



**STATEMENT OF  
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**“THE STATE OF THE RIGHT TO VOTE AFTER THE 2012 ELECTION”**

**SENATE COMMITTEE ON THE JUDICIARY**

**DECEMBER 19, 2012**

Chairman Leahy, Ranking Member Grassley, and Members of the Committee: I am Wade Henderson, president & CEO of The Leadership Conference on Civil and Human Rights. Thank you for the opportunity to submit testimony for the record regarding the state of the right to vote after the 2012 election.

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

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

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

**A National Pattern of Voter Suppression**

Over the past few years, there has been an assault waged against our constitutional right to vote that is nothing short of a concerted effort to decide the outcome of the 2012 elections before any ballot was cast.



These efforts were part of a coordinated, insidious effort to restrict voting rights across the country led by the corporate-sponsored American Legislative Exchange Council (ALEC), among others, which provided model voter suppression legislation to state legislators.

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 included 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 formerly incarcerated persons. The Brennan Center for Justice, in its report “Voting Law Changes in 2012,” estimated that more than five million Americans would be disenfranchised by these laws.<sup>1</sup>

In 2011 alone, voter suppression bills were introduced in 34 states and laws passed in 14 of those states. This past year, legislation was pending in 32 states, which included 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. The governors of both Pennsylvania and Virginia signed new voter ID bills passed by their states’ legislatures. As the Brennan Center for Justice noted, the states that have passed such laws account for 171 electoral-college votes, two-thirds of the 270 needed to win the presidency.<sup>2</sup>

Voting rights advocates fought these laws in all imaginable ways. Groups such as Color of Change put pressure on corporations with membership in ALEC, resulting in almost a dozen high profile corporation and foundation withdrawals from ALEC, and forcing ALEC to disband its Public Safety and Elections Task Force, which provided the model Voter ID bills.

While we can only hope that ALEC will truly move away from its attempts at voter suppression, such laws continue to proliferate and we have seen a continuation of state-sponsored suppressive voting legislation throughout the country as state legislative session begin to resume. Many advocates worked state by state, educating voters, collecting signatures, filing lawsuits, and lobbying the state legislatures to reverse this damaging trend. The League of Women Voters and the ACLU brought suit in Wisconsin challenging voter ID and registration changes,<sup>3</sup> Project Vote, Advancement Project, Fair Elections Legal Network, and Latino Justice PRLDEF filed suit in Florida challenging purges of voter rolls;<sup>4</sup> the Advancement Project along with local advocates, filed suit challenging Pennsylvania’s photo ID law;<sup>5</sup> and the Brennan Center for Justice and Common Cause Colorado challenged the Colorado Secretary of State’s effort to limit which voters got ballots mailed to them.<sup>6</sup> In Wisconsin and Ohio, as the election neared, anonymously-funded billboards appeared in predominantly low-income and minority

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<sup>1</sup> Brennan Center for Justice, “Voting Law Changes in 2012”  
[http://www.brennancenter.org/content/resource/voting\\_law\\_changes\\_in\\_2012/](http://www.brennancenter.org/content/resource/voting_law_changes_in_2012/)

<sup>2</sup> *Id.*

<sup>3</sup> [http://colorlines.com/archives/2012/03/judge\\_halts\\_wisconsins\\_toughest-in-the-nation\\_voter\\_id\\_law.html](http://colorlines.com/archives/2012/03/judge_halts_wisconsins_toughest-in-the-nation_voter_id_law.html)

<sup>4</sup> <http://www.projectvote.org/newsreleases.html?start=30>

<sup>5</sup> <http://www.citizenscall.net/public-accountability/pa-voting-rights-advocates-file-suit-over-voter-id-law-and-seek-injunction-to-block-enforcement-for-nov-election/>

<sup>6</sup> [http://www.brennancenter.org/content/resource/gessler\\_v.\\_johnson/](http://www.brennancenter.org/content/resource/gessler_v._johnson/)



neighborhoods threatening “Voter Fraud is a Felony! up to 3 ½ years & \$10,000 Fine.” National advocacy groups banded together to pressure the billboard companies to remove the signs, and then funded countervailing billboards urging citizens to vote.<sup>7</sup> In Ohio, after the state legislature passed HB 194, a law that would have severely limited early and absentee voting, prohibited poll workers from assisting voters, and made it more difficult for local boards of elections to promote early voting to registered voters, advocates organized in massive numbers to fight these restrictive measures. The citizens of Ohio, led by Fair Elections Ohio and a coalition of allies that included labor, civil rights, the faith community, and good government groups organized to protect the right to vote by utilizing the constitutional referendum process. As proof of its strength and commitment, this coalition collected 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, the state legislature introduced a new bill to repeal most of HB 194.

The Department of Justice (DOJ) also played a crucial role in ensuring that access to the vote was protected. Attorney General Eric Holder spoke several times on the importance of voter access and the Civil Rights Division has used the Voting Rights Act to protect against the implementation of discriminatory laws.

### **The Continued Need for the Voting Rights Act**

The 2012 election, for all its problems, reaffirmed the tremendous power of the vote. In spite of attempts to disenfranchise a targeted group of citizens, the American people showed up to make their voices heard. Although results are still being tabulated, the power of the Black vote, the Latino vote, the Asian American vote, the youth vote, and the vote of women in the 2012 election confirmed our hopes coming out of the 2008 election – that the profound demographic shifts taking place in our country can be harnessed to create a new coalition of voters whose voices cannot be ignored.<sup>8</sup>

But these voters had the Voting Rights Act (VRA) and the Department of Justice to thank for helping to ensure that their vote was protected. Without the protection of the VRA, especially Section 5, the threat to the right to vote would have been much greater.

