicizing in the appropriate languages that LEP voters have the right to bring an assistant of their choosing into the ballot booth.

H.B. 194 also increases the number of technical reasons a vote can be discounted. We at ASIA are particularly concerned that absentee ballots can now be discounted due to innocuous voter errors, such as writing the current year for one's birth year. Due to their non-native English proficiency, LEP voters from our community are, in spite of their best efforts, more likely than the general Ohio population to make a technical mistake on an absentee ballot. Again, by heightening the language barrier, H.B. 194 is nullifying a significant share of the Asian American vote.

As previously mentioned, H.B. 194 also exacerbates the issue of free time for Asian American voters in Ohio. We know from our work with the community that many low-income Asian Americans work non-traditional hours. A large percentage of our Chinese, Cambodian, Vietnamese, and Laotian communities work the swing or graveyard shift in Cleveland's manufacturing factories. Others run small family businesses such as restaurants and groceries. These individuals often cannot afford to take time off to vote on a Tuesday, or any weekday.

For these voters, absentee voting may be the only way they can cast their ballots—but H.B. 194 makes it more difficult for a mail-in ballot to be counted. If busy working Asian Americans do *not* vote absentee, their best option is to vote early in-person on the weekend. And yet H.B. 194 eliminates early in-person voting on the Saturday, Sunday, and Monday before the election, effectively obstructing the voting rights of economically vulnerable Asian American voters.

In summary, we at ASIA are concerned that H.B. 194, by exacerbating issues of language access and free time, has a suppressive effect on Asian American voters in Ohio. No longer requiring poll workers to aid voters who are in the wrong precinct, along with making it easier to discard absentee ballots on technicalities, effectively closes the door on limited English-proficient Asian Americans who wish to participate in their democracy. At the same time, eliminating early in-person voting on the Saturday, Sunday, and Monday before the election makes it difficult for working, low-income Asian Americans to vote at all.

Thank you for your time and consideration. Should you have any questions, please don't hesitate to contact me at dwang@asiainc-ohio.org or ASIA's Executive Director, Michael Byun, at mbyun@asiainc-ohio.org.

Sincerely,

Deborah Wang
Communications & Policy Consultant
ASIA, Inc.
dwang@asiainc-ohio.org
(330) 645-5805

CITY of DAYTON, OHIO
OFFICE OF THE CITY COMMISSION
101 WEST THIRD STREET • P.O. BOX 22 • DAYTON, OHIO 45401
CITY HALL • (937) 333-3636

May 3, 2012

The Honorable Dick Durbin
711 Hart Senate Building
Washington, DC 20510

Dear Senator Durbin,

Thank you for partnering with Senator Brown to bring to light Ohio's new voting law, HB 194. We believe that this law restricts access to voting in a way that specifically targets the disabled, young, and low-income Americans. The ability to vote is a fundamental right for the citizens of this country. As a state, we should be encouraging our citizens to participate in the democratic process, not restricting their access to it. We believe that this law infringes upon the voting rights of our constituents.

In urban areas like the City of Dayton, early voting has become an easy and convenient way for citizens to cast their ballot. Getting to the polls on Election Day is not easy or convenient for many people. By restricting the number of days in the early voting process and eliminating weekend voting options, an environment is created where some people have to choose between their personal responsibilities and being able to cast their ballot.

Another concerning issue in HB 194, relates to the removal of the requirement of poll workers to direct voters to the correct precinct. Many precincts across the state have been consolidated and by removing this restriction, there is potential for great confusion and frustration among voters. Without direction, the November elections could be marked by voters forced to cast provisional ballots.

Last, without clear guidelines, board of elections will not be able to properly train their staff and poll workers. Many might have to be retained which costs time and money. During this economic downturn, spending money on retraining workers is not in the budget of most – if not all cities.

Access to voting should not be divided along political lines. It is an American value that we all share. Voting is not just a right of all citizens, it is an important responsibility. During this presidential election year, it is imperative that all citizens have convenient access to the democratic process.

Sincerely,

Gary D. Leitzell
Mayor

Dean Lovelace
City Commissioner

Joey D. Williams
City Commissioner

Matt Joseph
City Commissioner

Nan Whaley
City Commissioner

CCO/aw

Before the Senate Judiciary Subcommittee
on the Constitution, Civil Rights, and Human Rights

Prepared Statement of
Jennifer Brunner, Former Secretary of State of Ohio
and
Co-chair of FAIR ELECTIONS OHIO,
an Ohio state political action committee and nonprofit organization
supporting voting rights in Ohio

Monday, May 7, 2012
9:30 a.m.

Carl B. Stokes United States Federal Courthouse
801 West Superior Avenue
Cleveland, Ohio 44113

Subcommittee Field Hearing:
"New State Voting Laws III: Protecting the Right to Vote in America's Heartland"

Chair Durbin, Senator Brown and members of the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights, thank you for the opportunity to appear today to discuss the impact of Ohio's new voting law, H.B. 194, which restricts early voting, eliminates the requirement that poll workers direct voters to the proper precinct, and makes it harder to vote absentee. I recognize the work of U.S. Sen. Sherrod Brown and U.S. Rep. Marcia Fudge in support of the efforts of Fair Elections Ohio along with many others who have assisted Fair Elections Ohio in placing on the statewide ballot a state constitutional referendum to allow Ohio's voters to decide whether the Ohio legislature should be empowered to diminish their rights to participate freely in their government through voting.

While others have testified and will testify on these matters, this is my first opportunity to present my views to you on them in my capacity as Ohio's former Secretary of State and as Co-Chair of Fair Elections Ohio. As former Ohio chief elections officer and supervisor of Ohio's 88 county boards of elections, I regret I am unable to be with you in person today. I am engaged presently in government strengthening activities in the Republic of Serbia through the USAID funded Judicial Reform and Government Accountability project operated by the National Center for State Courts in Belgrade. I am pleased, however, that Greg Moore, the Campaign Director of Fair Elections Ohio, can be with you today and participate in a meaningful way to aid you in your fact-finding and deliberations.

The issues you consider today are significant. I commend the careful attention you are giving them in Ohio and in other states and thank Senator Brown for his and his staff's work in securing the subcommittee's attention on Ohio's situation. On behalf of many Ohioans, I thank you for your extraordinary efforts in bringing this hearing to Cleveland, Ohio.

Fair Elections Ohio is a political action committee and also a nonprofit corporation that was formed in 2011 in response to the Ohio legislature's unfortunate adoption of HB 194, a harmful bill that would make it harder to vote in Ohio and harder for Ohioans' votes to be counted. Fair Elections Ohio exists and will continue to operate, regardless of the outcome of its current negotiations with the Ohio legislature on the voluntary legislative repeal of HB 194, as an ongoing nonprofit organization to protect voting rights in Ohio. The first part of this testimony is a discussion of the impact and status of HB 294. The second part of this testimony alerts you to other issues that should be monitored to ensure fair elections this fall and beyond.

Issues relating to HB 194:

As of this writing, Fair Elections Ohio is negotiating with the Ohio General Assembly on legislation that would repeal HB 194 and restore the ability for Ohioans to continue early voting during the last weekend and the Monday before this fall's presidential election. In short, Fair Elections Ohio has signaled to the leaders of the Ohio General Assembly that, if it restores the law to the state that it was before it adopted HB 194 and a subsequent corrective bill, HB 224, Fair Elections Ohio will withdraw its statewide referendum petition in the interest of moving peaceably into the fall election season without voter confusion or the additional expense of a statewide ballot issue. At present, Fair Elections Ohio awaits the response of the Ohio General Assembly. To be clear, there is no intention to back down from proceeding with the referendum unless full voting rights, as they existed in the 2008 presidential election are restored.

In the 2008 presidential general election, more Ohioans voted than have ever voted at an election in Ohio history. Additionally, more Ohioans voted for our current president than have voted for any other president in the history of Ohio. I mention this, not as a partisan point of reference, but rather, to emphasize the battleground nature of Ohio, where vote margins between Republicans and Democrats remain surprisingly thin, regardless of the political climate elsewhere.

In Ohio, third parties are emerging, in spite of state legislative attempts to make ballot access difficult for them. Unfortunately, judges in the southern district of this United States Federal Court have time and again been required to adjudicate the rights of third parties to ballot access, costing the taxpayers of Ohio hundreds of thousands of dollars in attorneys fees awarded to the plaintiffs in these cases and paid by the State of Ohio. When I served as Secretary of State of Ohio, based on court decision, I provided ballot

access to four additional parties in the 2008 presidential election, beyond the major political parties in Ohio, the Ohio Republican Party and the Ohio Democratic Party.

Just as more speech is the best antidote to harmful speech, increasing voter participation, rather than limiting it as HB 194 would, is the best antidote to actions of our federal, state and local governments that voters, whatever their political beliefs, have found distressing in these recent times. It seems a step backward that Ohioans would be faced this fall with a referendum vote on the very issue of their right to vote and whether or not it should be diminished. This is especially discouraging in light of 1) the gains made in securing voting rights through reforms and a six-year consent decree signed in 2009 between the state and the League of Women Voters, (*see*, League of Women Voters of Ohio v. Brunner, Case No. 3:05-CV-7309 (N.D. Ohio),[1],[2] and 2) the fact that nearly all of the objectionable changes in HB 194, such as no voting on Sunday, more ways for a ballot not to count, no requirement for a poll worker to tell a voter he or she is in the wrong precinct, no period after the election to provide identification and tighter identification rules, to name just some changes, would have a disproportionate impact on low income and minority voters.

HB 194 had its genesis in efforts by the staff in my administration from 2007 to 2011, along with a bipartisan team of Ohio boards of elections officials, to "clean up" outdated and inefficient requirements in Ohio election law to improve voting efficiency, responsiveness and accuracy. Near the end of my term, state Senator Bill Seitz (R-Cincinnati) and I were able to craft a compromise on remaining issues of contention, but the legislature failed to pass the measure. HB 194 resurrected parts of that prior general assembly's legislation, but harmful provisions were added to it, such as:

1. **Size of voting precincts:** voting precincts in cities but not rural areas would be required by law to be made bigger in many cases, which could result in longer lines on Election Day in cities,

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[1] The terms of the Agreement will remain in effect until January 11, 2015, and any claims arising out of the Agreement will be heard by Chief Judge James G. Carr of the United States District Court for the Northern District of Ohio.

[2] The key goals met in the resolution of the lawsuit include (see Exhibit 1, Factsheet from Demos)

- Ensuring uniformity and consistency in Ohio election procedures, so that the opportunity to vote can be enjoyed equally by all Ohio citizens;
- Promoting pre-election planning so as to minimize errors and breakdowns in administering Ohio elections, and overcome past problems concerning inadequate equipment and resources at polling places, processing of provisional and absentee ballots, disability access, voting technology and security and other matters;
- Enhancing the recruitment and training of election officials and poll workers;
- Instituting consistent data collection and monitoring of key aspects of election administration as a tool of accountability.

2. **Poll workers:** poll workers would not be required to tell voters they are in the wrong precinct and that their ballots are not counted if they are, (even though local budget cuts are resulting in more precincts being combined into multi-precinct polling locations),
3. **Advantages for corporations:** rules would be struck down, and laws would be softened that regulate corporations' activities in campaigns, including state political action committees that operate pursuant to the ruling in *Citizens United v. FEC.*
4. **Citizen petition drives:** the time needed to obtain sufficient signatures for a statewide petition such as HB 194 would be shortened, and because part of that restriction is based on when a notification from the secretary of state is *received* by certified mail by the petitioning committee, that period is uncertain as specified in the law,
5. **Technical reasons not to count votes:** more technical reasons would be created to keep ballots from being counted, especially when voters make mistakes, like putting the current year in their birth dates on an absentee ballot envelope, even if it had been correctly provided in an absentee ballot application,
6. **Using a voters' Social Security numbers to take them off the rolls:** the state would be able to take voters' driver's license or state ID information and/or the last four digits of their Social Security numbers and other private information about them and compare it with other government records to take them off the voting rolls, even if it finds new information and could correct the information for any voter,
7. **Taking away time to correct voters' ballots:** if a voter votes a provisional ballot, the voter would not get the 10 days now in state law after the election to provide the board of elections with additional information so the voter's ballot can be counted, even though election officials could take 10 days to determine if voters meet requirements by checking their own records,
8. **Narrowing of Voter ID Requirements:** If a voter does not have a valid ID on Election Day and does not or cannot supply the last 4 digits of the voter's Social Security Number, the voter cannot sign a required affirmation for provisional voting, and the voter's ballot is not counted,
9. **Shortening early voting and no Sunday voting:** voters would only have 3 weeks (not 5) to vote absentee by mail before Election Day; for voters who vote absentee in person, the time to vote absentee is shortened to just 2 weeks, and in no case would there would be Sunday voting,
10. **Long lines not allowed to interfere with nearby business:** even if there is a long line of voters at a polling place, the law would ban that line from interfering with a nearby business,
11. **Allows for more restrictive voter ID in the future:** if more restrictive voter ID requirements become law, this bill says they will control, no matter what.

One of the less emphasized facts about HB 194 is that it would also diminish Ohioans' reserved state constitutional rights to directly petition their government for redress of

grievances, such as was accomplished with the referendum on HB 194. Specifically, HB 194 would diminish the number of days permissible to "cure" a statewide initiative or referendum petition with the gathering of additional signatures (by supplemental petition). The very fact that HB 194 has been certified for a referendum vote has and will permit this and other statewide initiative and referendum petitions to be considered by the voters of Ohio, unless HB 194 ultimately becomes law.

The filing and certification of Fair Elections Ohio's referendum petition has stopped HB 194 from becoming law. The crossroads we stand at is whether the Ohio legislature of its own volition will restore full voting rights, or whether the voters will have to do it for them through a statewide referendum vote on November 6, 2012.

Issues relating to other issues important to monitor for fair elections:

In 2008 the Ohio legislature, with my assent, placed several limits on the Secretary of State's authority to issue directives to the state's 88 county boards of elections. Thereafter, the legislature approved rules that amplified that new law. Generally, Ohio, to the advantage of some other states, has in its statutory election infrastructure (R.C. 3501.05(B) and (C)) provisions that require the Secretary to:

- Issue instructions by directives and advisories in accordance with section 3501.053 of the Revised Code to members of the boards as to the proper methods of conducting elections.
- Prepare rules and instructions for the conduct of elections.

When the secretary's directive authority is used prudently, it allows Ohio election instructions to be issued in a timely fashion for smooth election administration. In a corresponding fashion, boards of elections are required under the same statutory framework (R.C. 3501.11(E)), to "[m]ake and issue rules and instructions, not inconsistent with law or the rules, *directives, or advisories issued by the secretary of state*, as it considers necessary for the guidance of election officers and voters." (emphasis added)

The Ohio General Assembly, in amending the secretary's authority to issue directives, enacted R.C. 3501.153, creating two classes of directives to be issued by the Secretary of State, permanent and temporary. It is important to monitor the secretary of state's directives to ensure the fair conduct of Ohio elections. Permanent and temporary directives are set forth in R.C. 3501.153, which provides:

> R.C. 3501.053 Instructions regarding conduct of elections – Web publication
>
> (A) The secretary of state may issue instructions as to the proper method of conducting elections to members of the boards of elections by permanent or temporary directives.

(1) The secretary of state shall establish a process to allow public review and public comment of proposed directives. Prior to issuing any permanent directive, the secretary of state shall provide reasonable notice of the issuance of the directive and allow a reasonable amount of time for public review and public comment of the proposed directive under this division.

No permanent directive shall be issued during the period beginning ninety days prior to the day of an election and ending on the fortieth day following the day of that election.

(2) Temporary directives shall only be issued, and shall only have effect, during the period beginning ninety days prior to the day of an election and ending on the fortieth day following the day of that election. Temporary directives shall not be subject to public review and public comment under division (A)(1) of this section.

A temporary directive shall not become a permanent directive unless the temporary directive is proposed as a permanent directive and subject to public review and public comment under division (A)(1) of this section.

If the situation prompting the establishment of a temporary directive appears likely to recur, the secretary of state shall establish a permanent directive addressing the situation.

(B) In addition to any other publication of directives and advisories issued by the secretary of state, the secretary of state shall publish those directives and advisories on a web site of the office of the secretary of state as soon as is practicable after they are issued, but not later than the close of business on the same day as a directive or advisory is issued. The secretary of state shall not remove from the web site any directives and advisories so posted. The secretary of state shall provide on that web site access to all directives and advisories currently in effect and maintain an archive of all directives and advisories previously published on that web site.

This statute is modified by the following administrative rule:

Chapter 111-14 Directives Regarding Conduct of Elections

111-14-01 Issuance of directives.

(A) Definitions

For the purposes of this rule and section 3501.053 of the Revised Code:

(1) "Permanent directive" means a directive issued to county boards of elections as to the proper method of conducting a primary or general election as defined under divisions (A) and (E) of section 3501.01 of the Revised Code that remains in effect until replaced or rescinded.

(2) "Temporary directive" means a directive issued to the county boards of elections as to the proper method of conducting a primary or general election as defined under divisions (A) and (E) of section 3501.01 of the Revised Code that remains in effect during the period beginning ninety days before the day of an election and ending on the fortieth day after the day of that election.

(B) No permanent directive shall be issued during the period beginning ninety days before the day of a primary or general election and ending on the fortieth day after the date of that election. Notice of the issuance of a permanent directive may be provided during the period beginning ninety days before the day of a primary or general election and ending on the fortieth day after the day of that election. Such notice may be provided notwithstanding the existence of a temporary directive to the same effect. A reasonable amount of time for public review and public comment of a proposed permanent directive also shall be provided during such time, and such time period shall be specified upon release of the directive for a period of public review and comment. After such period of public review and comment, the directive may be issued.

(C) Temporary directives providing instructions as to the proper method of conducting the election shall only be issued, and shall only have effect, during the period beginning ninety days before the day of that election and ending on the fortieth day after the date of that election. Temporary directives shall not be subject to public review and public comment under division (A)(1) of section 3501.053 of the Revised Code.

(D) For the purposes of special elections, as defined under 3501.01 of the Revised Code, and elections held under municipal, village or charter provisions only, directives may be issued at any time without first providing a reasonable time for public review and public comment.

Effective: 11/10/2008

R.C. 119.032 review dates: 10/31/2013

Promulgated Under: 119.03

Statutory Authority: 3501.05

Rule Amplifies: 3501.05, 3501.053

Under the statute, no permanent directive may be issued less than ninety (90) days before the November 6, 2012 election. If there are to be permanent directives that affect the November 6, 2012 election, they must be issued between now and August 7, 2012, and they cannot be issued as permanent directives after the election until December 14, 2012. While temporary directives may be issued during the period from August 8, 2012 through December 14, 2012, their issuance should be examined for the purpose and nature of the change, except in circumstances where court orders require the secretary to issue a directive.

