



**STATEMENT OF  
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**“NEW STATE VOTING LAWS: BARRIERS TO THE BALLOT?”**

**SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND HUMAN  
RIGHTS  
SENATE COMMITTEE ON THE JUDICIARY  
SEPTEMBER 8, 2011**

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 problem of voter identification laws and other barriers to the ballot.

The Leadership Conference on Civil and Human Rights is a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States. Founded in 1950 by A. Philip Randolph, Arnold Aronson, and Roy Wilkins, The Leadership Conference works in support of policies that further the goal of equality under law through legislative advocacy and public education. The Leadership Conference's more than 200 national organizations represent persons of color, women, children, organized labor, persons with disabilities, the elderly, gays and lesbians, and major religious groups.

The Leadership Conference is committed to building an America that is as good as its ideals – an America that affords everyone access to quality education, housing, health care, collective bargaining rights in the workplace, economic opportunity, and financial security. The right to vote is fundamental to the attainment and preservation of all these rights. It is essential to our democracy. Indeed, it is the language of our democracy.

Thankfully, in securing the right to vote, the days of poll taxes, literacy tests, and brutal physical intimidation are behind us. But today's efforts at disfranchisement, while more subtle, are no less pernicious.

Recently- erected barriers to the ballot like photo ID requirements, shortened early voting periods, limits on poll worker assistance, proof of citizenship requirements at the polls, restrictions on same day and third-party registration, and disenfranchisement of former felons, are nothing less than an all-out assault on the progress of the last century—indeed, on the very legacy of the civil and human rights movement.

These barriers, particularly laws requiring voters to show government-issued IDs at the polls to vote, are not the product of independent actions coincidentally occurring throughout the country. Supporters of these requirements spuriously claim IDs are a meaningful tool for fraud prevention. The truth is that they are very much part of a coordinated political effort to disenfranchise millions of Americans – particularly traditionally disenfranchised groups that saw an increased turnout in the 2008 elections – throughout the country.

### **A Euphemism for Voter Suppression**

Photo ID requirements disproportionately deny voting rights to people of color, people with disabilities, students, low-income workers, and seniors. A full 11 percent of voters currently do not have ID, and most of them are seniors, people of color, people with disabilities, lower-income individuals, and students.<sup>1</sup> In fact, about 1 out of 5 nonwhite citizens and citizens over 64 years old do not have government-issued ID.<sup>2</sup> Political architects are seizing on this fact and attempting to shape the turnout in future elections by denying these groups access to the ballot.

For those without an ID, the hurdles to obtaining one can be far greater than most people would think. One needs the time, access to transportation, access to child care or work leave, and underlying documentation to obtain an ID. This translates into time and money that lower-income citizens, people with disabilities, seniors, students, and people of color are far less likely to have. Long lines at driver services offices take away from time at work and with family. Reliable transportation may not be available. Time off of work and money for someone to watch the kids may be hard to come by.

Further, many may not have the supporting documents necessary to obtain an ID. To get an ID, one must present documents showing identity, citizenship and residence, including a certified birth certificate. In some cases, one must show a Social Security card, marriage or divorce records, or naturalization papers. This translates into more time and more money. A copy of a certified birth certificate can cost \$45, and in a bizarre Catch-22, 17 states require a photo ID to *get* a copy of the birth certificate in the first place. Naturalization papers can cost up to \$200.

In other cases, supporting documents like a birth certificate may not even exist. Those who were informally adopted at birth, born in rural settings, born outside of the United States, or whose records were destroyed in natural disasters like Hurricane Katrina, may all be disenfranchised by new ID requirements.

The experiences of Brenda Williams and her husband Joseph, physicians in the small town of Sumter, South Carolina, illustrate the challenges that new ID laws pose. *The Sun News* recently

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<sup>1</sup> Advancement Project, “What’s Wrong With This Picture? New Photo ID Proposals Part of a National Push to Turn Back the Clock on Voting Rights,” ii, <http://www.advancementproject.org/sites/default/files/publications/Picture%20ID6%20low.pdf>.

<sup>2</sup> Tova Wang, “Voter Identification Talking Points and Fact Sheet,” Demos.org, <http://www.demos.org/pubs/voterIDtalkingpoints.pdf>.

featured their story.<sup>3</sup> For the last 29 years, this couple has signed up their patients to vote. They have collectively registered about 1,000 voters. When the state's new photo ID law was enacted, they recall, their task seemed simple enough: collect enough money to pay for an individual's ID, and take that person to go get it.