Just this past year, DOJ objected to a total of 16 proposed changes under Section 5. The Justice Department used the VRA to block voter ID laws in Texas and South Carolina, to invalidate new district maps in Texas, and to prevent some jurisdictions in Florida from reducing early voting.<sup>9</sup> The value of Section 5 as the primary means to protect the right to vote of traditionally disenfranchised groups cannot be overlooked or understated. In a recent speech, Attorney General Holder reaffirmed this sentiment when he stated “the unfortunate reality is that, even today, too many citizens have reason to fear that their right to vote, their access to the ballot – and their ability to have their votes counted – is under threat. In too many places, troubling

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<sup>7</sup> <http://www.npr.org/blogs/itsallpolitics/2012/10/18/163158185/swing-state-billboards-warning-against-voter-fraud-stir-backlash>

<sup>8</sup> <http://www.gallup.com/poll/154559/us-presidential-election-center.aspx>

<sup>9</sup> <http://www.propublica.org/article/the-state-of-section-5>



divisions and disparities remain. And, despite the remarkable, once-unimaginable progress that we've seen over the last half century – indeed, over the last four years – Section 5 remains an indispensable tool for eradicating racial discrimination.”<sup>10</sup>

That is why so many agree that Section 5 remains essential to protecting the rights of millions across this country. It is so powerful that in many instances, jurisdictions withdraw their proposed changes rather than have the federal government block them. A 2007 Columbia University paper<sup>11</sup> found that of the 800 times since 1982 the Department of Justice *merely asked* for more information from states and local governments about proposed changes, more than a quarter of those jurisdictions voluntarily withdrew their proposals. This prophylactic effect is often overlooked, but is critical to the success and continued need of Section 5. Without Section 5, it is entirely possible that we would be dealing with a wave of discriminatory voting laws that would be practically impossible for voting rights advocates and litigators to handle.

In 2006, after review of an extensive record with overwhelming evidence of voting discrimination against minorities in the covered jurisdictions, Congress, almost unanimously, reauthorized Section 5 for an addition 25 years. Notably, the VRA includes a provision that allows jurisdictions to bail out if they meet certain conditions. The Attorney General noted, “since the provision took effect in 1984, bailout has been granted in 38 separate cases – with 20 of those cases in the past three years alone.”<sup>12</sup> In Virginia alone, 18 jurisdictions have successfully bailed out of Section 5 preclearance. Kings County, North Carolina and Sandy Springs, Georgia became the first non-VA jurisdictions to bailout of coverage on September 22, 2010.<sup>13</sup> The effectiveness of this provision proves that Section 5 is not only necessary, but proportionate to the challenges it seeks to address.

### **Voting Rights Reform Moving Forward**

While the VRA is a crucial tool in the arsenal of securing the right to vote, we believe there are several measures Congress can take to strengthen our democracy and improve the overall administration of elections.

Election Day 2012 showed everyone what civil and human rights advocates have known for a very long time: our electoral system is outdated, inefficient, confusing, and difficult for citizens to easily navigate. Many people stood in lines for nearly eight hours in places like Virginia, Florida, Pennsylvania and Ohio to cast their vote<sup>14</sup> and, despite legislation passed over the last few decades, such as the Help American Vote Act and the National Voter Registration Act to improve registration and voting, too many people were turned away or forced to vote

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<sup>10</sup> Attorney General Eric Holder Speaks at the John F. Kennedy Presidential Library Boston Tuesday, December 11, 2012  
<http://www.justice.gov/iso/opa/ag/speeches/2012/ag-speech-121211.html>

<sup>11</sup> <http://yalelawjournal.org/the-yale-law-journal-pocket-part/election-law/the-promise-and-pitfalls-of-the-new-voting-rights-act-%28vra%29/>

<sup>12</sup> Attorney General Eric Holder Speaks at the John F. Kennedy Presidential Library Boston Tuesday, December 11, 2012  
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<sup>13</sup> <http://www.justice.gov/opa/pr/2010/September/10-crt-1067.html>

<sup>14</sup> <http://www.usatoday.com/story/news/politics/2012/11/06/voting-problems-presidential-election/1685783/>



provisionally in many states because of clerical errors, lack of resources, and problems with poll worker training.

On election night, President Obama noted the long election lines and recognized the need to fix our system. The Voter Empowerment Act, introduced earlier this year, is a comprehensive bill which includes the components necessary to address many of the problems in the system. We believe that any comprehensive electoral reform legislation must include modernized voter registration that should be automatic, online, and portable; same-day registration; national standards for poll worker training; requirements that states equitably allocate staff, equipment, ballots and voting locations to ensure that the voting experience is as easy as possible; and early voting to avoid unreasonable election day lines. It is imperative that we bring our elections into the 21<sup>st</sup> century, in order to improve their integrity and conserve taxpayer dollars.

We urge you to work 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.

### **Conclusion**

In a speech last year on voting, the Attorney General stated, “all eligible citizens can and should be automatically registered to vote. The ability to vote is a right – it is not a privilege.”<sup>15</sup>

Though voting is the language of democracy, we have gotten into the habit of focusing on it primarily in election years when there are threats or when it is time to engage our communities in the process. Our commitment to protecting the right to vote and encouraging civic participation has to become embedded in the daily business of our work going forward, rather than driven by election cycles. Now is the time to look forward to the future of our democracy and work on how to perfect it. That endeavor starts with improving the overall voting process.

Thank you for your leadership on this critical issue.

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<sup>15</sup> <http://www.justice.gov/iso/opa/ag/speeches/2011/ag-speech-111213.html>