The following directives are permanent directives that it is advisable to monitor for modifications that may be made to them by the secretary as part of his role in instructing Ohio's boards of elections during the period of the next three months. There is also the opportunity for new directives to be issued, and these should be examined as well for their ability to be uniformly applied and to affect voters with equal impact throughout the State of Ohio. Please note, in the chart of directives appearing below, directives marked with an asterisk may not be considered to be in effect for the November 6, 2012 general election, since they were not adopted as permanent

directives at least 90 days before an election. They are listed, however, for their importance for the purposes of monitoring election instructions and directives.

Directive	Date issued	Title	Exhibit No.
***Dir. 2012-14**	4/20/12	Election Administration Plans	2
***Dir. 2012-12**	2/24/12	Post Election Audits	3
***Dir. 2012-11**	2/17/12	Recount Procedures	4
***Dir. 2012-09**	1/31/12	Access to Polling Locations and Verification of Accessible Polling Locations	5
***Dir. 2012-06**	1/20/12	Reminder to Boards of Elections to Comply with the NEOCH Consent Decree and Post Required Notices	6
***Dir. 2012-01**	1/4/12	[3]Determining the validity of provisional ballots, with related form and FAQ	7, 8, 9
Dir. 2010-102	12/29/10	Mandatory Duty of a Board of Elections to Conduct Investigations Relating to Violations of Title XXXV of the Revised Code and to Report the Findings of Such Investigations to the Secretary of State and to the County Prosecutor	10
Dir. 2010-100	12/29/10	Guidelines for Identifying and Rectifying Sharing Violation Errors During Upload	11
Dir. 2010-98	12/29/10	Election Day Voter Challenges Based Upon a Failure to Match Voter Record Information in the Statewide Voter Registration Database with Bureau of Motor Vehicles and/or Social Security Administration Records	12
Dir. 2010-93	12/29/10	Guidelines for Absentee Voting	13
Dir. 2010-92	12/29/10	Voting rights of persons convicted of a felony	14
Dir. 2010-91	12/29/10	Voting rights of persons facing home foreclosure	15
Dir. 2010-90	12/29/10	Cancellation of a Voter's Registration Due to the Death of the Voter	16

[3] This particular directive is intended to supersede Dir. 2010-96, issued December 29, 2010, and entitled, "Guidelines for Determining the Validity of Provisional Ballots." In the event that Dir. 2012-01 is found invalid as a permanent directive, its predecessor that is the permanent directive is attached as Exhibit 48.

Dir. 2010-88	12/29/10	Bilingual Voter Registration Forms	17
Dir. 2010-55	6/17/10	Performance Standards for Poll Workers	18
Dir. 2010-02	1/12/10	Minimum Qualifications for Directors and Deputy Directors of Boards of Elections	19
Dir. 2008-116	11/18/08	Directive Issued Pursuant to Court Order - Reasonable Accommodation for Disabled Absentee Voter s who are Homebound	20
Dir. 2008-91	9/11/08	In Person Absentee Voters Who Register and Vote During the Five-Day "Overlap" Period	21
Dir. 2008-90	9/11/08	Pre- and Post- Election Tests of Vote Tabulation Systems	22
Dir. 2008-89	9/11/08	Logic and Accuracy Testing (L&A) of Voting Machines and Public Test	23
Dir. 2008-88	9/11/08	Polling Location Checklist for Polling Place Supplies	24
Dir. 2008-87	9/9/08	Posting Summary Statements of Precinct Election Results at Polling Locations	25
Dir. 2008-86	9/9/08	Procedures for Handling Optical Scan Paper Ballots When a Ballot Box is at or Near Capacity Prior to the Close of the Polls	26
Dir. 2008-85	9/9/08	Instructions for Closing the Polls and Reconciliation of Paper Ballots for Tabulation (Relevant Statutes Attached)	27
Dir. 2008-80	9/5/08	Voter Identification Requirements	28
Dir. 2008-78	9/4/08	Eligibility of Former Ohio Residents to Vote in Presidential General Election in Ohio	29
Dir. 2008-77	9/4/08	Minimum requirements and best practices for poll worker training	30
Dir. 2008-74	8/28/08	County Board of Elections Security and Risk Mitigation Plan	31
Dir. 2008-73	8/26/08	Minimum Security Requirements of Vote Tabulation Servers	32
Dir. 2008-72	8/26/08	Internet Access, Networking, Installing or Downloading Software, and Modem Access on Voting Equipment	33
Dir. 2008-65	8/13/08	Precinct Polling Location Arrangement and Diagram for Counties Using DREs	34

Dir. 2008-64	8/13/08	Guidelines for Voting Machine Acquisition and Allocation	35
Dir. 2008-63	8/13/08	Processing Voter Registration Applications Received the Week Immediately Preceding a Voter Registration Deadline	36
Dir. 2008-60	8/1/08	Procedures if a Court Order Causes Any Precinct Polling Place to Remain Open on Election Day Past 7:30 p.m.	37
Dir. 2008-59	7/25/08	Optical Scan Ballots for Voters in Counties Using ORE Voting Machines	38
Dir. 2008-57	7/21/08	Minimum Security, Access, Inventory Control, Storage and Preservation Requirements for Ballots and Election Data Media	39
Dir. 2008-56	7/21/08	Security of Boards of Elections Offices as well as the Minimum Storage, Security, Access and Inventory Control Requirements for Voting Systems Equipment at the Board of Elections Office	40
Dir. 2008-54	7/18/08	Direct Recording Electronic (DRE) Voting Machine Key Card Management	41
Dir. 2008-50	7/8/08	Standards for establishing an alternate polling location for in-person absentee voting	42
Dir. 2008-47	6/20/08	Prohibiting the Outsourcing of Mailing of Absentee Ballots	43
Dir. 2008-34	3/3/08	Manual Hand Counting Procedures	44
Dir. 2008-30	2/27/08	Ballot Shortages or Machine Failures	45
Dir. 2008-29	2/25/08	Rights of and limitations on election observers	46
Dir. 2012.15	4/27/12	Mandatory Training for Precinct Election Officials	47

Fair Elections Ohio respectfully requests that this committee and Senator Brown and Congresswoman Fudge work with our organization and other voter advocacy and election protection organizations in Ohio to continue to monitor these and other issues, especially relating to HB 194 and Fair Elections Ohio's effort to completely restore voting rights to Ohioans as they existed in 2008. Thereafter, we look forward to working together to ensure future improvements to Ohio's voting laws. I appreciate the opportunity to submit this statement to you and again thank you for your efforts.

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Testimony Submitted in Writing
At the May 7, 2012 Cleveland Field Hearing on Ohio Voting Law
Before the Senate Judiciary Subcommittee on the Constitution,
Civil Rights and Human Rights

To the Honorable Senator Dick Durbin, Ohio Senator Sherrod Brown and the Committee-

Thank you for the opportunity to provide written testimony on the important issue of voting rights.

My name is Deborah Nebel and I am the Director of Public Policy for Linking Employment, Abilities and Potential (LEAP) a non residential Center for Independent Living, working primarily with youth and adults of any age with disabilities throughout Northeastern Ohio. As a Center for Independent Living one of our major responsibilities is to educate persons with disabilities to their right and civil duty to vote and participate in the democratic process. Addressing the barriers to voting whether they occur during registration, application, or the actual voting process both by mail and in person is important to LEAP and to the consumers that we serve. It is in that spirit that we have interviewed 5 of our consumers so that they could share their stories and their beliefs about their inclusion in the voting process with the committee. All of the consumers listed below have either received services from our Lorain County office or are part of our self-advocate network. They would have loved to have been present at today's hearing but affordable, accessible transportation is another issue that needs to be addressed if they are to do so in the future.

Consumer statements regarding Ohio's changes to our Voting Law

Jim Jenkins, Elyria.

I believe this new law is a big effort to make it more difficult for people of a certain social status to vote. We like to vote by absentee ballot because it's just easier for us. But in March, for the primary, I forgot to request an absentee ballot, so we had to go to the poll. Because my wife, Pam, has to help me cast my vote, we have to fill out paperwork at the desk. Sometimes, when we've done this, there will be a new poll worker who doesn't even know this, and we have to tell them that we have to complete paperwork to let Pam help me vote. I feel bad holding up other people because I have to do this paperwork, and it takes a long time, so it's just easier to vote by absentee ballot at home. It would be so much easier for me to vote if absentee ballot could just be sent to me automatically, or even just a postcard asking me if I wanted an absentee ballot, for every election. ***(Mr. Jenkins is a person who is legally blind)***

Marcus Atkinson, Lorain.

The reduction in the number of days that people can vote by absentee ballot will make things more difficult for me. I am 27 years old, and I have never missed an election, but I always vote absentee ballot. I have never been to a polling place to vote, but I think voting is my patriotic duty. Because of my arthritis, there are days when I can barely walk. So I never risk it, I always ask for an absentee ballot. I feel my vote is very important. Requesting a ballot is a procedure.

You have to call for the application, complete it, return it and then they send you the ballot. Then when I get the ballot, because of my vision problems, I may need more than one day to read it. Some days I can see the type and other days I cannot, and have to wait until the next day. It's a great strain on my eyes. Shortening the time allowed for voting by absentee ballot is a problem for me because all these things add to the time it takes me to vote. During major elections, the parties offer to help you get to the polls, but that doesn't happen during primaries or elections that just have local things on the ballot. And, even if someone offers to pick me up and take me to the poll, if I can't get out of bed on that day because of my arthritis, it's no help. ***(Mr. Atkinson is legally blind in one eye, and is a person with low vision in the other eye. He also is a person with glaucoma and arthritis.)***

Joshua Stollings.

I am 23 years old, so the last presidential election was the first time I voted. When I got to the poll, no one knew how to accommodate me. I needed someone to write for me. The people asked me to wait at the side and told me that someone would come over to help me. Everyone else just kept voting and the crowd kept moving, but no one came over to help me. So I finally gave up and asked my step-sister to write for me. I was done with it. Now I vote by absentee ballot. It's easier than having to deal with the lines and crowds and tables and voting booths. It was so easy when they'd just send the absentee ballot – it was like, "Oh, it's time to vote now." Now I'll have to remember to request an application, and then mail that back, and then mail back the ballot too. It's just one more thing I'll have to remember to do. It's just more of a hassle. ***(Mr. Stollings is a person with physical disabilities)***

Myrna Torres, Lorain

I would vote to repeal HB 194 by referendum if it is on the November ballot. I understand that supporters of the law argue that the changes are needed to reduce the risk of voter fraud. I believe that the overwhelming evidence shows that voter fraud is virtually non-existent. It's really a way to suppress the minority, low-income, and disability vote. ***(Ms. Torres is a person with cerebral palsy.)***

Contact:
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May 4, 2012

To: Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights

Attention: Senator Dick Durbin, Chairman

I am writing to express my firm opposition to recent laws which restrict the right of the residents of my community to vote including especially HB 194, passed by the Ohio General Assembly in 2011. This law contains a number of changes that suppress the right of individuals to vote – exactly the opposite of what we should be trying to accomplish in a democracy.

The restrictions include limitations on early in-person voting which are likely to result in longer lines and longer wait times that discourage people from voting, the ban on requiring poll workers to direct voters to the correct precinct which creates confusion for voters and makes it much more difficult for them to vote, the provision prohibiting counties from sending postage paid absentee ballots to all registered voters and the requirement of photo i.d.'s and proof of citizenship which many Ohioans are unlikely to have when they go to vote.

I believe that the above legislation is likely to have a prejudicial impact on minority voters and on those who are less affluent.
I would urge that HB 194 and similar legislation be repealed.
Sincerely,

Earl M. Leiken
Mayor
City of Shaker Heights

National Action Network
Reverend Al Sharpton, President and Founder
Reverend Dr. W. Franklyn Richardson, Chairman
Tamika Mallory, National Executive Director

Testimony for the Ohio Field Hearing on Voting Rights
Submitted by National Action Network

The National Action Network ("NAN"), a leading civil rights organization that fights for one standard of justice, decency and equal opportunities for all people regardless of race, religion, national origin, and gender, supports the hearing on the negative impact of new voter laws, as well as the referendum on Ohio House Bill 194 ("HB 194"), which will be on the ballot for the November 2012 election.

Ever since the 2008 election, where a record number of voters came out to vote, there has been a calculated effort by certain groups to restrict the voting rights for millions of eligible voters across the United States. These new laws affect all Americans but specifically the elderly, low income families, college students, disabled, and minorities. A prime example of this targeted effort to reduce voter turnout is HB 194 in Ohio. HB 194 reduces the number of early voting days from 35 to 17, eliminates voting on the weekend before an election, removes the requirement that poll workers direct voters to their proper precinct, and prohibits county boards of elections from mailing unsolicited absentee ballots.

This bill not only hinders the constitutional rights of Americans it also damages the voting process. With the elimination of early voting days, we will return to the days of long lines on Election Day. Having an expanded early voting period decongested the polling place, allowing people who are voting on the Election Day to get in and out faster. Nearly 30 percent of the state's total vote, or roughly 1.7 million ballots, came in ahead of Election Day in 2008.[1] Furthermore, early voting is a tool that is more frequently used by the African American

[1]The News Herald, *Opponents put Ohio's early voting law on temparary hold* http://www.news-herald.com/articles/2011/09/30/news/doc4e853e7fb11c2639400337.txt?viewmode=fullstory *(2011)*

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community. The reduction in early voting days will have a disparate impact on African Americans and will lead to lower voter turnout. Additionally, early voting allowed voters to have extra time to correct any registration problem that would prevent them from voting. Now with the proposed changes voters may not have ample time to correct the problem, thus leading to their votes not being counted. The elimination of Sunday voting directly affects NAN members and the African American community. It has been a tradition for many African American churches to have voter drives the Sunday before an election. After the completion of church, members would carpool or organize buses to go to the polling site to cast their vote. Now, with the elimination of Sunday voting many will not have the opportunity to vote, since they will have no means to get to the polling site or will be unable to make it to the polls because of their work schedule. Luckily, thanks to voting rights advocates, labor unions, civil rights organization and citizens of Ohio, a referendum petition was circulated and over 300,000 signatures were collected causing Ohio to submit the bill to voters in the November 2012 election. NAN whole-heartedly supports the referendum.

We need to take a stand and fight these voter suppression laws to ensure that history does not repeat itself. For far too long the majority of the United States population was unable to participate in the voting process. Our ancestors fought long and hard to make sure that their families and future generations had the right vote. We cannot allow their work to go in vain; we must fight these bills, such as HB 194. We cannot allow state legislatures to turn back the hands of time and once again restrict the rights of millions.

NAN has been on the front line fighting against these voter suppression laws. In March, we re-enacted the 1965 Selma to Montgomery March. In 1965, the march was to fight for equal voting rights for all, and once again in 2012 we were marching to fight for equal voting rights for all. In 1965, Dr. Martin Luther King and other leaders of the civil rights movement marched

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from Selma, Alabama to Montgomery, Alabama to raise awareness and make a plea to Alabama and the entire country to pass and enforce the Voting Rights Act of 1965. In 2012, NAN, along with civil rights organizations, labor unions, activists and everyday citizens, were in Alabama to oppose the harsh legislation that requires proof of citizenship to register to vote and a government-issued photo ID to cast a ballot. Thousands came to Alabama to support and participate in the 60 mile march across Alabama. Additionally, in December 2011, NAN held a 25 city one day rally where we spoke out against voter suppression. We held rallies in the following cities where the state legislator has passed or is trying to pass a voter suppression laws: Houston, TX; Cleveland, OH; Akron, OH; Columbus, OH; Memphis, TN; Montgomery, AL; Milwaukee, WI; Columbus, MO, Atlanta, GA. In April, we held our 14th annual national convention, where we once again called for an end to the voter suppression laws. NAN is committed to the fight against voter suppression and will continue to fight until these laws are repealed.

Voter suppression has been sweeping across the United States, where 30 states have passed some form of voter suppression laws. As unjust as Ohio HB 194 is, it is not the worst offender. Currently HB 194 does not restrict the type of photo identification which can be used. However, there are states that believe the photo identification system should be completely overhauled and only certain types of identification can be accepted. In Texas, the state legislator passed a law which stated a license to carry a concealed weapon is an acceptable form of identification for voting purposes, but a college ID from a State University would not be accepted. Other states, such as Tennessee and South Carolina, do not allow college IDs as well. The restrictions on acceptable photo identification will ultimately lower the participation in the upcoming election. According to a 2006 study done by the Brennan Center for Justice nearly 11 percent of United States citizens do not have government-issued photo identification; nearly 18 percent of American citizens over the age of 65 lack photo identification; 25 percent of voting age African

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Americans do not possess government-issued photo identification.[2] We need to stop these blatant attacks on certain populations and fight to make sure that everyone who is eligible to vote has the right.

Thank you Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights for holding this field hearing and allowing the National Action Network to submit this testimony.

[2] Brennan Center for Justice, *Citizens Without Proof*, http://brennan.3cdn.net/df19f15e269638919a_g9ysmvgpd.pdf (2006)

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Testimony submitted to the United States Senate April 2012—Voter Suppression Activities in the United States

Senator Dick Durbin, Chair
Senator Lindsey Graham, Ranking Member
U.S. Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Durbin and Graham:

We commend the Senate Judiciary Subcommittee for looking into the issue of voting changes in the United States and their impact on low income voters, especially in Ohio. The Northeast Ohio Coalition for the Homeless urges Congress to direct the Department of Justice to enforce the Voting Rights Act and the 2001 Help America Vote Act in states such as Ohio that we believe are engaged in activities that will make it difficult for lower income people to vote. We know that our national organization, the National Coalition for the Homeless, has written to Attorney General Eric Holder and publicly expressed concerns that the changes in the voting laws are advertised as "reform," but will actually suppress voter turnout by people experiencing homelessness. In Ohio, NEOCH has sued the State of Ohio over the changes in voting beginning in 2006 to protect access to the ballot box by homeless voters without identification and to assure that the provisional ballots are counted in a uniform manner in the State of Ohio. These changes have taken place over the last six years with little evidence that there is fraud in the American system of voting. We find that the cure for this "perceived fraud" is often worse than the disease. We are potentially disenfranchising millions of voters to stop a handful of documented cases where a voter tried to vote multiple times.

The right to vote is the foundation of democracy in this country, and any legislation that constructs artificial barriers and prevents legitimate voters from casting a ballot needs to be met with the full scrutiny of Congress and the Department of Justice. The law in Ohio was changed in 2006 without input from the minority party, and required identification for in-person voting. The law did not allow a member of the US armed forces to use his military identification. It made it difficult for students, the elderly, and immigrants to vote. Many groups, including unions that represent immigrants, the League of Women Voters, and anti-poverty groups sued the state over these identification changes. The State largely had to settle with all of the groups and was required to repeatedly issue directives to the 88 counties clarifying and correcting the law. This

made it very difficult for the average older poll worker to understand the law and the county boards of elections had to repeatedly issue directives, even up until the eve of elections.