In Brenda's words, however, "I was in for the education of my life."<sup>4</sup> Documentation proved to be a major barrier to obtaining IDs. Like many of their rural, lower-income or minority counterparts in the South and elsewhere, many of the Sumter residents had no birth certificates at all. This is because, before the 1970s, many women used midwives. Those midwives may have failed to file birth certificates or filed incomplete or incorrect certificates. This factor helps explain why more than half of South Carolina voters without an ID are 45 years of age or older.<sup>5</sup>

Struggles in other states illustrate the barriers that exist even when an individual has documentation and the ability to get to a Department of Motor Vehicles (DMV) office. In Wisconsin, a mother recorded her son's interaction with a DMV clerk while trying to apply for an ID to comport with the new voter ID law.<sup>6</sup> The son used a bank statement as proof of residency. The untrained clerk examined the son's bank account statement and, going beyond even Wisconsin's stringent requirements, proceeded to interrogate him about exactly how *often* he used the account and whether there was enough activity to allow him to qualify for an ID. Luckily, the clerk decided the son's Amazon purchase allowed him to "qualify" as an active user of his own bank account. A less persistent individual, however, or one with a less active bank account or no bank account at all may have been turned down by that clerk on that day and disenfranchised entirely.

Even when a state promises to waive fees for ID cards that are used for voting, problems can still occur. This is because many DMVs like Wisconsin's also require an applicant to *know* that the ID is supposed to be free before they can get it for free. That is, they must locate and check a certain box on their ID application indicating that they want the ID for voter identification purposes. Otherwise, they are automatically charged a fee.<sup>7</sup> This amounts to a poll tax.

There is also a high risk of disenfranchisement on voting day. That is, even if a voter has the required ID, he or she may still be disenfranchised by poorly trained poll workers. Poll workers have nearly full discretion to determine whether the photo on the ID actually portrays the potential voter. This allows for arbitrary and discriminatory enforcement. Dyed hair, weight gain or loss, or simple aging can all cause someone to look different than the photo on his or her ID.

More importantly, African Americans and Hispanics are *already* more likely to have their IDs more harshly scrutinized at the polls. A Harvard University study conducted after the 2006 elections

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<sup>3</sup> Dawn Hinshaw, "S.C. husband-and-wife doctor couple at center of voting-rights movement," *The Sun News*, <http://www.thesunnews.com/2011/07/18/2283993/sc-husband-and-wife-doctor-couple.html>.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> "Voter ID at the DMV," <http://www.youtube.com/watch?v=x0G01zbHGM8>.

<sup>7</sup> *Id.*

revealed that 55 percent of African Americans and 54 percent of Hispanics were asked for photo ID whether it was required or not, compared to only 47 percent of whites were asked for photo ID.<sup>8</sup>

New regressive voting laws are thus taking communities that have traditionally struggled for ballot access – and that have fought long and hard for the access they have – and setting back the clock on their progress.

### **A Solution in Search of a Problem**

Proponents of voter ID laws claim that voter fraud is commonplace, yet multiple studies have shown that the problem is essentially nonexistent. And anecdotal evidence held up by proponents has consistently been debunked.

First, the only type of voter fraud that a photo ID could address would be voter impersonation – that is, when voters show up at the polls and pretend to be someone they are not. This kind of fraud simply does not exist at a significant level anywhere in this country. “It is more likely that an individual will be struck by lightning than that he will impersonate another voter at the polls,” according to a recent report on voter fraud by the Brennan Center for Justice.<sup>9</sup> Indeed, another recent analysis of data from all fifty states and the U.S. Department of Justice found that voter impersonation – again, the only type of fraud that a photo ID can address – is exceptionally rare.<sup>10</sup> Only 24 people were convicted or plead guilty to illegal voting at the federal level between 2002 and 2005.<sup>11</sup> On the state level, there were 19 cases of voting by ineligible voters.<sup>12</sup> Of those, five were prohibited because of felony convictions, fourteen were not citizens, and five voted twice in the same election.<sup>13</sup> *None* of them were attempting to impersonate someone else.

Furthermore, voter fraud, if it existed, is already illegal and punishable by jail time and fines. Already-existing punishment is why voter impersonation is so rare. It is simply not worth the risk.

If these laws truly aimed to confirm a voter’s identity, they would allow for the many ways that a person can prove who they are. People would be able to use a broader range of documents such as expired photo IDs, utility bills, bank statements, or paychecks. States could also explore less

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<sup>8</sup> Stephen Ansolabehere, “Effects of Identification Requirements on Voting: Evidence from the Experiences of Voters on Election Day,” *PS: Political Science & Politics* (2009), 42:127-130 Cambridge University Press, The American Political Science Association 2009.