My own mother worked as a poll worker in Westerville, Ohio, for over 35 years until the 2006 election, when she just could not take the changing election rules anymore. All the identification changes and new rules put in place in 2006 fundamentally transformed the job of the poll worker from helping people to vote to working to find ways to prevent people from voting according to my mother. The 2004 Presidential vote was especially difficult in Ohio with long lines, polls being forced to stay open late, and large scale confusion on Election Day. Instead of correcting these problems in Ohio, we have actually made it more and more difficult to vote in person on election day over the years.

The main problem with all of these identification laws is that there is a fundamental misunderstanding between proving who you are at a polling place and proving where you live. Very low income citizens move their primary residence a great deal, and since the housing crisis swept the United States, this has only exacerbated the displacement of low income residents. It is easy to prove that you are the person you say you are at the polling place with your signature affirming your identity coupled with a student identification, passport, employment identification card, or military identification. However, all these forms of identification are unacceptable if you are trying to prove your residency. Homeless people have an especially difficult time proving their residency since most of the acceptable forms of identification are tied to where you live.

Changes that have passed in state legislatures or are awaiting a vote will have the effect of suppressing the vote, especially for homeless people, minority populations, the elderly, naturalized citizens, students, and those trying to rebuild their lives after release from incarceration. The other issue that is never addressed is the expense of obtaining identification and length of time that it takes to obtain a birth certificate from some communities. The ability to obtain a birth certificate can take many months and there can be a significant financial barrier that will then prevent a citizen of the United States from legitimately casting a ballot. We have a staff person at our office, born at his parents' home in Cleveland, and the hospital where he received his first check up has long since closed. He was told that he would need to go to court and hire an attorney to get a certificate of live birth since the City of Cleveland cannot find his birth certificate. Since the attacks on September 11, states have clamped down on issuing birth certificates and some make it nearly impossible to get a copy of one's own birth certificate.

We now have 11 states that have a photo identification requirement at the polling place with an additional 19 that are requiring some form of identification in order to vote. These measures may in fact disenfranchise many American citizens who would otherwise be able to vote. A survey by the Brennan Center for Justice at the New York University School of Law (*Citizens Without Proof: A Survey of Americans Possession of Documentary Proof of Citizenship and Photo Identification*, 2006) found that 11% of American citizens who are of voting age (21 million people) do not have up-to-date photo identification, with that percentage being significantly higher among those with low incomes (15%) and African-Americans (25%). Furthermore, this was a phone survey, so the nation's entire homeless population was, in all likelihood, not remotely accounted for in the results. Cleveland, Ohio has an organized identification program to assist those experiencing homelessness with obtaining birth certificates and state identification. The social service providers in Cleveland find that 45% of those utilizing the shelters do not have a state issued identification as a result of theft or loss in the move from housing to shelter.

We believe that these identification laws are the 2012 version of the "poll tax" which kept African Americans and other minorities from voting before the passage of the Voting Rights Act. In theory, making photographic identification free, as some of these laws also do, should make it easy for citizens to acquire one and be able to vote. However, it is not that simple. Although most of these state laws have alternatives to using identification on election day, such as provisional ballots or signing an affidavit, many of them still put a de facto price on voting for those who simply do not have the means to easily obtain a birth certificate, find out their Social Security number, or to make a trip to the DMV for a state-issued ID, such as the impoverished, disabled, and homeless. The key problem here, as outlined by Professor Justin Levitt of Loyola Law School (*Voter ID Debate Ramping Up Again for 2012*, NPR May 24, 2011), is that "it takes ID to get ID."

Even if finances are not an issue, which they certainly are for individuals and families experiencing homelessness, it can still be "quite difficult to round up the documentation necessary to get documentation. It ends up a little bit of a bureaucratic cycle," possibly causing voter apathy. Provisional ballots in many states are viewed as "second class voting" because most provisional ballots are not counted and there is such a wide disparity among the states and even among counties in the same state in rejection rate for provisional ballots. As part of the NEOCH lawsuit against the State of Ohio, we found wide disparity in the counting of provisional ballots in Ohio, with some counties accepting a majority of the provisional ballots while others accepted only 20% of the provisional ballots. If they are operating under one standard for counting provisional ballots in Ohio, why is there such great disparity in interpreting Ohio law? We found that the Hamilton County Board of Elections rejected our settlement with the State of Ohio over the proper procedure for counting provisional ballots and set their own rules, disregarding the directive from the previous Secretary of State for the 2010 election.

NEOCH is a non-profit charitable organization operating in the City of Cleveland with a mission of amplifying the voice of homeless people. We administer a number of programs that serve homeless people including a public education program, a street newspaper, and a legal assistance program. We see 23,000 homeless people in Cleveland and nearly one-third of the population needs help with obtaining identification. We have worked to assist people to vote since our founding in 1988. We filed suit in 2006 to protect homeless people who want to vote in person to assure that their ballot counts.

NEOCH has great concern over the integrity of the election and possible inequality issues based on the state a voter resides and their attempts to suppress the turnout. We have a concern that a voter in New York State has easy access to voting because they do not have to show identification. However, a voter born in New York state trying to vote in Ohio, as a resident of a Cleveland shelter, may not be able to vote because they cannot receive their birth certificate from their birth state. We know that it can take up to six months to get through the bureaucracy of some states and can cost up to $60. There are a number of other changes in state voting laws that will move the United States away from the principle that every citizen has a right to participate in democracy no matter their housing status. The Help America Vote Act was intended to provide a uniform standard for voting to avoid another problem similar to the poorly administered election of 2000. We have created a patchwork of legislation that does not assist people to vote, but instead builds huge barriers to voting. Other changes that have become law will have a serious negative impact on those experiencing homelessness:

- Florida this year restricted third party registration procedures - which will restrict the ability of homeless shelters and case workers to assist their clients in registering to vote - and forced a five year waiting period before a felon can even apply to have his or her voting rights restored.
- Georgia was challenged in court for not enforcing the 1993 National Voter Registration Act commonly called "motor voter law" thus potentially disenfranchising thousands of low income voters. In addition, Georgia is requiring proof of citizenship in order to register to vote, and in some cases is rejecting state identification as proof of citizenship.
- Maine ended same-day voting and registration, which made it much easier for people who became homeless just before an election to register and vote in that election.

The Ohio legislature tried to further alienate some voters in 2011, in preparation for the 2012 Presidential election by increasing the size of precincts, which could increase the lines on Election Day (a huge problem in the 2004 Presidential election in Ohio). Also, poll workers would have not been required to tell voters that they are at the wrong precinct, giving the potential for voter suppression through misinformation. The Ohio legislature increased the number of technical reasons for not counting provisional ballots, which homeless people are often forced to use because of their residency problems. Finally, laws have reduced the number of early voting days and have outlawed counties from reaching out to voters that have been mailed early voting forms, further reducing assistance for disabled or homeless voters.

No matter if you are homeless or housed it is not easy to get identification in the post-September 11th world. Those who wander from shelter to family member's houses then to the sofas of friends have an even more difficult time. The birth certificate is the basis for all forms of identification. There is no national standard for the issuing of a birth certificate, and a few states make it nearly impossible for a homeless person to get a legitimate copy of their own birth certificate. In our collaboration with service providers in Cleveland, we can demonstrate nightmare scenarios in which homeless people wait six, eight or ten months to receive a birth certificate. The assistance with obtaining a birth certificate is expensive and for many takes a great deal of time to finally receive a legitimate form of identification. There is no standard in the fee for a birth certificate or standard for the time required for another state to respond. A son or daughter born on a military base or a U.S. citizen born in Puerto Rico has a nearly impossible task just to get identification. For some it is easier to travel to their place of birth in order to retrieve a birth certificate, but that is certainly prohibitive for homeless people. This delay makes it difficult to find housing, a job, receiving assistance, and since 2006 has made it difficult to cast a ballot in-person in Ohio on election day.

Our government should not penalize people for being poor or having to flee a domestic violence situation with denial of the opportunity to vote. Donna fled her husband in the middle of the night in August with her children and the clothing on her back. She could not safely leave her house with her identification, and because she was born in California would not have time to retrieve a new birth certificate from her birth state before the election. She is certainly made to feel punished by the State for seeking safety, and Donna needs supported in her struggles, not segregated into a separate class of provisional voter if she wants to vote in person. James is a veteran of the first Iraq War, and comes from a military family. He was born at an American base in Germany to a decorated veteran of the U.S. Army. James became homeless after struggling with a health issue for years, and had all of his identification stolen in the shelters. He has petitioned both the Defense Department and the State Department for his birth certificate and each say the other is responsible. He cannot get a job without ID, and therefore has no

ability to vote in person on election day. He will have to file a provisional ballot and hope that he is counted in Ohio and one third of the states.

Overall, these changes in legislation put unnecessary roadblocks between those experiencing homelessness and those casting a ballot. From previous election experience, we see these new voting laws will result in long lines in minority and low income neighborhoods, confusion by the voting public, thousands of voters forced to vote a provisional ballot where in some counties are rarely counted, and limiting the number of days a person is able to cast a ballot. The research done by staff from the National Coalition for the Homeless indicates that a surprisingly large number of Americans, at least 21 million, stand to effectively lose their vote if this legislation spreads nationwide. The Congress could propose that we eliminate the cost of acquiring a birth certificate and state identification for those experiencing homelessness in the United States to overcome this issue.

The current Ohio Secretary of State has complained that some counties in Ohio are providing advertisements sent to every voter's residence urging early voting by mail and paying for postage to send in a ballot by mail. The Ohio Secretary of State claims that this puts rural county at a disadvantage because they do not have the money to pay for these same mailings. There was an attempt by the state legislature to shut this down with the argument that this is unfair to the rural counties who cannot afford these additional expenses. If we value democracy in America, then we should do everything we can to encourage voting and make it as easy as possible. This may mean paying for the postage across the United States or providing free rides to the elderly to get to polling sites in rural communities, but to punish communities that are willing to pay for these expenses by outlawing voter education activities is another form of voter suppression. In addition, the large counties need a large percentage of people to vote by mail in order to reduce the lines at the single board of elections office in which we are allowed to vote early in our state. We had lines out the door during the 2008 Presidential election even though we had an efficient and highly trained staff at the Cuyahoga County Board of Elections. There were lines on the weekend, in the late afternoon, and early in the morning. These lines grew the closer we got to the election, with enthusiasm growing and attention on the historic election grew. We needed more time for early voting locations and a bigger campaign to encourage voting by mail. Limiting early voting in Ohio will only result in longer lines in Cleveland, Columbus, Youngstown, Dayton and Toledo.

We have seen that some communities such as Akron/Summit County are proposing a sharp decrease in the number of precincts because they cannot afford staff all these polling sites anymore. These budget constraints at the local level will make it harder to vote in person on Election Day. Shortening the time for early voting or limiting the County from reaching out to voters to encourage vote by mail will result in frustrations, long lines and more disenfranchised voters. We have not previously had to deal with the severe budget constraints at the state and local level that could produce one of the most chaotic Presidential elections in history.

The proposal enacted in 2011 by the Ohio state legislature will be up for a vote in November, but many of the activities are clear voter suppression activities and have nothing to do with helping voters participate in democracy. For example, the law passed by the Ohio legislature stated that the employees working at a polling site had no obligation to tell voters that they were at the wrong precinct. If you vote at the wrong precinct in Ohio, your vote does not count. Imagine enacting a law that said a public employee has no obligation to help a voter to cast an official legitimate ballot in Ohio. This can only be described as an attempt to suppress the vote

in certain parts of the state, and it does not take a huge imagination to see the potential for abuse by one party instructing their poll workers to withhold information from voters so that all those votes will not count if this law had not been challenged.

Moreover, these voting changes make it difficult for homeless people who are forced to move frequently to participate in the selection of elected officials who may in the future take the lead in solving the housing crisis in America. We urge the Subcommittee, Congress and the Department of Justice to fully scrutinize such legislation for the potential to disenfranchise thousands of homeless people. We urge Congress to instruct the Justice Department to enforce existing national voting laws in order to broaden participation in democracy, and push back against state efforts to limit access to the ballot box. The United States has a solid foundation of universal access to representative democracy. We have a history of 236 years of expanding eligibility to the vote, and we should not be moving back to the days of "Poll tax" and Jim Crow laws that disenfranchised large segments of the population. We need to be inspired by the struggles and sacrifices made in order to vote in the Middle East as part of the Arab Spring, by realizing the goal of helping every American to cast a ballot and strike down laws that erect barriers to participating in the foundation of democracy.

We appreciate your consideration of this testimony, and the work that you have already done to protect the civil rights of all Americans.

Sincerely,

Brian Davis
Director of Community Organizing
Northeast Ohio Coalition for the Homeless
Cleveland, Ohio
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DOCUMENTATION OF HOW HB194 RESTRICTS VOTING OR MAKES IT MORE DIFFICULT

Statement for the Record: Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights
May 1, 2012
Norman Robbins, Research Director, Northeast Ohio Voter Advocates (NOVA) nxr@case.edu

Summary: As documented in the Introduction, Ohio has had many federal and state elections that were decided by a margin of victory of less than 3% of the total vote. Therefore, any law such as HB194 (pending repeal or referendum vote), which as documented below, restricts or makes voting less accessible, could have substantial effects on election outcomes in Ohio. As a result, these outcomes could have more to do with election restrictions than with the will of the people.

Data are presented (starting at page number in parentheses) to support the following statements:

If HB194 is not repealed, it would:

- prohibit counties from sending out absentee vote-by-mail (VBM) applications to all registered voters, a prohibition which has reduced absentee vote-by-mail by about 10% of the electorate in the affected counties (page 2). (By special arrangement, the Secretary of State will send applications to all voters in the 2012 General Election but not in subsequent elections)
- by reducing VBM (see above), reverse cost-savings of closing precincts and increases probability of crowding on election day, since large-scale consolidations have occurred in both large and small counties since 2008 (somewhat more so in Republican-leaning counties) (page 3),
- prohibit in-person voting in the last 3 days before election, and thereby inconvenience a projected 105,000 voters statewide, some or many of whom may not vote or vote instead on election day (page 4)
- reduce the availability and increase already crowded (2008) conditions of in-person early voting by cutting Sundays and reducing total days available from 35 to effectively 12 days, many with shorter hours (page 5)
- increase the number of provisional ballots rejected by ***not*** requiring election officials to provide voters with information on the correct precinct and polling place (page 6)
- make it more difficult for voters to supply missing information so their provisional ballot could be counted (page 6)
- make it impossible for election observers to point out problems in need of urgent correction (page 6), and
- not provide any secure mechanism to be sure voters were reminded of election dates and hours, ID rules, and the need and requirements to actively request VBM ballots (page 7)

Introduction: As shown in Table 1, numerous elections in Ohio at the Federal, State, and District level have been decided by a margin of victory which represents less than 3% of the votes cast. The same is true for local elections such as City Council, or bond or tax issues. Any election law which restricts opportunities for voting is likely to reduce turnout, even though there are other ways for voters to cast their ballots if they choose to do so. For instance, if voters assume that they can, as in the past, vote in-person on the last 3 days before election, they will learn too late if this opportunity is prohibited (by HB194). It will be too late to vote absentee, and many may well have a conflict with voting on election day (e.g. job, child-care). It is estimated (see below) that 105,000 voters statewide voted in these last 3 days in 2008, and if many of them won't be able to vote in the 2012 General Election, their absence could help to determine elections decided by a several tens of thousands of votes (Table 1).

One must also bear in mind that if there are several restrictions on voting, the cumulative effect could change the 3% margin even though each individual restriction might affect, say, only 0.5 to 1% of voters. For this reason, it is important to consider not just one but the several ways in which HB194 restricts voting.

Table 1. Examples of Federal and State elections in Ohio that were decided by a margin of victory of less than 3% of the votes cast.

YEAR	OFFICE	CANDIDATE 1	CANDIDATE 2	MARGIN OF VICTORY, % OF VOTES	TOTAL VOTES CAST	MARGIN OF VICTORY, # OF VOTES
2004	US President	Bush	Kerry	2.1	5,627,908	118,601
2008	US Rep	Kilroy	Stivers	0.8	303,838	2,312
	State Rep	Baker	Brady	0.9	60,677	1,123
	"	Grady	Patten	1.7	55,893	957
	"	Harris	Lewis	1.1	36,427	735
	"	Garland	McGregor	2.6	62,812	1,652
	"	Phillips	Thompson	0.9	54,224	514
2010	Governor	Kasich	Strickland	2.0	3,852,469	77,127
	Attorney General	DeWine	Cordray	1.3	2,231,728	48,686
	State Sen.	Beagle	Strayhorn	1.7	97,020	1,658
	State Rep	Duffey	Robinson	1.0	39,341	377
	"	Pilch	Wilson	1.4	42,880	602
	"	Fende	Fiebig	1.9	38,930	744
	"	Krabil	Murray	2.1	41,217	861

Detailed Report:

- **HB 194 prohibits county BOEs from sending out absentee vote-by-mail applications to all registered voters, even though this prohibition reduced absentee vote-by-mail by about 10% of the electorate. NOTE: Even in the absence of HB194, Ohio Sec. of State issued a Directive (2011-26) which stipulates this prohibition, and that Directive still applies no matter what happens with HB194. However, the Sec. of State has formally agreed to send such applications to all registered voters statewide for the General Election of 2012, but presumably not thereafter.**

Data to compare voter usage of vote-by-mail (VBM) absentee ballots, with and without Boards of Elections sending applications for VBM to all registered voters, are now available in several counties (Table 2).

Table 2. Percentage of total votes cast by mail-in absentee votes in General Elections 2010 and 2011

	Vote-by-mail votes as % total votes cast		
County	2010 VBM Applications mailed to all registered voters	2011 VBM applications mailed only on request	Reduction in VBM usage 2011 vs. 2010 as % of vote
Franklin	36%	21%	-15%
Cuyahoga	45%	33%	-12%
Hamilton	21%	15%	-6%
Montgomery	18%	9%	-9%
Lucas	21%	11%	-10%

In every county above, the prohibition on mailing VBM applications to all voters led to reductions in usage of VBM in 2011(compared to 2010), with a median drop of 10% of total votes cast. In future Presidential elections (2016 and later), if VBM applications are not mailed to all voters, a "ballpark" simulation (requiring several assumptions) showed that over 1,000 precincts statewide would have to handle 700-1000 voters on election day, if total votes cast were similar to that in the 2004 General Election. This number of voters could well cause overcrowding and long waits in many cases.

- **Prohibiting mailings of VBM applications to all voters reverses cost-savings of closing precincts, which has occurred in both large and small counties since 2008**

Many counties substantially reduced and consolidated precincts between 2008 and 2012 (Table 3), e.g. as many as 354 precincts in Cuyahoga County and as high as 48% of precincts in Williams county. In several cases, this was made possible because the mailing of VBM applications had greatly increased absentee voting, reducing the number of election day voters. Indeed, one Cuyahoga County Board member reported[1] that the consolidation as of 2011 saved $1.2 million in voting machine purchases and $800,000 costs per election plus other savings which offset the $860,000 (per election) cost of the mailings. HB 194, by reducing absentee ballot use, forces such counties to re-open more polling places or to face overcrowding on future Presidential election days.

[1] Eben McNair, Board Member, Written formal statement to the Cuyahoga Board of Elections, Aug. 22, 2011: excerpted in the Appendix to this statement

Table 3. Number of precincts reduced, and percentage of reduction, between 2008 and the primary election of 2012 (Only data from counties with reductions of precincts of 15% or more are shown in this Table).

County	Number of precincts reduced, 2008 to 2012	Reduction as % of 2008 precincts	County	Number of precincts reduced, 2008 to 2012	Reduction as % of 2008 precincts
WILLIAMS	21	48	ASHLAND	16	25
HARDIN	17	45	HOCKING	8	24
COSHOCTON	18	42	TRUMBULL	63	23
HAMILTON	336	38	MEDINA	34	23
MADISON	16	37	STARK	80	22
MONTGOMERY	188	34	DEFIANCE	9	21
PUTNAM	11	31	SANDUSKY	14	19
HENRY	10	30	ATHENS	13	19
LUCAS	141	28	GEAUGA	18	19
ALLEN	33	27	JACKSON	6	17
LAKE	58	27	HIGHLAND	6	16
AUGLAIZE	10	25	FAIRFIELD	20	16
CUYAHOGA	354	25	LORAIN	36	15

Of the 25 counties that reduced the number of precincts by more than 15% between 2008 and 2012, 713 precincts were in Republican-leaning counties in the 2010 election, 577 precincts were in Democratic-leaning counties, and 210 precincts were in fairly evenly divided counties. It appears that Republican-leaning counties would be somewhat more negatively affected by reducing in-person absentee voting.

- **HB 194, by prohibiting in-person voting in the last 3 days before election, inconveniences a projected 105,000 voters statewide, some or many of whom may not vote or vote instead on election day.**

In the 2008 General Election, in-person absentee (early) voting in 12 of the largest counties constituted 9% of all votes cast in those counties. An almost exactly similar percentage was found in a sample of 13 smaller counties (8% of total votes cast), i.e. the fraction of voters who prefer in-person voting seems fairly similar across the state. In seven counties (Table 4) where data from 2008 were available on in-person absentee ballots cast on the last 3 days before election (i.e. the period now prohibited by HB194), nearly 47,000 in-person votes were cast in these last 3 days. If the results from these counties, which comprise 45% of all votes cast in 2008, are projected for all in-person votes cast statewide, over 105,000 voters would be inconvenienced (They would have to have voted earlier in person or by mail

or would have to vote at the polls on election day). It is likely that many of those who voted in these last 3 days may have had conflicts or preferences which led them to vote early rather than on election day.

Table 4. Votes cast in-person in the last 3 days before election day in 2008, and projection to the entire state

COUNTY	# of in-person voters in last 3 days before 2008 election
Cuyahoga	10,938
Franklin	9,194
Hamilton	3,081
Lucas	4,638
Mahoning	3,807
Montgomery	7,926
Summit	7,373
SUBTOTAL	**46,957**
Projected voters for entire state*	**105,110**

Source: County information gathered by telephone interviews and email exchanges between Rep. Kathleen Clyde's office and Boards of Elections.
*Projected total (by N. Robbins) by multiplying subtotal by the ratio (2008 total votes cast in all 88 counties)/ (total votes cast in these 7 counties).

- **HB194 reduces the availability and increases already crowded conditions of in-person early voting by cutting Sundays and reducing total days available from 35 to effectively about 12 days, many with shorter hours. As a result, a projected 193,000 voters would be forced to choose another time or method of voting. Maximum times for voters to wait could equal or exceed 2.5 hours.**

As documented above, in-person voting in 2008 occurred almost equally (8-9% of total votes) in samples of smaller and larger counties. Therefore, any limitation on the time allotted for in-person voting is likely to affect voters statewide. In Cuyahoga and Franklin counties, where daily in-person voting was charted, about 50% of such votes were cast on days and times prohibited in HB194. Given some 386,000 early in-person votes statewide in 2008, about 193,000 voters could be forced to choose another method of voting.

In 12 counties, election officials were willing to estimate the longest waiting time experienced by in-person early voters in the days prior to the 2008 General Election. Even with a full 35 days of in-person voting in 2008, the median longest waiting time in 2008 was already 2.5 hours, including smaller counties (Table 5). Therefore, if far fewer days were available for in-person voting, as under HB194, voters would be reluctant to wait longer than 2.5 hours at peak times, and will probably choose to vote either by mail, on election day, or not at all. It is likely that many of these "excess" voters will crowd the polls on election days rather than vote by mail: NOVA registrars in the Cleveland area, who interact with thousands of voters each year, find that many voters have more confidence voting in-person than by mail.

Table 5. Longest waiting times experienced by in-person early voters (i.e. on the "worst" day) in 2008

County	# of in-person absentee votes in 2008	longest waits **(hours)** for in-person absentee voters in 2008
PUTNAM	1,346	3 to 4
BROWN	1,532	6
HIGHLAND	2,994	2
FAIRFIELD	4,246	3
DEFIANCE	4,712	1
RICHLAND	10,009	1 to *1.5*
LAKE	10,194	2
TRUMBULL	11,061	0.75
LUCAS	24,557	3
MONTGOMERY	28,000	1
HAMILTON	(estimated) 38,600	3.5
FRANKLIN	53,447	6
CUYAHOGA	54,325	3 to 4

- **The provision in HB194 that election officials NOT *be required to* provide voters with information on the correct precinct and polling place will greatly increase the number of provisional ballots rejected because of being cast in the wrong precinct.**

In 2008, 14,335 legitimately registered voters had their votes cancelled for being cast in the wrong precinct. If poll worker direction of voters becomes optional, thousands more votes will be lost. There are no data on the number of voters sent by poll workers to entirely wrong polling places (although there are anecdotal instances) vs. those voters who were confused about the proper polling place. However, in 9 counties whose BOEs were queried after the 2006 election, a median of 36% of rejected wrong-precinct provisional ballots were cast in the correct polling place.

In Cuyahoga County, concerted attempts to train election officials since 2004 failed to greatly reduce votes lost because of this "right church wrong pew" problem. These were 52% of the "wrong-precinct" rejections in 2004[2], 36% in 2006, and nearly 50% of wrong-precinct rejections cast in the correct polling location 2010. Without a mandate to direct voters to the correct precinct, the situation would undoubtedly grow worse.

- **HB 194 eliminates the previous 10 day period for voters to supply missing information so their provisional ballot could be counted.** Although rather few voters took advantage of this option in 2008 and 2010, it is important to preserve it as long as Ohio has so many rejected provisional ballots.

- **Under HB194, election observers are no longer allowed to point out infractions to election officials – they can only take notes but may not say anything to correct an ongoing situation, even if it is disenfranchising voters.** For instance, in 2008, one observer (myself) was able to point out to the polling place director that poll

[2] Analysis by Victoria Lovegren, formerly posted on "Ohio Vigilance" website

workers were using provisional ballots incorrectly, in a manner that would disenfranchise many voters, and the situation was immediately rectified.

- **There is no provision in H.B.194 requiring that voters be informed of the rules and timetables that have been changed since the last General Election or that are difficult to remember. It is left to the discretion of financially strapped county Boards of Elections whether or not all voters receive vital information by mail.** For instance, when new ID requirements for voting were introduced in 2006, the law required BOEs to send all voters notification of these rules for 3 federal election cycles. In contrast, when the various changes in voting in person or by mail, etc. were introduced by HB194, no such notification requirement was passed in tandem. Indeed, an amendment to this effect was rejected by the legislature. Voter confusion resulted. For instance, prior to the November 2011 election, NOVA registrars were told by hundreds of voters that they fully expected the Cuyahoga BOE to send them VBM applications, as they had as recently as 2010 (even though this type of mailing had been banned by the Sec. of State). Fortunately, an appeal to the Cuyahoga BOE led the BOE to send out a notification mailing telling new or previous VBM voters they would not get VBM applications automatically in 2011. In response to this information, voters mailed an extra 31,000 additional application requests. In order to minimize other likely voter mistakes, BOEs should send out information on Ohio's complex ID requirements, and information on changed BOE days and hours for in-person or VBM voting.

Appendix: Excerpt from a written statement by Cuyahoga County Board Member Eben McNair, presented at the Board meeting of 8-22-11

Beginning with the November 2006 election, this Agency, with the financial support of the County Commissioners, changed how voting occurs in this county by mailing vote by mail applications to all registered voters and providing postage paid return envelopes. That practice continued into 2008 when, again with the financial support of the County Commissioners, and in advance of the presidential election, the Agency engaged in an extensive community outreach program promoting vote by mail. The program was successful and we had no significant problem of long lines on election day. Over time, more voters have been using vote by mail, both as measured in absolute numbers and as a percentage of the total vote.

In 2009, this Board agreed to reduce the number of precincts by 368, 26% of the then total. I viewed this reduction as prudent because of our successful vote-by-mail initiative, and the precinct reduction allowed us to capture saving by eliminating the costs associated with those 368 precincts. Had we not been so successful moving a large number of voters from voting on election day to voting by mail, I would not have supported reducing the number of precincts, given our previous history of long lines, especially during presidential elections. But by eliminating 26% of our precincts, we avoided spending $1.2 million by reducing the number of DS200 voting machines we were required to purchase.

Overall, the County has received a good value for its vote by mail investment. As shown on the summary, currently the average total vote by mail cost for a countywide election is around $863,000 (dividing the total of the last two actual and the November 2011 estimated amounts by 3). From this, one needs to deduct the savings from the reduced number of precincts from 1,436 to 1,068. Staff estimates that savings to be approximately $800,000 for

each countywide election. This leaves a net cost of $63,000 per county wide vote by mail process. But this is not the true dollar cost, which is in fact less. First, these numbers assume no cost for vote by mail if we did not continue our existing practice. But in fact, we would have additional expenditures for any voter who requested a vote by mail application--we would have the cost of processing that request, paying for the printing of the requisite materials and postage to send to that voter. So also would we have the processing, printing and postage costs for those voters from whom we received a vote by mail application. All of these expenses would reduce that $63,000 difference. In addition, we effectively have a reserve fund of $1.2 million from the money we did not spend on the DS200s because of the precinct reduction. That fund, without considering the time value of money, would pay for some nineteen countywide elections (that is $1.2 million divided by $63,000 equals 19).

So our vote by mail program has been cost effective, right now we have spent less than we would have, had we not promoted this program and not reduced our precincts. But, what is most important, this program has promoted voting, while alleviating problems on election day. Clearly, this is an architecture we should maintain for as long as we can, consistent with the law. HB 194 will not be the law when we effectuate our vote by mail program for this November's election, and may never become the law. We should stay our course.

In **conclusion,** there is no more fundamental right than the right to vote; all other rights derive from the right of enfranchisement. I believe it is the obligation of each Board Member to protect that right to the extent permitted by law. Here we can, and we should continue our policy, a policy that has had the unanimous support of this Board, to send out vote by mail applications, with return postage, to all electors, other than those who have specifically requested that we not do so.

OEA
OHIO EDUCATION ASSOCIATION

Patricia Frost-Brooks, President
William Leibensperger, Vice President
Jim Timlin, Secretary-Treasurer
Larry E. Wicks, Executive Director

The OEA will lead the way for continuous improvement of public education while advocating for members and the learners they serve.

STATEMENT FOR THE RECORD:
PATRICIA FROST-BROOKS
PRESIDENT, OHIO EDUCATION ASSOCIAITON

JUDICIARY SUBCOMMITTEE HEARING
ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS
MONDAY, MAY 7, 2012
CLEVELAND, OHIO

As President of the Ohio Education Association, it is my privilege to represent 124,000 teachers, higher education faculty and education support professionals. As educators, we play a critical role in preparing students for success and to be productive citizens. We teach our students that the right to vote is central to our democracy. We know from history that securing the right to vote has been a struggle but one that has marched towards inclusion and access for all citizens. As a citizen and a teacher, I was appalled by the passage of HB 194 because many of provisions are aimed at reducing opportunities to vote.

During the Presidential election of 2004, the eyes of the nation were on Ohio. What the nation saw was long lines of people waiting to vote. Subsequently, voting laws in Ohio were changed to allow any voter to vote absentee and provide an extended period of early in-person voting. Early voting proved to be a popular option for Ohioans. The last few elections, while tightly contested, have not seen the long lines or disorder of 2004.

However, the passage of HB 194 is a step back from the progress we've made in Ohio to assure access to the polls and restore voter confidence that their vote will count. The bill made harmful changes to Ohio election law by making it more difficult for citizens to cast a ballot. The OEA opposed HB 194, which passed both the House and Senate on a party line vote; Republicans voting for the bill and Democrats against. The bill was signed by the Governor Kasich on July 1, 2011. Provisions of HB 194, if enacted, would do the following:

- Reduce time periods for absentee voting by mail and in-person absentee voting
- Ban in-person absentee voting on Sundays and every Saturday after the noon hour
- Ban in-person early voting during the last weekend before the election
- No longer require poll workers to assist voters by directing them to the correct voting precinct
- Stop local Boards of Election from sending absentee ballot applications unsolicited to all eligible voters
- Stop local Boards of Election from paying postage on return absentee ballot requests or on the return of absentee ballots
- Make it more difficult for Boards of Elections to open extra locations for early voting

The net effect of these changes would be to increase the amount of people voting in person on Election Day. I fear that this would bring back the long lines of 2004 and the potential of multiple hour waits for Ohioans to exercise their Constitutional right to vote.

Fortunately, the provisions of HB 194 are on hold pending a referendum. A group called "Fair Elections Ohio" was able to collect over 307,000 valid signatures to put the issue on the November 2012 ballot. Much like the "citizens' veto" of SB 5 in 2011, I proudly join with others from both parties and all walks of life who are working to protect the rights of Ohioans.

The passage of HB 194 was, in my belief, an attempt to suppress the right to vote. In Ohio we are fighting back. Sometimes I think to myself "Democracy shouldn't be this hard." Securing the right to vote has had fits and starts throughout history, but the path has been towards progress and inclusion. We teach our students that every citizen has the basic right to vote. I wonder what lesson the supporters of HB 194 were trying to teach.

OHIO WOMEN WITH DISABILITIES NETWORK
(OWDN)
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Delaware, Ohio 43015
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August 19, 2016

To Whom It May Concern:

The Ohio General Assembly seems to be grasping at straws when it tries to change election legislation to "supposedly" provide better access for people with disabilities. The language changes nothing. Ohio never has & never will enforce ADA. Ohio can only enforce its own building code, which has recently incorporated the newly revised ADA accessibility standards, and its own civil rights laws.

If the General Assembly is truly concerned about the voting rights of people with disabilities, it will insist on the enforcement of HAVA and call upon the Secretary of State to insist that local Boards of Election hold elections in facilities that are accessible to people with disabilities. In addition, the time limit for voting has been waived for people with disabilities for many years in Ohio. If this is now deemed to be a problem, the Secretary of State could issue a directive to remedy this situation. Poll workers have been assisting voters with disabilities to cast their ballot, when needed, for many years as well.

It is disingenuous to portray a need to change the law, at this time, on concerns for the voting rights of Ohioans with disabilities.

On a personal note, I was required to vote on Election Day this year due to the decrease in the number of in person absentee voting days. I had had a medical situation that I could not vote until one of those last three days prior to the primary election. Voting is very important to me, but I always vote early as it is less crowded and congested. I also prefer voting in person absentee rather then absentee by mail as it makes me feel more a part of my community.

Sincerely,

Karla M. Lortz, President

Note: Karla Lortz is a long time advocate for the rights of people with disabilities. She is the co-founder of the Ohio Coalition of Citizens with Disabilities as well as the Ohio Women with Disabilities Network. She assisted with the passage and implementation of Ohio's civil rights law for people with disabilities as well as the passage and implementation of the Americans' with Disabilities Act. She was also active in the passage of HAVA and the continuing efforts to reach compliance with its provisions that effect people with disabilities. She is the retired director of the Ohio Governor's Council on People with Disabilities.

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A CENTURY OF PRIDE AND PERFORMANCE

May 3, 2012

The Honorable Senator, Dick Durbin
Chairman of the Senate Judiciary Committee on the
Constitution, Civil Rights and Human Rights
Carl B. Stokes United States Courthouse
801 West Superior Avenue
Cleveland, OH

Dear Senator Durbin,

As a fifty-seven year citizen of the United States, I feel compelled to address the changes to the Ohio Voting Laws as passed by the Ohio Legislature in HB 194.

I was proud to cast my first vote in the 1972 Primary Election as a seventeen year old, as I would be eighteen by the November General Election. The ability for eighteen year olds to vote was a hard fought battle by progressive and responsible legislators.

The United States of America considers herself to be the greatest democracy in the history of the world, yet she has struggled with voter rights throughout her history. Poll taxes, literacy tests, non-property owners, women etc. are just a few of the tactics that have been employed to suppress the vote in America.

Statistics from Mark N. Franklin's "Electoral Participation," show that the United States has a 48% voter participation rate, well behind countries such as Malta (94%), Germany (86%), Venezuela (85%), Canada (74%) and Russia (61%).

While voter disenfranchisement is not the only issue affecting voter participation, our elected officials should be considering any and all solutions to encourage voting. HB 194 heads in the other direction by adding more encumbrances to the peoples' ability to vote.

Cuyahoga County, in the 2010 election cycle, was able to gain efficiency, increase voter participation, and save $1.2 million of taxpayers' money by mailing vote-by-mail applications to all registered voters.

This is the 21st Century. America has some of the best and brightest citizens in the world and as such is very capable of holding fair and honest elections. The 800 pound gorilla in the room, voter fraud, is an argument that should follow its long discredited partners, illiteracy, elitism, racism and chauvinism to an early grave.

I appreciate your efforts in ensuring that the voting publics' right to vote is secure. I wish you the best in your field hearings on OH HB 194.

Respectfully,

Terence M. McCafferty

Terence M. McCafferty
Business Manager/Financial Secretary-Treasurer

Policy Matters Ohio

Testimony
May 2012

Senator Durbin and Senator Brown,

Thank you for the opportunity to testify today. My name is Pamela Rosado and I am the outreach coordinator for the non-partisan policy research institute Policy Matters Ohio. I have long served on the Greater Cleveland Voter Coalition. Today I would like to summarize new research released by our organization just last month, from a study called *Ohio Photo Voter ID: A picture worth $7 million a year?*, written by my colleagues Sana Haider and Amy Hanauer.