<sup>9</sup> Justin Levitt, “The Truth About Voter Fraud,” The Brennan Center for Justice at New York University School of Law, 4, at <http://www.truthaboutfraud.org/pdf/TruthAboutVoterFraud.pdf>.

<sup>10</sup> Advancement Project, “What’s Wrong With This Picture? New Photo ID Proposals Part of a National Push to Turn Back the Clock on Voting Rights,” 4, <http://www.advancementproject.org/sites/default/files/publications/Picture%20ID6%20low.pdf> (citing Lorraine C. Minnite, *The Myth of Voter Fraud*, Cornell Univ. Press (2010), showing that allegations of widespread voter impersonation fraud at the polls are not supported by empirical evidence).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

oppressive alternatives. They could better publicize existing election laws and penalties to promote awareness. They could more widely post eligibility requirements at the voting polls for both voters and poll workers. They could start an election hotline like Georgia's Stop Voter Fraud hotline. Finally, they could invest in updating voter registration rolls so that poll workers would have up-to-the-minute data on voter eligibility. These steps will likely not be taken, though, because most states know that voter fraud is not the issue.

### **A Financially Irresponsible Move**

Photo ID requirements are also an unnecessary financial burden on state and local government. Because charging for the IDs would be an outright unconstitutional poll tax, states must offer photo IDs to voters for free. This is costly. For example, in Indiana, the state spent more than \$10 million on more than 700,000 cards in just four years.<sup>14</sup> And these figures are just the beginning. Related costs like public awareness campaigns, provisional ballot preparations, and poll worker training all raise the price tag on these laws. In fact, Missouri recently estimated that it would cost the state more than \$16.9 million in its first three years to implement a photo ID law.<sup>15</sup> Local jurisdictions will have extra costs to deal with elections offices, longer lines, and more complicated procedures to navigate with the new requirements.

In a time of such financial crisis, there is simply no rationale to spend millions of dollars on a photo ID requirement. Too many people are working harder and getting paid less – if they are working at all. People are frustrated, angry, and wondering just when the pain will end. States should be investing in resources like education, housing, and job creation that will further empower and enfranchise their citizens, rather than on measures that will directly exclude them from participating in civil society. States will be spending money on enforcing ID laws that will hurt the very groups that need their protection the most. Not only is this a perverse reversal of the government's role in a democracy, it is simply bad budgeting.

### **Conclusion**

Governors who vetoed corrosive voter ID laws in their states should be commended for their leadership in squelching harmful voter ID legislation in their states. Yet many others have fallen prey to the rhetoric—or orchestrated and perpetuated the rhetoric themselves – in an attempt to disenfranchise thousands of voters across the country for their own political gain. Rhetoric like that of Nevada Governor Brian Sandoval that “the right to vote is a privilege” – a contradiction in terms if I have ever heard one – cannot be tolerated in a democracy founded on equality.<sup>16</sup> Explanations from

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<sup>14</sup> Advancement Project, “What’s Wrong With This Picture? New Photo ID Proposals Part of a National Push to Turn Back the Clock on Voting Rights,” v, <http://www.advancementproject.org/sites/default/files/publications/Picture%20ID%20low.pdf>.

<sup>15</sup> *Id.* at vi.

<sup>16</sup> “Why We Don’t Need Felony Disenfranchisement Laws Anymore,” Unfinished Business, The Leadership Conference on Civil and Human Rights, June 20, 2011, <http://www.unfinishedbusiness.org/20110620-felony-disenfranchisement/>.



New Hampshire House Speaker that college students are “foolish” and just “vote their feelings” and so should not be able to cast a ballot have no place in the 21<sup>st</sup> Century.<sup>17</sup>

It should be the duty of our policymakers to remove the barriers to participation for all citizens, not to erect new ones under the guise of political rhetoric. Removing barriers involves modernizing the voting system with automated registration, online access to records, and accessible voting machines that would allow more than **65 million eligible Americans to participate**. Investing in a uniform, simplified process for voting would eliminate unnecessary bureaucratic processes, save states money, and save election officials time. Right now state legislators are committed to doing the opposite. Requiring photo ID and imposing other restrictions on the right to vote will not preserve our democracy. It will only serve to exclude many Americans from participating in the important decisions that face us all.

Thank you for your leadership on this critical issue.

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<sup>17</sup> Peter Wallsten, “In states, parties clash over voting laws that would affect college students, others,” *The Washington Post*, March 8, 2011, <http://www.washingtonpost.com/wp-dyn/content/article/2011/03/06/AR2011030602662.html?hpid=topnews&sid=ST2011030802271>