The United States was founded on the ideal of government by consent of the governed. Voting is the means by which we express and achieve that consent. Throughout US history we have expanded the right to vote – to non-propertied men, African Americans and other people of color, women, and young adults. Recently in Ohio and other states, lawmakers are going in the opposite direction, proposing new restrictions.

A bill requiring photo identification to vote, HB 159, was approved by the Ohio House of Representatives in March 2011 and a slightly different Senate version has been introduced. Legislators have passed laws requiring photo voter identification in 17 states, nine of which are strict laws like the Ohio proposal.

The version of this bill passed by the Ohio House requires all voters to have photo identification, but provides free ID cards only to qualifying low-income voters who request the card and can prove low income. The Senate version would provide free cards more broadly. It is unclear whether either version would withstand a legal challenge.

In Ohio, we estimate that approximately 938,642 Ohio adults lack photo IDs.

Costs

We have two different cost scenarios for the IDs and two different projections of how many cards would be needed. We can assume an $8.50 cost – the current cost of a state ID in Ohio. At this price, the annual cost would range between $4.85 and $6.75 million, depending on whether we provided the IDs to all eligible voters or just the percentage who voted in the last presidential election.

Table 1
Estimated Annual Cost to Ohio for Voter IDs Low and High estimates

Annual Cost	$8.50 per ID	$13.00 per ID
For all voters	$6,750,945	$6,940,327
For likely voters	$4,849,833	$4,976,719

Source: Policy Matters Ohio, based on data from the US Census and Ohio BMV

Alternately, we can assume a $13.00 cost, the actual cost that Indiana faced when it implemented voter ID requirements. At this price, the annual cost would range between $4.98 and $6.94 million, again depending on whether all voters are given one, or just the 67% who voted in the last presidential.

Comparable expenditures
What could $6.94 million buy each year in Ohio?
• More than 8.68 million subsidized fares on mass transit for passengers who are elderly or have disabilities
• More than 277,000 books or other library items.
• More than 4,000 courses of out-patient treatment for patients with alcohol addiction.
• A year of after-school childcare for more than 1,800 children in low-income families.

Comparable Expenditures

Ohio is cutting spending on many essentials. We cut $95 million from the budget, including cuts to education, police and fire protection, drug treatment, disability services, and disease prevention, under House Bill 487. The state has even cut local election board funding, making it more difficult to staff elections and forcing reductions in polling plaees. HB 159 would inject a new unfunded mandate in this environment.

The $6.94 million in annual costs could instead be used for other important priorities in Ohio. What other services of benefit to Ohio families could the state instead purchase for this amount?

- More than 8.68 million subsidized fares on mass transit for passengers who are elderly or have disabilities;
- More than 277,000 library items, including books, reference books and movies;
- More than 4,300 courses of treatment for patients with addiction; or
- More than 1,800 subsidized slots of after-school child care for children in struggling families.

According to the Brennan Center for Justice at NYU School of Law, the courts require that state photo ID laws meet criteria currently missing from HB 159. States must provide free IDs to all those who lack them, provide free birth certificates, expand the number and hours of ID-issuing offices, and undertake substantial voter outreach to ensure voters know the requirements. These requirements figure into the costs.

Disparate Impact

More than one in ten Ohioans lacks a photo ID. The new requirements would have a disproportionate impact on elderly voters, young adults, minority voters and low-income voters, all of whom are statistically less likely to have an Ohio driver's license. Who lacks photo IDs?

- About 290,000 Ohio seniors - 18 percent
- About 260,000 black Ohioans – a staggering one in four
- At least 380,000 moderate-income Ohioans (earning less than $35,000) - 15 percent in this income range
- College students and voters with cars are also less likely to have valid photo IDs.

Conclusion

HB 159 is likely to suppress voting in Ohio. The bill purports to solve the virtually non-existent problem of voter impersonation, but will instead create new voting problems, and at a steep new cost. Ohioans value the right to vote and they value their neighbors' participation. If there is a problem with voting in Ohio, it is that too few people are doing so because of existing barriers. Creating new, unnecessary costs and suppressing votes has no place in the Buckeye State.

Thank you again for the opportunity to testify today.

Written Testimony Submitted by ProgressOhio
For
Senate Judiciary Subcommittee on the Constitution Civil Rights and Human Rights Hearing on
Voter Disenfranchisement Laws
May 7, 2012

The number of eligible voters participating in our nation's elections has not exceeded 60% in over four decades. In such a society, we can scarcely afford to foster the perception that voting is difficult or time-consuming or that votes aren't properly counted.

After the 2004 election, the ability of Ohio voters to cast their ballots in a timely and accurate manner had been called into question, not only in the national press but in the minds of individual voters. As recently as 2007, twenty one lawsuits were pending against the office tasked with overseeing Ohio's elections. The 2008 and 2010 elections made substantial progress in restoring the faith of the state's electorate in fair voting. While not wholly without incident, voters participated in an event competently conducted and without apparent malice.

Unfortunately, the majority of the proposed changes to Ohio's voting system would work to further undermine public perception of our elections. The outcome of laws such as House Bill 194 is clear – voter participation will be stymied. Across every aspect of the law, the voters most likely to be impacted are those traditionally underrepresented at the ballot box. This will increase the perception that this outcome is not a bug, but a feature.

Over thirty states have reconsidered their voting laws recently, and the trend is inescapably tilted towards making it more difficult to participate in our democracy. That these laws have picked up steam since 2008, which saw the highest percentage turn-out of voters in forty years, is tragic and, one can only hope, coincidental.

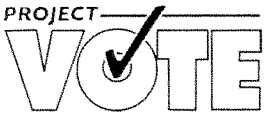
While proponents bill these laws as combating prevalent voter fraud being perpetuated on an individual basis, the evidence for illegally cast ballots on a widespread basis is nonexistent. The Brennan Center for Justice has conducted eight state-level case studies examining the volume of substantiated cases of voter fraud. The results ranged from a rate of 0% to 0.0006% of fraud, none of which could have been prevented by requiring photo ID at the polls. In Ohio, a similar analysis yielded a 0.00004% substantiated fraud rate during the turbulent 2004 election. No neutral observer, presented with the chasm between the fraud rate and the number of voters who were barred or discouraged from voting that same year, would prioritize reducing the prevalence of the former over all else.

Intentional voter fraud is a serious crime and shouldn't be taken lightly when it occurs. The nation's laws already recognize the severity of it, with offenders facing large fines and multiple year sentences.

A New York Times survey of arrest records, found only 86 people were found guilty of such crimes between 2002 and 2007. This shouldn't be surprising. When even candidates in 'close' federal elections are generally separated by tens, or hundreds, of thousands of votes, voter fraud on an individual basis is not only dangerous to the individual, it is thankless. As Rick Hasen, an election law expert, put it, "Who

in their right mind would risk a felony conviction for this? And who would be able to do this in large enough numbers to (1) affect the outcome of the election and (2) remain undetected?"

Those motivated to change the outcome of an election have available to them legal options that are vastly more effective. Motivating some of estimated one hundred million eligible Americans to vote this November who might choose to not vote, in spite of the barriers some officials are putting in front of them, is one legal and effective way to change the outcome of an election.



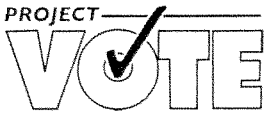
"New State Voting Laws III: Protecting the Right to Vote in America's Heartland"
TESTIMONY OF PROJECT VOTE
Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights, and Human Rights
Monday, May 7, 2012

Project Vote appreciates this opportunity to submit testimony in connection with today's important hearing in Cleveland, Ohio. 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.

Project Vote has been active in monitoring election laws in Ohio and opposing laws that would create additional barriers to voting. Last spring, Project Vote provided testimony in opposition to HB 159, the photo identification law considered in the 2011 session. Our testimony highlighted the additional costs of implementing the photo identification law, as well as the disparate impact on elderly, disabled, low income, and minority voters who are less likely to have the kinds of photographic identification made mandatory by HB 159. Although HB 159 passed in the House, fortunately the Senate has not taken it up this session.

Project Vote has also been active in opposing the reenactment of any provisions of HB 194, the voter suppression bill that is currently subject to referendum. The bill was passed by the legislature in the summer of 2011. Among the most onerous restrictions, HB 194 would cut the absentee voting period from five weeks to three weeks and eliminate early voting opportunities in the evenings, Saturday afternoons, and Sundays. Furthermore under HB 194, poll workers would not be required to tell voters they are in the wrong precinct, even though votes cast at the wrong precinct may not be counted. More than 300,000 Ohio voters signed a petition to put HB 194 before the voters as a referendum on the 2012 ballot. This petition constitutes an unequivocal endorsement of the voting rights of Ohioans, and this outpouring of opposition to HB 194 must be honored. The Senate has voted to repeal HB 194, and the House of Representatives is poised to repeal the bill in the near future. We continue to believe that repeal is only sensible if the legislature abandons any plans to reintroduce some provisions of HB 194 until after the November election, if at all.

This spring we have also been urging the legislature to restore the last weekend of early voting. The provision striking the three busiest days of absentee voting was enacted by HB 224 as a technical correction to HB 194. Due to this drafting error in HB 194, the elimination of the last weekend of early voting was not referred to the voters along with all the other provisions of HB 194. Rather, this new early voting deadline went into effect for the November 2011 election, and will continue to be in effect in 2012, unless



the legislature acts to repeal this provision.

According to a study conducted by Norman Robbins, Research Director, Northeast Ohio Voter Advocates, nearly 100,000 Ohio voters could be impacted in 2012 if they are not permitted to vote in person on the Saturday, Sunday, and Monday before Election Day. This number is staggering and could easily affect the outcome of the presidential election in Ohio, which was decided in 2004 by less than 119,000 votes. If the legislature intends to honor the spirit of the referendum and fully repeal HB 194, the final weekend of in person voting should be restored.

Finally, the Secretary of State must ensure that as many voters as possible receive absentee ballot applications in 2012. Historically, several large counties have mailed absentee ballot applications to all registered voters as a means to promote absentee voting and to relieve pressure on already strained polling place resources on Election Day. However a provision of HB 224 now prohibits counties from sending out unsolicited absentee applications and providing postage paid application returns. These restrictions will drastically reduce the overall number of absentee ballots cast in the election, as already evidenced by the absentee ballot application rates that declined after this law went into effect in 2011. The Secretary of State has agreed to send unsolicited absentee ballot applications for the 2012 election -- but not for future elections. Secretary Husted has indicated that the applications will go out to registered voters in August. However, any voters who register after August but before the October registration deadline will not automatically receive an absentee ballot application. We propose that the planned mailing by the Secretary of State be moved closer to the registration deadline so that more voters receive absentee ballot applications. Furthermore, the categorical prohibition on sending unsolicited absentee ballot applications should be repealed by the legislature after the election to ensure that counties are given the necessary flexibility to mail unsolicited absentee applications in the future if this method best meets their needs and resources.

By convening this field hearing in Ohio, the Subcommittee on the Constitution, Civil Rights, and Human Rights implicitly recognizes that regressive state laws can have a far-reaching impact upon federally guaranteed rights, and that this impact should be examined. For this, we are grateful. The Judiciary Committee has the authority and the responsibility to take testimony on the repercussions of the state laws 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 appreciates the Subcommittee's efforts, and our staff is ready to provide whatever assistance you may require.

Rabbi Richard A. Block

Senior Rabbi, The Temple – Tifereth Israel

26000 Shaker Blvd.

Beachwood, OH 44122

May 4, 2012

Statement for the Record Concerning Ohio HB 194

I am deeply concerned at the impact HB 194 will have on the exercise of the privilege of voting in Ohio. The right to vote is the fundamental underpinning of democracy and the US Supreme Court has articulated the principle of "One Man, One Vote," as a core dimension of the US Constitution.

HB 194 places undue burdens on the exercise of our constitutional rights. By limiting in-person voting, banning poll workers from directing voters to the correct district, prohibiting counties from sending postage paid absentee ballots to all registered voters, and imposing onerous identification requirements on voters, HB 194 undermines our democracy. HB 194 has a disparate impact on minorities, citizens with low income, and those who do not have ready access to documents proving their citizenship, including 32 million voting-age women who do not have access to proof of citizenship documents in their current name.

I am grateful that Senator Durbin's Judiciary Subcomittee is holding a hearing on The Constitution, Civil Rights, and Human Rights in Cleveland next week. These are vitally important matters to all Americans who cherish our Constitution.

Testimony to Field Hearing of the Senate Judiciary Subcommittee – Constitution, Civil Rights and Human Rights
Robert A. Nosanchuk, Monday, May 7, 2012

My name is Robert Nosanchuk, I am a U.S. citizen, resident of Ohio, and the Senior Rabbi of the Anshe Chesed Fairmount Temple, a leading institution of Reform Judaism, and of the congregations of Greater Cleveland. In 1964, my predecessor Rabbi Arthur Lelyveld's determination to see equality and fairness applied in our U.S. voting system led him to the State of Mississippi where authorities beat him with a tire iron but did not subdue his drive to pursue equality and justice in the realm of voting rights for all Americans. It has now nearly been five decades since the Freedom Summer in Mississippi and sadly, we cannot take for granted our leaders support of these standards fought for in the civil rights movement. Indeed, because of pending legislation, Ohio citizens face the difficult prospect of being polarized one against another in terms of our access to the election system and the validity of our votes!

When former Ohio Representative Robert Mecklenborg proposed House Bill 194, he stated in the press last March that the legislation was necessary "to combat voter fraud and the perception of fraud." Indeed combating fraud is a legitimate pursuit if such fraud exists. Certainly we'd all agree that elections that are freer of fraud are more consistent with our American ideals and the dictates of our various faiths as they pertain to following societal laws.

Given the resources of his office, Representative Mecklenborg had the opportunity to research, to explain, to back up his claims and show Ohio's citizenry his evidence of such fraud and how his proposals would combat the voter fraud he alleged. But he did neither.

Rather he proposed legislation that I believe suppresses voter turnout by making it appear to be fraudulent or improper for poll workers to show those who've mistakenly come to the wrong polling house how to find their official polling station on election day.

Rep. Mecklenborg further proposed that placing on a provisional ballot the date in the box where you were supposed to put your signature, or your signature in the box where you are supposed to put the date is somehow an act of fraud and not merely a typographical error. He further supported legislation that would limit voting rights to those who have a valid passport or current driver's license, even though current law allows Ohio citizens who have neither of these photo ID's to show any one of a dozen personal documents to show poll workers they truly live in the home the registrars say they live.

In an interview with the press, he simply speculated: "I believe it happens, but it's proving a negative and it's impossible to prove a negative," then following with his own question, "How do you prove that fraud doesn't exist there?" Seeing the wide-ranging nature of the bill he proposed, and his complete lack of proof that there is cause warranted for such legislation demonstrates that his commitment to bringing a measure of integrity to our election system is a false or at the very least empty commitment.

Rather I believe that Ohio House Bill 194 and its companion H.B. 159 are proposed laws intended to limit the access specific groups of individuals in our society have to have their vote counted. The basis of H.B. 194 is speculative at best, and shows an indifference to the value that undergirds every citizen of every faith and background's commitment to vote in the first place – the idea that their vote and our participation in the electoral and democratic system matters.

That is in one of the reasons that dozens of my congregants joined the petition drive last summer which sought to repeal H.B. 194's implementation. We felt that: evidence of voter fraud was necessary to place new restrictions and regulations on our election system, and that H.B. 194 would errantly pursue voter fraud while enacting into law a disturbing array of unfair practices.

These unfair practices under H.B. 194 include:

- Restrictions on in-person/absentee voting hours
- Limits on in-person/absentee voting locations to county Board of Election offices
- Prohibitions on poll workers directing errant voters to the correct polling location and on counties sending unsolicited absentee ballot applications to registered voters.

In addition, H.B. 159 would require anyone voting at the polls to bring a driver's license, passport or other government-issued identification card that shows the person's current address and contains a photo, in effect disallowing the current system which allows our current utility bills, bank statements, paychecks or government documents with a current name and address as proof of identification.

Am I expected to believe that our leaders are not aware: who in our society has difficulty at a polling place producing a valid passport or a driver's license with a current address? Research shows it is most difficult for low-income individuals, senior citizens, racial and ethnic minority voters, and voters with disabilities.

These groups in our society, members of my community who have dutifully brought their utility bills, bank statements, paychecks and other government documents to polling places, often have trouble getting government-issued photo ID or are economically challenged when it comes to the financial commitment to keep such photo ID's updated. Research shows there are more than 21 million Americans – who do not have government-issued photo identification. As many as 25% of African American citizens of voting age do not have and 18% of Americans over 65 do not have it.

The median age of the congregants at my large synagogue in Cleveland sixty-six which leads me to believe that hundreds of my community members are potentially at risk of being disqualified to vote, because they no longer travel out of the country (needing a passport), drive independently (needing a valid license) or are living with limited income (and thus cannot afford to regularly update these documents.)

Additionally, I am disturbed that the legislation currently proposed in Ohio eliminates the requirement that poll workers direct voters to the correct precinct; Shortens early voting and makes it illegal to have Sunday voting. Shortens the time span to vote absentee, Eliminates satellite locations for early voting; And increases size of our voting precincts: including more consolidation in cities than in rural areas.

I am a rabbi, a faith and community leader in the Jewish community. So I see this legislation and its inordinate number of restrictions on voting in the context of the value expressed in Deuteronomy 16:20 *Tzedek! Tzedek Tirdof!* Justice, justice shall you pursue!

Testimony to Field Hearing of the Senate Judiciary Subcommittee – Constitution, Civil Rights and Human Rights
Robert A. Nosanchuk, Monday, May 7, 2012

I believe that the value of justice is repeated twice in the Bible as an admonishment to every one of us to judge with justice. In other words, we must make *tzedek* ("justice") the guiding value by which we evaluate the laws of conduct in our democratic society. I know that when I focus my attention on justice and fairness, I am outraged at bills which would unfairly target minorities, elderly and poor individuals and others who share my commitment and my synagogue's legacy of acting to make civil rights, human rights and voting rights the cornerstones of our public and social activism.

Tzedek Tzedek Tirdof. Justice, justice shall you pursue -Deuteronomy 16:20

I commend your committee to pursue *tzedek* ("justice") and ask yourselves if you discern it to be present in the strictures on voting rights proposed for Ohioans.

I ask you to consider that *tzedek* ("justice") is not a one-size-fits-all concept. We are each called upon to look to our own moral fiber and our diverse backgrounds to define this concept. For history has shown that even when societies pursue it as their highest aim, there is no uniformity of views and thus it is an equal commitment to justice that inspires and allows every citizen to speak his mind and vote her conscience.

To me, *tzedek* ("justice") can mean for us in Ohio and the U.S. unity for the pursuit of equality, righteousness and freedom, on election day and every day.

For the sake of fairness, equal access, and what I hope to be your firm commitment to the civil rights and just treatment of all U.S. citizens, I urge you to investigate closely and use every energy in your power to combat these dangerous proposals in Ohio, which suppress votes and are no less discriminatory than the systems and practices our nation tried to rid itself of five decades ago.

I thank each of you for the opportunity to share this testimony for the record of your critical work in the Senate Judiciary Subcommittee on Constitution, Civil and Human Rights.

Rev. Stanley R. Miller
Shaffer Memorial United Methodist Church
12002 Miles Road Cleveland, Ohio 44106
216-641-7629 shafferumc@att.net

May 4, 2012

Senator Richard Durbin
Chair
U.S. Senate Judiciary Committee, Subcommittee on the Constitution,
Civil Rights and Human Rights

Dear Senator Durbin:

Thank you for taking time to host this important hearing in Cleveland. The purpose of this letter is to serve as my objection to the voting laws that have recently swept the country, including HB 194 in Ohio. Among other things, HB 194 restricts early voting, limits the distribution of absentee ballots, and no longer requires poll workers to direct voters to their proper precincts.

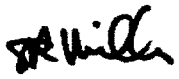
As the former Executive Director of the Cleveland Branch NAACP, it is clear that these attempts at voter suppression are a step back in the gains that have been made in voting equality.

These forms of legislation are a slippery slope. It's been more than a century since we've seen such a tidal wave of assaults on the right to vote. Historically, when voting rights are attacked, it's done to facilitate attacks on other rights. It is no mistake that the groups who are behind these issues are simultaneously attacking very basic women's rights, environmental protections, labor rights, and educational access for working people and minorities.

Again....these assaults — which are comprehensive in their reach and are clearly launched in time to affect the 2012 elections — threaten to undermine the record levels of political participation witnessed during the historic 2008 Presidential Election, by blocking access to people of color, the poor, the elderly and the young.

I urge you to vigorously oppose efforts like HB194 which are a step back in our efforts for full equality.

Sincerely,



Rev. Stanley R. Miller

Rev. Stanley R. Miller
Shaffer Memorial United Methodist Church
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Ohio State Representative Alicia Reece

Statement on Ohio Election Law

U.S. Senate Judiciary Committee - Subcommittee on the Constitution, Civil Rights and Human Rights

Cleveland, Ohio Field Hearing: "New State Voting Laws III: Protecting Voting Rights in the Heartland"

May 7, 2012

Thank you, Chairman Durbin and members of the subcommittee, for allowing me to provide a statement for the record.

House Bill 194 is a bad bill. It ignored years of research and input from all elections stakeholders in its sweeping changes. It was opposed by every Democrat in the Ohio legislature. And it was opposed by over 400,000 Ohio voters who signed the petition to place it on the ballot this fall so that it can be vetoed by the citizens of Ohio. Here are some of the biggest reasons that so many opposed HB 194:

- HB 194 did nothing to remedy Ohio's Provisional Ballot Crisis and, in fact, its changes would worsen the Crisis. 40,000 provisional ballots were not counted in Ohio in 2008. That is unacceptable, yet Republican legislators ignore this crisis.
- HB 194 eliminated the first several weeks and the last three days of in-person early voting, and banned Sunday after-church voting which has been used by African Americans heavily in the past.
- HB 194 instituted a literacy test by requiring that a write-in vote must be spelled exactly correctly. No other state does this. Fortunately, Republicans stopped short of requiring voters to correctly state the number of bubbles in a bar of soap before being permitted to vote, like in the Jim Crow days.

A major reason that Ohio throws out so many provisional ballots is the Wrong Precinct Provisional Ballot. These are ballots that are cast provisionally at the wrong polling location or at the wrong precinct table within the voter's correct polling location. Provisional ballots are cast by those whose names are not in the pollbook for some reason and, occasionally, because a voter lacks ID or for some other rare reason. Most Ohio voters whose names are not in the poll book have just moved to a new precinct. Such voters are permitted to update their address on Election Day by completing a change of address form and voting a provisional ballot at their new precinct. In Ohio, many counties locate multiple precincts within a single polling place.

Sixteen months ago, I introduced a bill with a solution to Ohio's Provisional Ballot Crisis. My Republican colleagues insist that some Ohioans purposely vote in the wrong precinct and should not have their votes counted if they will not follow the rules. They claim this even though election officials tell us it is extremely rare for a voter to purposely vote in the wrong place and evidence has proven that it is most often mistakes by well-meaning poll workers that lead to ballots being cast in the wrong precinct. My bill would alter the poll worker checklist that currently appears on provisional ballot envelopes so that poll worker mistakes could be more effectively captured. This would eliminate the need for costly and time-consuming litigation and forensic analysis of close elections and would stop the practice of throwing out voters' ballots over innocent mistakes by well-meaning poll workers. My bill should have pleased my Republican colleagues, because it provides a mechanism to see whether voters break the rules on purpose. Instead, my bill received one hearing and has been ignored ever since. Their solution was no solution at all and would surely have led to even more provisional ballots being cast

Meanwhile, a court case has dragged on and on in my district in Hamilton County over the disqualification of a large number of wrong precinct provisional ballots in a juvenile court judge race. It was only last week, 18 months after the voters went to the polls, that all of the voters' votes were counted and the rightful winner was declared. While Republicans at the local and state level fought the counting of all the voters' votes, Ohio's Governor seated the rightful winner's opponent on the court's bench, adding great insult to the injury already suffered by Hamilton county voters. The case is ongoing and Republicans have even pledged to keep appealing all the way to the U.S. Supreme Court in their effort to throw out the votes of my constituents.

Here are some examples of ballots that the Republicans want to throw out rather than count in my county:

- "The poll worker told her she was at the correct precinct table, and the voter cast her ballot. In fact, the voter's correct precinct table was across the room."

- "...some poll workers failed to recognize the significance of voting at the correct precinct table, did not understand how to process a voter whose name did not appear in the signature pollbook, and failed in their statutory duty to direct voters to their correct precinct."

- "many poll workers did not follow the steps for processing provisional voters as described in the Comprehensive Manual, the Quick Guide, and the relevant Directives and statutes."

- "...the first thing a provisional judge must do is verify that the voter's current address is located in the precinct. Many poll workers skipped this step entirely when processing provisional voters, assuming that another poll worker had already made that determination."

- "a poll worker's review of the voting location guide would have shown that the voter should be directed to another precinct for his or her vote to count"

- "34 [of 50 poll workers] said there were times when they did not look up the voter's address to confirm the voter was in the correct precinct."

- "many made mistakes and believed the voter was in the correct precinct when, in fact, he or she was not. These poll workers testified that they would have directed the voters to their proper precinct if they had known that the voter was in the wrong precinct.

- "many poll workers mistakenly identified the voter's precinct in situations where the voter's street was divided into different precincts based on the house number"

- "some poll workers did not notice that some rows in the Green Book pertained only to even house numbers and a different row pertained to odd house numbers on the same street."

- "In at least one instance, a poll worker appeared to be unable to distinguish between even and odd numbers"

- "Another poll worker testified that her precinct ran out of pre-labeled provisional ballot envelopes, so she borrowed pre-labeled provisional ballot envelopes from a different precinct table within the same building"

- "many poll workers did not direct voters to the correct precinct if the voter's address did not appear in the precinct street list"

- "Another poll worker, a presiding judge, testified that he let anyone vote at his precinct, even if he knew that the voter resided in another precinct."

- "many poll workers failed to warn voters that a ballot would not be counted if cast in the wrong precinct."

- "poll workers testified that they did not warn voters because they were not aware that ballots cast in the wrong precinct would not be counted."

- "Another presiding judge testified that he let anyone with a valid ID cast a provisional ballot in his precinct, knowing that "it is not supposed to be like that."[1]

The above list is probably a normal list of misunderstandings and errors that can be made by 40,000 temporary public officials who work at this particular job once every year or two. The problem is that

[1] These are excerpts from pages 39 – 45 of the U.S. District Court decision *Hunter v. Hamilton County Bd. of Elections*, 2012 U.S. Dist. LEXIS 15745 (S.D. Ohio Jan. 8, 2012). Republican elected officials continue to challenge the counting of ballots cast in the wrong precinct due to the listed poll worker errors. An appeal is pending in the U.S. 6th Circuit Court of Appeals.

there is an easy answer to how to handle these routine mistakes. Ballots that are cast in the wrong place can be remade and the votes the voter was eligible to cast can be counted. That is how Ohio Boards of Elections used to handle such problems. However, Ohio Republicans want to throw out the entire ballots of the voters who were advised by these poll workers.

These dogged efforts to keep from counting the votes of legitimately registered voters led me to ask the U.S. Attorney General this past January to send election monitors to Hamilton County to safeguard our elections and protect the rights of all voters. The Department of Justice assured me that they are watching what is happening here in Ohio.

As you examine the manipulation of state election laws and its effects on federal elections and on one of our most sacred rights, I urge you to consider additional hearings as needed across the country and ultimately to consider stronger legislation to safeguard voting rights. With the National Voter Registration Act nearing it's 20 year birthday and the Help America Vote Act nearing it's 10th birthday, it might be time to modernize these laws and to more directly outlaw the kind of voter suppression tactics that we have seen in Ohio and across the country. Voting should not be a partisan issue. We should be working together to make it more accessible for citizens to exercise their most basic American right to vote.

The following are remarks that I delivered on the floor of the Ohio House of Representatives on Tuesday, May 8, 2012. I urged my colleagues to vote "No" on Senate Bill 295 which purported to repeal House Bill 194, but in fact reenacted one of its most harmful provisions – the elimination of the three busiest days of early voting. House Bill 194 is certified for referendum on the ballot this fall.

> Thank you, Mr. Speaker. I rise to correct a couple of things that were said today regarding the election officials. I'm here to tell you that the Democrats on the Hamilton County Board of Elections do not support this bill. They do support the three days of voting prior to Election Day. I want to make it absolutely clear that the Democratic representatives on the Hamilton County Board of Elections do not support the bill as it currently stands.
>
> I think the bigger issue here is the words I heard come out of these chambers that "It doesn't matter how the people vote." That statement is the reason I got up. When I heard that, it became clear that we have a major problem, a major disconnect. Can you imagine us being here if the people's votes weren't counted? Can you imagine if you vote for the Speaker of the House and find someone else has been appointed? I think we are going into dangerous territory and moving away from the people that we are supposed to be representing. It's like we are up in a country club, completely unconcerned with what's going on at home, what's going on in communities, and what's affecting families. In Hamilton County, this already took place when voters went to vote for a juvenile judge in 2010. It doesn't matter if you're a Democrat or Republican, we are talking about voting rights for which people have died and fought.

The issue is how did HB 194 get here? The people who supported HB 194 and voted for it were the majority party. Now the same majority is saying we need to repeal portions of HB 194. HB 194 didn't even have to happen but it did. The people responded by signing their names on a ballot initiative, and thousands of people signed up. You're right that we shouldn't be interpreting what the people think and what the people want to say. And that's exactly why it's on the ballot so that the people can speak directly. What we're doing today is interpreting the voice of the people so that when they do speak, their voice isn't heard.

Mr. Speaker, I cannot tolerate that. I cannot stand here in good conscience and vote for something that says that the people do not matter. I'm not here to interpret what they say. I am here to allow over 300,000 people the right to speak. I have to support that right. There's nothing bigger in our electoral process. None of us are bigger or more important than the voters. When we believe that we are more important than the voters, we are killing the foundation of America and going down a slippery slope. We scream about the constitution but we are killing it. You ask why we are worried about losing three days. Why are you not worried about losing three days? The statistics show that these days are the highest voting days. It's the fact that more people vote on those days. After seeing thousands vote over these three days, why not allow this voting period to continue?

To fix this situation, you must first admit to failure in passing a bad bill. Secondly, we must allow the people who worked to get thousands of signatures the ability to resolve this matter. The voters went through the hard and difficult process that we so often speak about. Now that it's finally ready to be voted on, we should not undercut the process and tell them they don't matter. I would ask that those who support the Constitution, the American way, and voter's rights as the fundamental rights of the American citizen join me today in a "No" vote.

Michael Stinziano
State Representative

State Representative Michael Stinziano
Statement for the Record
U.S. Senate Judiciary Subcommittee on the Constitution,
Civil Rights and Human Rights
Hearing on Ohio's Voting Law – HB 194
May 7, 2012

Thank you Chairman Durbin, Senator Brown and members of the U.S. Senate Judiciary Subcommittee on the Constitution, Civil rights and Human Rights for holding this hearing examining Ohio's voting law, Ohio House Bill 194 (HB 194), and for giving me the opportunity to submit my comments for the record.

My name is Michael Stinziano and I proudly serve the residents and businesses of Franklinton, German Village, The Hilltop, Lockbourne, Merion Village, Obetz, Schumacher Place, The University Community, Victorian Village, Westgate, and Southern and Far South Franklin County in the Ohio General Assembly.

Before being elected to the Ohio House, I worked as Assistant to the General Counsel for Ohio Secretary of State Jennifer Brnnner and served as Director of the Franklin County Board of Elections.

As a member of the Elections Center of the National Association of Election Officials and a Certified Election/Registration Administrator, and an attorney working with election law, I believe I have a unique understanding of election administration across the country and the impact that HB 194 will have given my experience interpreting, administering and helping to craft election laws.

I have serious and ongoing concerns regarding HB 194 and the impact this law will have on election administration and voters throughout Ohio.

Although there are many concerns with this broad and sweeping proposal, my chief concern with HB 194 is the loss of control that is being stripped from local boards of election. HB 194 reduces the number of early voting days from 35 to 17, eliminates voting on the weekend before an election, removes the mandatory requirement that poll workers shall direct voters to their proper precinct and prohibits county boards of elections from mailing unsolicited absentee ballots, among other harmful changes to what had previously stood as Ohio election law.

Committees:
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77 S. High Street, Columbus, Ohio 43215-6111

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FAX: 614-719-6964
Email: district25@ohr.state.oh.us

As the former Director of the Franklin County Board of Elections, the 24th largest election jurisdiction in the country, I know firsthand just how important the aforementioned provisions are to increasing voter participation, reducing lines on Election Day and ensuring that every vote is counted in Franklin County. I also recognize what works in Franklin County may not work in other areas of the state.

All elections, like politics, are local at their core. That is why giving local boards of elections the ability to implement administrative policies that they are able to decide upon which work in the best interest for their communities should be of the utmost importance when considering election administration changes. Forcing one set of generic rules on every local board of election without considering individual community needs will inevitably result in many of the same disastrous problems Ohio saw during the 2004 election.

Inevitably, HB 194, without significant changes, will result in more litigation which will only add to the confusion of election administrators and voters. Many of the issues that have and will arise from HB 194 should have been avoided with legislation crafted through collaboration with local boards of election; voter rights advocacy groups, and the recommended changes made by Ohio Secretary of State Jon Husted. Instead, HB 194 is a "one size fits all" law crafted in the belief that all elections should be administered in a way that assumes that all counties are equal in size, scope and needs and not on proven facts, real needs, or recent Ohio history.

Thank you again for holding this hearing on this crucial issue in our state.

Please feel free to contact me if I can assist in any way.

Sincerely,

Michael Stinziano

Representative Tracy Maxwell Heard
Minority Whip

TO: U.S. Senate Judiciary Committee – Subcommittee on the Constitution, Civil Rights and Human Rights

RE: Cleveland, Ohio Field Hearing: "New State Voting Laws III: Protecting Voting Rights in the Heartland"

DATE: May 7, 2012

Thank you, Chairman Durbin and members of the subcommittee, for allowing me to provide a statement for the record. For the last three years from the House and Senate. I have played an active role in ensuring that all Americans continue to have the right to vote. I have done so by working across party lines to create a better election process that is both fair and open to all.

Three years ago I introduced HB 260, a broad elections reform bill that would have enhanced our election process through thoughtful, common-sense legislative proposals. I spent over a year in bipartisan work groups crafting the bill and working out compromises with members of all four legislative caucuses. Our work was based on the input of many stakeholders from around the state from voter protection groups, the League of Women Voters, the Boards of Elections and even including the findings of two summits held by the former Ohio Secretary of State after the 2008 election. That is how election law changes should be made. When only one side writes the election rules, the other side will never trust the end result. Bipartisanship in making election law changes is crucial.

We should be passing legislation that is bipartisan in spirit and *increases* voter participation, not passing legislation that makes it more difficult for people to exercise their God-given right as Americans.

In the United States, the right to vote, and the right to fair and open elections is under attack. Thirty-five states across the country are trying to disenfranchise Americans and limit that right. We live in the greatest and most open society in the world yet, this attack on the American peoples' right to vote makes us no better than despotic countries that use intimidation, fear-mongering, and unfair practices to limit voting and rig election outcomes.

Voting is not just a fundamental right, it is the cornerstone of our democracy. That is why I stood up in the legislature and fought hard to kill HB 194. However, to my despair, my colleagues across the aisle rammed this legislation through, ignoring the voices of the voters – their constituents.

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So just how bad is HB 194?

HB 194:

- Shortens early voting and does away with early voting opportunities in the evenings, Saturday afternoons, and Sundays
- Shortens mail-in voting from five weeks to three weeks and in person voting from five weeks to two weeks
- Creates more technical reasons not to count votes. For example, a simple mistake, like putting the current year in your birth date on an absentee ballot envelope, can be grounds to toss it out.
- Makes it harder to carry out citizen petition drives
- Increases the size of urban voting precincts resulting in longer lines to vote in many cities
- Makes it harder to correct your ballot. If one casts a provisional ballot, you would not get the 10 days you now have after the election to give additional information so your vote can be counted
- Takes away party identification from third party candidates on the ballot
- Removes the requirement that poll workers tell voters they are in the wrong precinct
- Stops the county Boards of Elections from sending absentee ballot applications to all voters

HB 194 is detrimental to our country and the fundamental assumption of one person one vote. An assumption that is only valid if every person has unobstructed access to cast their vote. It is a stark reminder that without appropriate checks and balances on abuse of power, our civil liberties can be taken away in the blink of an eye. Republicans in the Ohio General Assembly should be ashamed of themselves. They have chosen partisan politics over people, over what's right, and over the basic code of democracy that ought to govern this state and nation.

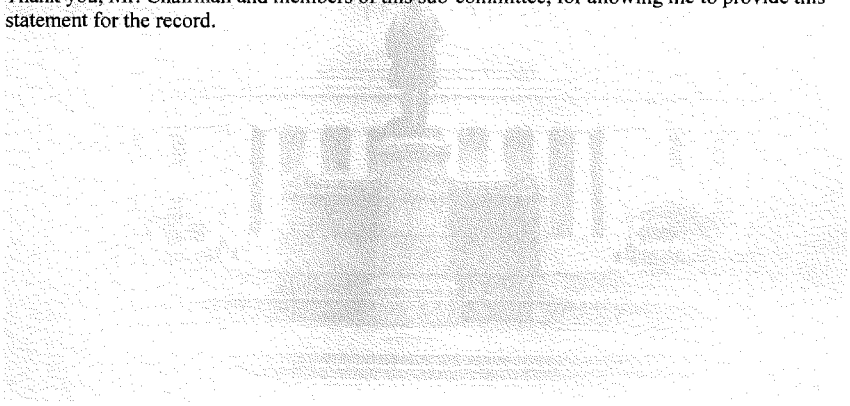
Until Republicans in Ohio and around the country understand that voting is not a privilege but instead a right, and that respecting that right is *owed* all Americans, we can expect nothing more than continued political gamesmanship. Respecting the voting rights of *all* Americans is, perhaps, the most indispensable and crucial component of the American way of life – of democracy.

Therefore, we must do all we can to ensure that we repeal the harmful voter suppression bills that have passed in various states, and stop the bills that are still under consideration in state legislatures right now.

While our partisan ideals can run deep, we must protect the right of the individual to participate in our governing and electoral process – without impediment from the government in effort to further partisan agendas. The agenda should be determined by the people and that requires their access to the process. Our country is better than fear tactics and voter intimidation and it is long past time that we stand up and end the assault on voter rights by repealing HB 194 and bills like it throughout the country.

As an African American female legislator, this fight is in my blood and a legacy I will champion as my heritage and my duty. A debt owed to those women and ancestors who earned this access to democracy and service for me. I shall not stand down. I will remain vigilant and defend against this attack on the basic principles this country was founded on: liberty, justice, democracy, and that *all* Americans are created equal and have equal access.

Thank you, Mr. Chairman and members of this sub-committee, for allowing me to provide this statement for the record.



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May 4, 2012

The Honorable Dick Durbin
United States Senator for Illinois
711 Hart Senate Office Building
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The Honorable Sherrod Brown
United States Senator for Ohio
713 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Durbin and Senator Brown:

Thank you for traveling to Cleveland to convene this special hearing of the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights to examine the troubling impact of House Bill 194 on the right to vote in Ohio. Unfortunately, this is only one of many elections bills being advanced by the majority party in the Ohio General Assembly that would make it harder to vote. It is imperative that the public be given every opportunity to weigh in on these pieces of legislation and that these crimes against democracy be exposed for what they are: attempts to suppress the vote and voice of Ohio's citizens.

Given all the challenges facing our state and nation at this critical hour, it is highly unfortunate that Statehouse Republicans have chosen to utilize single-party rule to advance an agenda that would turn back the clock on voting rights in our state. Instead of working to address the hardships facing the long-term unemployed, fixing a broken educational system, or investing in the infrastructure of tomorrow, they have decided to focus their energies on making it harder for Ohio voters to have a say in their government. This disregard for democratic principles is demonstrated through the following bills:

- **House Bill 194:** This bill would reduce in-person early voting from 35 to 10 effective days, prohibit in-person early voting the three days preceding an election, limit mail-in early voting to 21 days instead of 35, prohibit county boards of election from proactively sending absentee ballot applications to registered voters to reduce lines on election day, among other provisions.
- **Senate Bill 148:** Similar to HB 194, this piece of legislation would place restrictive limits on early in-person and mail-in voting, and mandate that voters use their full nine-digit social security number on registration forms and ballots—a disincentive for many in this age of identity theft.

- **House Bill 159:** This legislation would force all voters to have photo identification to be able to vote on election day. According to Policy Matters Ohio, over 930,000 adult Ohioans lack a photo ID.

The provisions contained in these bills would undoubtedly discourage voter participation in future elections and specifically impact students, the poor, the elderly, and communities of color. The removal of the last three days of early voting—historically the busiest days before an election—is especially egregious, as it is a common practice of for congregations of many African American churches to vote en masse on Sundays following the service.

The power vested in the General Assembly by the people of Ohio ought to be used to empower the state's citizens by making the franchise more accessible and to make it easier for their voices to be heard, yet Republicans insist on helping Jim Crow move north. Fortunately, SB 148 and HB 159 have since stalled in the General Assembly, and HB 194 will be on the ballot this November as a result of a successful referendum petition drive. Though I am disheartened by the fact that we continue to find ourselves fighting for the franchise 47 years after the passage of the Civil Rights Act, I am immensely proud of the way many in our state have worked collaboratively to defend access to the ballot box.

Moreover, the leaders of the General Assembly are now doing their utmost to force Senate Bill 295, which would repeal HB 194, through the legislature. Not only does this plainly circumvent the will of the people—over 300,000 of which signed petitions to have the opportunity to vote upon the measure this November—this action clearly conflicts with provisions in the Ohio Constitution governing the referendum process.

The right to vote is incontrovertibly fundamental to the health of a democracy, as all other rights rest upon its foundation. Any attempt to infringe upon this right by obstructing its exercise is unacceptable. Thank you for your attention to this matter. I look forward to continuing the work of protecting the franchise in partnership with the members of this committee and the entire US Senate.

All the best,

NINA TURNER
State Senator
25th District

cc: The Honorable Eric H. Kearney, Minority Leader, Ohio Senate
The Honorable Marcia Fudge, United States House of Representatives
The Honorable Dennis Kucinich, United States House of Representatives

SD25@ohiosenate.gov

Statement of Stuart I. Garson - Chair of the Cuyahoga County Democratic Party

There is no empirical evidence to suggest that Ohio's voting procedures and access to the ballot box have ever been an issue requiring such draconian measures as imposed by HB 194. The great canard by proponents of this egregious legislation is that there is a need to have uniformity in Ohio's 88 counties due to voter fraud. Since the proponents of HB 194 offer no evidence of voter fraud because none exists, the new voting regulations imposed by the legislation are nothing more than a cynical and unconstitutional effort to inhibit a certain segment of Ohio's voting population from exercising their right to participate in elections.

The question is why are these efforts being instituted now? During the election cycle of 2010 no mention of voter fraud was ever raised by any candidate. It was only after one party won the Governor's office and the majority of the General Assembly did voter fraud become an issue in the early months of 2011. As a result HB 194 was ramrodded through the General Assembly and quickly signed by the Governor in the early months of the new administration.

How HB 194 affects voting in Ohio:

1. HB 194 shortens early voting from five weeks to three and eliminates most weekend hours. It imposes a ban on in person early voting in the three days prior to an election. IMPACT: The weekend prior to an election has been a popular time for voting particularly among minorities and working people. Let me state the obvious here but regrettably it needs to be stated. Working people work and after a long day of work there are other obligations like working a second job, picking up children from day care, running errands or just going home because they are exhausted. Extended hours and particularly on weekends is an acknowledgement of the reality that working people face every day.

2. HB 194 prevents poll workers from directing voters to their proper voting precinct in the voting venue. There have been significant changes made to Ohio's voting precincts as a direct result of state redistricting. In 2012 this will be a major problem as many voters will not be aware of their new voting precincts. IMPACT: In 2008 14,335 voters had their provisional ballots rejected for voting in the wrong precinct. In 2012 this number will be significantly higher due to the changes imposed by state redistricting. It is beyond the pale of courtesy and a democratic society to require poll workers to stand mute and not to assist voters in finding their proper voting precinct within the voting venue. Further such activity is a guarantee to create more confusion at the polls.

3. HB 194 does not permit local Ohio County Boards of Election from sending postage paid absentee ballots to registered voters. IMPACT: Gains in efficiency, increased voter participation and cost savings are likely to be reversed with this provision. Cuyahoga County was able to eliminate 368 precincts in 2010, the result of

the increase in use of vote-by-mail ballots. The savings to taxpayers was considerable. The county spent an estimated $800,000 less per election and saved $1.2 million without the need to purchase new voting machines according to testimony of Cuyahoga County Board of Elections Member Sandy McNair.

All these efforts have one thing in common and that is to suppress the ability of working people, minorities, students and the elderly to vote. Ohio's voting procedures have been working extremely well under the expanded voting hours instituted since 2008. You need to look no further than Cuyahoga County, Ohio's largest voting region and county for proof of this assertion. Apparently Ohio's early voting program has not been working for a particular political point of view that sees expanded voter participation as a threat to its political agenda. Their solution is to disenfranchise the poor, the elderly, working people and others by efforts designed to intimidate, obfuscate, and impede one's access to voting. Ohio's early voting program was a solution upon which HB 194 now mandates a problem.

HB 194 is an affront to the most basic of all of our civil rights which is the right to participate in our democratic elections. Any individual or government entity that would champion and support such an ignoble exercise by placing unnecessary and unreasonable restrictions on a citizen's right to vote, is a dangerous threat to freedom and liberty everywhere. What is even more alarming is now this threat is right here in Ohio's back yard.

Respectfully submitted,

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STATEMENT OF

THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

Submitted to:
The Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights

New State Voting Laws III:

Protecting the Right to Vote in America's Heartland

On

May 7, 2012

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Lawyers' Committee for Civil Rights Under Law
Submitted before the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights
New State Voting Laws III:
Protecting the Right to Vote in America's Heartland

Introduction

The Lawyers' Committee for Civil Rights Under Law thanks United States Senator Dick Durbin (D-IL), Senator Sherrod Brown (D-OH) 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 Ohio, particularly as it relates to H.B. 194. We appreciate this opportunity to comment on this restrictive voting law that threatens the rights of voters in Ohio. We are encouraged that this field hearing is 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 (Lawyers' Committee) 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.

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The right to vote and choose our leaders is at the heart of what it means to be American and participate in our democracy. This is why it is so disturbing that some in the Ohio state legislature are actively trying to make it harder for certain segments of the citizenry to vote and have their voices heard. H.B 194 restricts early voting, eliminates the requirement that poll workers direct voters to the proper precinct, and makes it more difficult to vote via an absentee ballot. Such restrictions on the right to vote are particularly alarming for the African American community because, despite historically high voter turnout in 2008, there continues to be a significant registration and participation gap between the African American community and the electorate writ large. This persistent gap widened in the 2010 non-presidential election cycle, and closing the current gap would require registering over 1.8 million African Americans.[1] This gap has ramifications with regards to the inability to fully advocate for policies and programs to address the systemic issues that perpetuate an underclass in many urban areas across the country. Structural deficiencies within our system of elections, shortcomings in election administration, and actors who seek to manipulate the system for partisan gain continue to thwart efforts to build meaningful long-term engagement within the African-American community.

In response to these continued coordinated voter suppression strategies, and founded in the wake of the 2000 elections, the Election Protection coalition was formed to protect the rights of all voters. It has included more than 160 national, state, and local non-partisan organizations over the course of its history. The Lawyers' Committee organizes this diverse coalition to coordinate efforts and maximize the resources and expertise of the groups involved. The coalition builds broad-based support for Election Protection across the nation and engages new constituencies in the effort to ensure that all eligible voters can vote, particularly communities of color, youth, elderly, veteran groups, and people with disabilities, among many others. In 2012, the Lawyers' Committee will continue to help lead this coalition throughout the country, particularly in key states like Ohio.

[1] New Organizing Institute, "Engaging the Emerging Majority": 2011, p. 9. From http://neworganizingeducation.com/media/attachments/Emerging_Majority_Report_1.pdf

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Discriminatory Impact of Voter Suppression Laws

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 law, early voting, voter registration and other restrictions disproportionately affect people of color. Sadly, these attacks are not a coincidence. The Lawyers' Committee developed the "Map of Shame" to highlight this attack on certain voters sweeping the nation. 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 Ohio, a Presidential swing state and a key domain in the fight for control of the U.S. Senate.

Lawyers' Committee Voting Rights Advocacy and Litigation in Ohio

Although a national organization in scope, the Lawyers' Committee works in states across the country through its affiliates and with state and local organizations to support coalition efforts. As part of the Ohio Fair Elections Committee (OFEN) coalition, we are continuously supporting and monitoring legislative efforts and grassroots activity. Additionally, because of Ohio's voting rights history, the Lawyers' Committee continues to prioritize our engagement in the state, particularly as part of our Election Protection activities.

Unlike other states, Ohio has not passed a restrictive voter ID requirement; however, it has attempted to implement other equally burdensome restrictions upon voters. H.B. 194 is a draconian legislative initiative that would drastically and unnecessarily change Ohio's election

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laws. Fortunately, the bill is subject to a referendum which prevents provisions of H.B. 194 from going into effect before the November 6, 2012 election. Some of the most noteworthy changes that H.B. 194 would create are shortening the period for mail-in voting from five weeks to three, and in-person voting from five weeks to two, elimination of early voting in the evening, Saturday afternoons, and Sundays and removal of third-party candidate identification on the ballot. In addition, H.B. 194 also eliminates the requirement for poll workers to tell voters they are in the wrong precinct, prevents counties from mailing absentee applications to all voters, reduces the availability of provisional ballots and eliminates the ten day period in which voters can provide information in order to cast provisional ballots.

H.B. 194 is disturbing because evidence clearly suggests that Ohio's election administration is ripe with complications, as are many states, and in need of reform to increase accessibility to the ballot, not erect more barriers. Through Election Protection efforts, thousands of complaints have been collected in our database documenting the continuing problems and confusion with our election process. Ohio is no stranger to these problems. The recent 2008 and 2010 elections, once again highlighted ongoing difficulties in Ohio, particularly surrounding voter registration, provisional ballots, intimidation and poor poll worker training. Some examples include:

- In 2008, a voter was denied access to regular ballot and made to cast provisional ballot because a poll worker said he was not registered. However, the voter's registration online was easily found online by an Election Protection volunteer indicating he had been registered since 1997.
- In 2008, it was reported that poll workers are not telling people that they need to go to the correct precinct instead telling people to vote by provisional ballot without directing them to the correct location. Additionally, the polls had maps of the precincts that were incorrect.
- In 2008, it was reported that a Party poll monitor was perched behind poll workers, asking questions of voters, distracting and intimidating workers and making the line move slowly. Eventually, the presiding judge did acknowledge this intimidation and moved the poll monitor to a place where he would not be so troublesome or intimidating.

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- In 2010, a voter had been registered in the same place for 15 years and had not moved and had voted at usual polling place 2008. On Election Day 2010 he was told he had to vote with a provisional ballot and called to report the problem. He indicated that many provisional ballots being handed out.
- In 2010, a voter complained that quite a number of people at this polling place are being required to file provisional ballots, even if they had not moved or changed their names, and even if they had appropriate ID with them.

Again, these are just some examples of the thousands of complaints collected across Ohio and throughout the country revealing the need for real electoral reform, not restrictions like H.B. 194.

Following the passage of H.B. 194, Fair Elections Ohio, a coalition led by former Secretary of state Jennifer Brunner sponsored a referendum to repeal the bill entirely. On December 9, 2011, Secretary of State Jon Husted certified the referendum. As a result Ohio voters will have the opportunity to vote to approve or reject the legislation in the upcoming November 6, 2012 election. If there are challenges to the referenda the Ohio Supreme Court has original jurisdiction to hear challenges not to be filed later than 95 days before the election. Supporters of the law may submit explanations in favor of the law no later than 80 days before the election if they wish. In addition to legislative repeal efforts, the Lawyers' Committee will continue to support and monitor activities to return Ohio back to a state that was on the path toward enhancing voter rights, not inhibiting them.

As the Lawyers' Committee works on the legislative level, we have continued to work in the courts to pursue much needed change to Ohio's electoral system. As a result of complaints received by Election Protection in November 2004, the Lawyers' Committee, on behalf of the League of Women Voters of Ohio and individual plaintiffs, filed a lawsuit in 2005 against then Governor Bob Taft and Secretary of State J. Kenneth Blackwell. (The case concluded as *League of Women Voters of Ohio v. Brunner*.) The complaint detailed the challenges that voters faced in exercising their right to vote and casting a meaningful ballot. The lawsuit resulted in an agreement that sought to ensure that the problems of 2004 would remain in the past. However, with

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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.

Further, as part of our effort to expand the franchise and increase accessibility to the ballot, 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 Ohio[2], Missouri[3], Indiana[4], New Mexico[5] and Georgia[6]. In September 2006, the Lawyers' Committee, together with Demos, Projcct Vote, and the law firm of Dechert LLP, filed suit against officials of the State of Ohio to remedy their violation of the National Voter Registration Act (NVRA). The suit, *Harkless v. Brunner,* alleged that the Ohio Department of Job and Family Services (ODJFS) was failing to provide thousands of low-income Ohioans with the opportunity to register to vote, as required by Section 7 of the NVRA, and that the state's chief election official, the Secretary of State, had failed to address this violation.

Ohio's own voter registration statistics for the period 2002-2004 showed that voter registration applications submitted through ODJFS represented less than one percent of the persons applying for Food Stamps or seeking recertification of these benefits. Moreover, public assistance offices in ten counties did not register a single person from 2002 to 2004, and another 17 counties registered fewer than ten persons. In light of this stark discrepancies and after a favorable ruling in the Sixth Circuit by the Plaintiffs and extensive pre-trial discovery, a settlement was reached that would potentially help thousands of voters in the state.[7] The settlement agreement specifies the procedures that ODJFS shall use in distributing voter registration

[2] Harkless v. Brunner, 1:06-cv-2284 (N.D. Ohio)
[3] Acorn v. Scott, 2:08-cv-04084 (W.D.Mo.)
[4] NAACP v. Gargano, 1:09-cv-0849 (S.D. Ind.)
[5] Valdez v. Herrera, 1:09-cv-668 (D.N.M)
[6] NAACP v. Kemp, 1:11-cv-1849 (N.D.Ga.)
[7] After a similar settlement 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.

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applications to public assistance clients, and requires training and monitoring to ensure that the State remains in compliance. Of special note is that the agreement requires ODJFS to incorporate voter registration into its existing computer system used for processing public assistance applications. The agreement continues in effect through June 2013 and the changes made under the agreement represent a long-overdue recognition of the need for an active program of voter registration at public assistance offices in Ohio.

Because H.B. 194 restricts the time period during which early voting is conducted for federal and state elections it potentially restricts the number of early voting hours, particularly affecting the ability of newly registered and low-income voters, i.e. those especially impacted by recent litigation successes. This change notably eliminates early voting on the Saturday, Sunday and Monday before election Tuesday. Further, H.B. 194 would cripple in-person and mail absentee voting, one of Ohio's most important recent reforms. This would hurt Ohio's voters by eliminating even more options for all categories of voters, but particularly low-income voters and those with disabilities. These changes, among others, to Ohio's Election Code could have devastating effects for Ohio's voters and severely undermine hard fought victories in the courts. The Lawyers Committee will continue to protect voters against these new laws and policies, such as Ohio's H.B. 194, which discriminate against all minority voters and fail to protect the rights of all voters.

Recommendations for Real Reform

Modernizing Voter Registration

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

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voters did not participate because they encountered problems with their voter registration or failed to receive absentee ballots.[8]

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

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 H.B. 194 does nothing to address. Because of these systematic problems and issues, instead of limiting the ability for voters to register and vote, and even the ability of poll workers to assist voters, Ohio should be modernizing the system to provide every opportunity for Americans to register to vote, update their registration and cast meaningful ballots.

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 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.

[8] http://www.nytimes.com/2009/03/11/us/politics/11vote.html

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Combating Deceptive Practices

Another 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 and documented in the Election Protection database. 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.

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. On December 14, 2011, Senators Ben Cardin (D-MD) and Charles Schumer (D-NY) re- introduced the Deceptive Practices and Voter Intimidation Prevention Act of 2011, to create tough criminal and civil penalties for those who use voter deception tactics. The bill will allow for criminal penalties of up to $100,000 and up to five years of imprisonment for

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those convicted of deceptive campaign practices. 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 elections. 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 Act. The Lawyers' Committee strongly supports this legislation and similar state legislative efforts.

Increasing Early Voting Opportunities

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. 194 does, we urge the Ohio Legislature repeal this draconian law and instead increase opportunities for early voting as it did prior to the 2008 Presidential Election.

Full Compliance with International Treaty Obligations

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

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

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Equally, ratified by the United States in 1994, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) 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 largely been ignored through neglect. 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 ICERD, 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 Ohio 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.

Conclusion

The 2010 elections reinforced what we have known since November 2000 - our system of election administration needs reform and efforts to deny minority voters full access to the franchise persist. Those who fought to break the hold of disenfranchisement and make the gains of the civil rights movement a reality put their lives and livelihoods on the line to see that election laws would be agents for progress and not instruments of oppression. It is the fruits of those labors that are at stake today. The erection of new barriers to the ballot is exactly the opposite of what is needed to ensure the protection of all eligible voters throughout the electoral process. The well-funded and coordinated assault on the right to voter, particularly upon

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communities of color, is alarming and serves to heighten our need for vigilance on the national, state and local levels.[9]

An important aspect of our response is also to change the narrative of about the real problems with our system of elections and enact true reform that will provide an equal opportunity for all who seek to participate in our democracy. Thus, real reform needs to start with a serious discussion about modernizing our antiquated, paper-based, voter registration system, an increase in early voting opportunities, increased poll worker training and an elimination of "voter deception" tactics by individuals and groups with the intention of providing false information about elections. H.B. 194 only serves to erect more barriers to Ohio voters. Such restrictions on early voting, in-person and absentee balloting, poll worker assistance and provisional ballot 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 fully repeal H.B. 194 and instead 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.

[9] 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/

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STATEMENT OF
WADE HENDERSON, PRESIDENT & CEO
THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS

"NEW STATE VOTING LAWS III: PROTECTING VOTING RIGHTS IN THE HEARTLAND"

SENATE JUDICIARY COMMITTEE
SUBCOMMITTEE ON THE
CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

MAY 7, 2012

Chairman Durbin, Ranking Member Graham, and Members of the Subcommittee: 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 importance of ensuring access to the ballot.

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, through legislative advocacy and public education, in support of policies that further the goal of equality under law. The Leadership Conference's more than 200 national organizations represent persons of color, women, children, organized labor, persons with disabilities, seniors, the LGBT community, 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. A healthy and representative government should encourage citizens to participate in it, not construct barriers to such participation.

A National Pattern of Voter Suppression

Since the 2010 midterm elections, state legislators across the country have introduced and passed an unprecedented number of voting measures that threaten our democracy by suppressing voter participation. Recently erected barriers include photo ID requirements, shortened early voting periods, limits on poll worker assistance, proof of citizenship requirements, restrictions on same day and community-based registration, and the disenfranchisement of former felons. Many of these bills have been part of a coordinated, insidious effort to restrict voting rights across the country by the corporate sponsored American Legislative Exchange Council (ALEC) which provides model voter suppression legislation to state legislators. Recently, however, ALEC announced that it was disbanding its Public Safety and Elections Task Force, which provided model bills for voter ID requirements, after it encountered a public relations debacle when the advocacy group Color of Change announced a call to boycott the Coca-Cola Company for its

membership in ALEC. Coke quickly ended its relationship with ALEC and set off a chain of almost a dozen other high profile corporation and foundation withdrawals from ALEC. While we can only hope that ALEC will truly move away from its attempts at voter suppression, such laws continue to proliferate.

In 2011 alone, voter suppression bills were introduced in 34 states; laws passed in 14 of those states and are pending in eight. This year, legislation is pending in 32 states so far. That includes new voter ID proposals in 14 states, proposals to strengthen existing voter ID laws in ten states, and bills in nine states to amend the new voter ID laws passed in 2011. In Pennsylvania, the governor signed a new voter ID bill on March 14, and the Virginia General Assembly has sent a new voter ID bill to the governor, who is still determining whether or not to sign the bill into law.

According to the Brennan Center for Justice's "Voting Law Changes in 2012" report, the states that have passed such laws hold 171 electoral college votes, two-thirds of the 270 needed to win the presidency.[1] The Brennan Center estimates that more than five million Americans would be disenfranchised by these laws.[2]

There has been some success at stopping these voter suppression laws this year. Nebraska's legislature voted down a photo ID law, the photo ID law passed in Wisconsin has been enjoined by a lawsuit brought on behalf of several advocacy groups, and the Department of Justice has used its authority under Section 5 of the Voting Rights Act to deny preclearance to restrictive voting laws in Texas, Alabama and South Carolina. In addition, voter referendums are on the ballot in states including Minnesota and Missouri, as well as in Ohio.

Ohio's voter suppression law, HB 194, is a comprehensive and significant assault on voters. Among other things, the bill would severely limit early and absentee voting, prohibit poll workers from assisting voters, and make it more difficult for local boards of elections to promote early voting to registered voters.

Ohio voters' past experience clearly demonstrates the potential for HB 194 to drastically suppress voter participation. In the 2004 presidential election, Ohio voters suffered long waits and outright confusion, resulting in large numbers of provisional ballots being handed out (many of which were never counted) and low voter turnout.[3] In response, voters demanded more opportunities for early voting, and the Board of Elections (BOE) called for greater flexibility. In 2005, Ohio's legislature passed laws to expand early voting and increase the ability of the BOE to better meet voters' needs.[4] Shorter lines and fewer procedural complications contributed to a record turnout in the 2008 presidential election.[5] Regrettably, HB 194 would eliminate the advances that Ohio voters enjoyed in the previous presidential election. A return to a restrictive and disorganized voting process would erect barriers that would undoubtedly suppress voter participation.

Importance of Maintaining the Citizens' Veto

Fortunately, in response to these restrictive measures, the citizens of Ohio organized to ensure their access to the ballot by utilizing Ohio's state constitutional referendum process.

Twenty-one state constitutions include a citizen referendum, also referred to as a veto referendum, which allows citizens opposed to a newly enacted law to collect signatures to place the law on a ballot for voters to

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[1] Brennan Center for Justice, "Voting Law Changes in 2012"
http://www.brennancenter.org/content/resource/voting_law_changes_in_2012/
[2] *Id.*
[3] American Civil Liberties Union, "SB 148 & HB 194 Opponent Testimony," Senate Government Oversight and Reform Committee & House State Government and Elections Committee, May 10, 2011,
http://www.acluohio.org/issues/votingrights/ACLUTestimonySB148_HB194_2011_0510.pdf.
[4] *Id.*
[5] *Id.*

either reject or ratify. Ohio is one such state, and the importance of the citizen referendum is clearly illustrated by the active opposition to HB 194 in 2011.

Last year, The Leadership Conference organized a series of meetings with major national civil rights and labor groups to discuss the scourge of repressive voter and anti-labor laws sweeping the country and to strategize about how to most effectively raise awareness and educate the public on the issue. These efforts helped to galvanize grassroots support and mobilize local communities. The citizens of Ohio, led by Fair Elections Ohio and a coalition of allies from labor, civil rights, the faith community and good government groups organized to ensure their access to the ballot by utilizing the constitutional referendum process. The coalition of Ohio voter advocacy groups proved its strength and commitment when it succeeded in collecting 400,000 signatures, significantly more than the 231,000 required, to put HB 194 on the ballot for the November 2012 presidential election.

Fearing reversal by this impressive grassroots activism, similar to the embarrassment it faced last year when the anti-collective bargaining law SB 5 was repealed through a similar effort, the state legislature sought to introduced SB 295 in February of this year, a bill that would repeal HB 194. By introducing SB 295, the legislature is attempting to preempt the citizen referendum. While we support the citizen initiative, in light of the legislature's recent efforts and the current negotiations, we hope that the state legislature will work out a compromise that eliminates the harsh measures contained in HB 194. We urge the legislature to ensure that any repeal of HB 194 restore the law to pre-194 status and restore full voting rights to the citizens of Ohio. Additionally, the legislature should also take steps to repeal HB 224, a proposed bill that unjustifiably attempts to eliminate the last weekend of in-person early voting before the presidential election. This restriction will have a particularly significant impact on voters of color.[6]

Ohio State Legislature Must Fully Restore Citizens' Voting Rights

We are only months away from the 2012 presidential election. Now is not the time to introduce changes to voting laws, which will only cause confusion and problems for both voters and election administration. Implementing new laws five months before a presidential election is not good policy -- it does not provide sufficient time to adequately educate and inform voters of such changes, nor does it give election officials sufficient time to implement new procedures. Rather, any measures implemented so close to an election will only serve to confound voters, and restrict, delay or limit the electoral process—thereby suppressing voter participation.

We are encouraged that the idea of enacting a controversial photo ID law in Ohio (HB 159) has been abandoned during this current debate, More than one million Ohio residents lack an acceptable form of government-issued identification, putting them at risk of being disenfranchised. In addition, a recent study conducted by Policy Matters Ohio estimated that implementation would cost Ohio between $5 and 7 million annually.[7] Ohio should not risk violating citizens' constitutional rights or wasting taxpayers' money to solve

[6] Opponents of these restrictions have been particularly angered by the efforts to eliminate Sunday early voting, which they see as explicitly targeting African-American voters. In Ohio, William Moore, coordinator of the northwest Ohio district of the NAACP, labeled Ohio's new legislation "voter-suppression legislation," taking specific aim at the part of the law that eliminated Sunday early voting, noting that it had become a regular practice in the black community for voters to "pile into vans after church to cast their ballots." Where available, the evidence supports the contention that black (and to a lesser extent Hispanic) voters used Sunday early voting in numbers proportionally greater than other groups. For instance, in the 2008 general election in Florida, 33.2% of those who voted early on the last Sunday before election day were black and 23.6% were Hispanic, whereas blacks constituted 13.4% of all early voters statewide (for all early voting days) and Hispanics constituted 11.6%. See Weiser, Wendy R. and Lawrence Norden, "Voting Law Changes in 2012," Brennan Center for Justice, 2011, 33.

[7] Policy Matters Ohio, "Study Finds Costs for Voter ID Bill," April 2012
http://www.policymattersohio.org/study-finds-costs-for-photo-voter-id-bill

the purported problem of voter impersonation, which a study by the Brennan Center for Justice found to be less common than annual deaths attributed to lightning strikes.[8]

Conclusion

The coordinated effort to disenfranchise millions of Americans throughout the nation is reminiscent of the Jim Crow era. However, national and local voter advocacy groups have worked diligently to protect the voting rights that have been threatened by suppressive measures. The importance of the right to vote, and access to the ballot for all eligible Americans, cannot be overstated. Without the vote, citizens don't count. Voting is the right that makes it possible to defend all our other rights – a right that many have protested, fought, and died to protect. Today, citizens are fighting with all the tools at their disposal, using citizen referenda, grassroots advocacy, and coalition building to protect the right that came at a great cost to so many.

In Ohio, the tremendous grassroots support generated by local groups demonstrates the strength of voters' passion. The Leadership Conference is committed to supporting these groups by raising awareness and educating voters about the importance of the right to vote. We will continue to bring groups together at the national level to share information in order to educate and inform advocates and citizens about their rights. We look forward to working with Ohioans to ensure that their right to vote is protected.

Thank you for your unwavering leadership on this critical issue.

[8] Justin Levitt, "The Truth About Voter Fraud," The Brennan Center for Justice at New York University School of Law, 2007, 4, at http://www.truthaboutfraud.org/pdf/TruthAboutVoterFraud.pdf.

May 8, 2012

Dear U.S. Senators Brown and Durbin:

On behalf of all Ohioans, we want to thank you and U.S. Rep. Marcia Fudge for holding congressional hearings on the effort in Ohio and across this country to suppress voter turnout by constructing obstacles to access to the ballot box.

We Are Ohio is a citizen-driven, non-partisan, grass roots coalition representing hundreds of thousands of working and middle class families and we understand the importance of voting.

In 2011, out-of-touch politicians led by Gov. John Kasich passed Senate Bill 5 to deny collective bargaining rights to public employees.

Our only recourse was to ask Ohioans to veto Senate Bill 5, the unfair, unsafe attack on us all.

In the midst of our campaign, these same politicians decided to erect barricades to voting by passing House Bill 194. They claimed the new law was necessary to address voter fraud, however, they could not cite one example.

The sad truth was they wanted to improve their chances of keeping Senate Bill 5 on the law books by suppressing voter turnout.

Gov. Kasich signed Senate Bill 5 into law on March 31 and We Are Ohio was formed to fight back against this attack on workers and collective bargaining rights. Within two weeks, Senate Bill 5 supporters in the legislature introduced HB 194. They rammed it through the Ohio House and Ohio Senate in an effort to suppress the vote in November, 2011.

House Bill 194 reduces opportunities to vote in Ohio, plain and simple. It shrinks the number of early voting days and the opportunities to vote absentee. This anti-voter law closes local county boards of elections on weeknights and weekends for no purpose other than to make it more difficult for voters with busy schedules or conflicts to cast ballots.

These extended hours were put in place to acknowledge that many voters have a difficult time voting on a Tuesday due to family and work demands. The extended operating hours, the longer periods of time to vote early or by absentee, were designed to increase voter turnout.

The architects of House Bill 194 have never explained how making it more inconvenient to vote addresses fraud issues and they never will.

House Bill 194 is also sinister because it encourages and increases confusion in voting precincts. Poll workers traditionally are hired to assist voters, but this bad law states poll workers

are not required to help or even answer questions posed by voters.

When voters enter a polling place with multiple precincts, this law states they are on their own. Votes cast in the wrong precinct can be tossed out. This onerous law not only suppresses voter turnout, it also tries to reduce the vote count for people who show up on Election Day.

Well, We Are Ohio and others did not stand by idly while the same people who brought us Senate Bill 5 tried to increase their chances of winning by passing the voter suppression law. We helped with a second petition drive and successfully collected the requisite number of signatures to put House Bill 194 on hold until November, 2012.

On Nov. 8, 2011, 2.1 million Ohioans, by a 62-38 percent margin, vetoed Senate Bill 5 by voting "No" on Issue 2. It was a crushing defeat for Gov. Kasich and his anti-worker agenda.

But the political games have not stopped. Lawmakers are once again attempting to confuse Ohioans by claiming they are going to repeal House Bill 194 before voters have a chance to veto the bad law in November. The problem is it is not a true repeal of the voter suppression efforts by these politicians.

For example, the repeal as it currently stands would not restore early in-person voting on the Saturday, Sunday and Monday before Election Day.

In 2008, an estimated 93,000 Ohioans cast votes during this three-day period proving there is a need and a demand for final weekend early voting. Recently, We Are Ohio asked supporters to sign an online petition asking lawmakers to restore those three days of early voting and more than 6,000 people signed in the first 36 hours.

Democracy shouldn't be this hard.

Unfortunately, here in Ohio and in other states, extreme, out-of-touch politicians want to decrease, rather than increase, voter turnout. They want to padlock rather than unlock the voting booths to Ohioans. And they are enacting policies to generate rather than reduce confusion in the voting precincts.

The hundreds of thousands of working and middle class families that make up We Are Ohio cannot and will not take this attack on our voting rights sitting down. We Are Ohio is committed to fighting for voting rights this year and into the future.

Thank you again for coming to Ohio and listening to our concerns about protecting voting rights and access to the ballot box.

Courtney Johnson
Teacher
Ironton, OH

Doug Stern
Firefighter
Cincinnati, OH

Sandra Williams

State Representative, 11th Ohio House District

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House Committees:
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Economic and Small
Business Development

Criminal Justice

Other Committees:
Minority Development
Financing Advisory Board

May 1st, 2012

The Honorable Dick Durbin
Committee Chairman
Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Durbin;

In the 2008 election, more Americans cast their ballot than ever before. This trend is a reflection of years of electoral reform, increased political accessibility, and increased participation by members of traditionally underrepresented minority groups. Despite the unprecedented level of voter participation, voting rights are under attack nationwide.

More than thirty state legislatures across the country passed voter suppression laws under the guise of preventing voter fraud. In Ohio, House Bill 194 makes severe cuts to early and absentee voting by reducing the number of days a citizen may vote by mail from 35 to 21, reducing the number of available in-person absentee voting days to 17, and prohibits voting on the three days immediately before Election Day. The bill would also eliminate a requirement that voters be told if they are in the wrong precinct. While Senate Bill 295 repeals parts of HB 194, it neglects to restore the elimination of the last three days of early voting before Election Day; remnants of a technical amendment in HB 224.

More than 1.4 million voters took advantage of Ohio's five-week early voting period in 2008. This represents an astounding number of our state's eligible voters. Ohio has over 1.3 African Americans and 27 percent in Cuyahoga County alone. It is almost certain that minorities were among those that took advantage of the convenience of early voting to make their voices heard.

An ACLU article noted with reference to HB 194 that: "Among the voters most impacted by cuts to early voting are African-American churches that use early voting on the Sunday before Election Day to take van-loads of people to the local board of elections. Many of these people are working class Ohioans who couldn't leave their job, or find childcare to vote on Election Day."

"Take your souls to the polls" was one of many successful mechanisms to enfranchise African Americans and the public took note. An HB 194 repeal campaign was launched through Fair Elections Ohio. The Ohio Legislative Black Caucus (OLBC) in conjunction with the NAACP, the Ohio Voter Coalition and others throughout state and nationally sought to raise awareness of the voter suppression bill and the repeal effort. The OLBC hosted tele-town hall meetings, statewide town hall meetings, and a number of community outreach events to shed light on the negative consequence of this new

legislation. More than 300,000 signatures were obtained calling for a full repeal of HB 194. If HB 194 is repealed and if the petitioners remove the issue from the ballot the voters will lose their ability to vote on this egregious law.

Ohio is a battleground state and the elimination of early voting will change the electoral landscape that is unique to Ohio. Together, we must work to maintain the democracy that those before us fought so fiercely to create.

Sincerely,

Sandra Williams

SANDRA WILLIAMS
State Representative
11th House District

Cc: Senator Sherrod Brown