



**Statement of**

**Ryan P. Haygood**

**Director, Political Participation Group**

**NAACP Legal Defense & Educational Fund, Inc.**

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

**Hearing Before the Senate Committee on the Judiciary**

**Subcommittee on the Constitution,  
Civil Rights and Human Rights**

**Thursday, September 8, 2011**

Founded under the direction of Thurgood Marshall, the NAACP Legal Defense & Educational Fund, Inc. (LDF) is the nation's premiere civil rights law firm. A pioneer in the struggle to secure, protect, and advance the voting rights of African Americans, LDF has consistently been involved precedent-setting litigation relating to minority voting rights since its founding in 1940.

LDF also strongly supported the passage of the Voting Rights Act of 1965, and each of its subsequent reauthorizations, and other federal voting rights laws and core voting protections. Through extensive litigation, advocacy, public education and election monitoring efforts, LDF has developed significant expertise in combating barriers to full, equal and active political participation for African Americans. I serve as the Director of LDF's Political Participation Group.

Although the right to vote is widely recognized as a constitutionally-protected, fundamental right, barriers to political participation, such as those discussed in my testimony today, threaten to render that right meaningless. It is essential that Congress is both aware of and prepared to carefully scrutinize the precise manner in which these discriminatory voting measures undermine political participation by the most vulnerable citizens in our democracy.

On behalf of LDF, I am pleased to submit written testimony at today's hearing before the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights, and to address a worrisome trend: a wave of laws that erect barriers to the ballot unlike anything we have seen in decades. My testimony today will address two topics: (1) the discriminatory impact of proposed reductions in early voting days; and (2) nationwide statistics concerning racial disparities in access to state-issued photographic identification ("photo ID"). These are by no means the only problematic measures that have been adopted or proposed recently, but they are among the most troubling.

## **I. Reductions in Early Voting**

As we all know, many states offer their citizens the opportunity to vote in-person prior to official day of an election. This is an important means of access for individuals who might have difficulty reaching the polls on Election Day.

A number of states, however, have recently proposed reductions in the number of days during which they will offer early in-person voting. Given that early in-person voting has been of tremendous benefit to racial minority voters, proposals to reduce the period of early voting will have a discriminatory effect on minority voters, and on African-American voters in particular.

To take one example, the State of Florida has recently proposed a change to its elections code that would reduce the number of early voting days from 15 to 8, and would change the number of hours that early voting sites must operate from a mandatory 8 hours per day (other than weekends), to a discretionary range of 6 to 12 hours per day. Thus, the proposal not only eliminates the first week of early voting in Florida, but it also makes possible a reduction in total hours of early voting from a mandatory 96 hours to a minimum of only 48 hours.

Initially, for perspective, it is important to note that during the 2008 election, nearly 4.38 million votes were cast early in Florida, accounting for an estimated 57.3% of all ballots cast.<sup>1</sup> Significantly, African Americans made up a disproportionate percentage of early voters in Florida. During the 2008 general election, African Americans were 22% of voters during the first week of early in-person voting in Florida statewide, despite being only 13% of the Florida electorate.<sup>2</sup> Overall, more than half—nearly 54% of Florida’s African-American voters—voted in-person at early voting sites in 2008.<sup>3</sup>

In other words, African Americans were significantly overrepresented in the pool of early voters overall, and were much more likely than white voters to take advantage of the first week of early voting. Florida’s current proposal to reduce the number of early voting days would therefore have a disproportionate effect on African-American voters, reducing their access to the polls.

LDF’s independent analysis of early voting patterns in the five counties in Florida that are covered by Section 5 of the Voting Rights Act also confirmed that African Americans are more likely to rely on early voting. According to our analysis, African Americans constitute only 12.15% of the voting age population (VAP) in the five covered jurisdictions in Florida, but were 18.86% of early voters during the 2008 General Election:

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<sup>1</sup> See United States Election Project, *2008 Early Voting Statistics*, available at [http://elections.gmu.edu/early\\_vote\\_2008.html](http://elections.gmu.edu/early_vote_2008.html).

<sup>2</sup> See Aaron Deslatte and Vicki McClure, *Battle for Florida: Blacks Turn Out in Droves, but Few Young People Have Voted*, *Orlando Sentinel*, Oct. 30, 2008, available at [http://articles.orlandosentinel.com/2008-10-30/news/earlyvote30\\_1\\_early-voting-voters-in-florida-black-voters](http://articles.orlandosentinel.com/2008-10-30/news/earlyvote30_1_early-voting-voters-in-florida-black-voters).

<sup>3</sup> See “Voting Law’s Sunday Punch,” *Sarasota Herald-Tribune*, June 15, 2011, available at <http://www.heraldtribune.com/article/20110615/OPINION/110619722/-1/news?Title=Voting-law-s-Sunday-punch>.

**Early Voting Period in the Covered Counties - 2008 General Election**

	<b><u>Demographic Breakdown of Early Voters</u></b>			<b><u>Demographic Breakdown of County</u></b>		
	<b><u># Black Early Voters</u></b>	<b><u>Total # Early Voters</u></b>	<b><u>Black Percentage of Early Voters</u></b>	<b><u>DOJ BVAP</u></b>	<b><u>VAP</u></b>	<b><u>Percentage BVAP</u></b>
Collier	2,694	52,734	5.11%	13,475	258,873	5.21%
Hardee	198	3,271	6.05%	1,446	20,056	7.21%
Hendry	891	4,872	18.29%	3,682	28,254	13.03%
Hillsborough	37,397	146,574	25.51%	136,834	935,018	14.63%
Monroe	508	13,631	3.73%	3,004	62,089	4.84%
<b>TOTALS</b>	<b>41,688</b>	<b>221,082</b>	<b>18.86%</b>	<b>158,441</b>	<b>1,304,290</b>	<b>12.15%</b>

(Data Sources: Florida Division of Elections Early Voting Reports; Florida Voter Registration File; and U.S. Census Bureau.<sup>4</sup>)

A closer analysis of the precise days of early voting that Florida has proposed to eliminate reveals even greater disparities. Most notoriously, Florida has proposed to eliminate early voting on the last Sunday before Election Day, a day on which Black churches in Florida have traditionally conducted their election assistance efforts.

According to Professor Michael McDonald of George Mason University, African Americans comprised 32%—almost one-third of the statewide turnout—on the last Sunday before the 2008 Election.<sup>5</sup> Although not all of Florida’s counties currently do so, those counties in Florida that have the largest populations of African Americans generally

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<sup>4</sup> Early vote totals are calculated using data from the Florida Division of Election, *County Absentee and Early Voting Reports*, available at <https://doe.dos.state.fl.us/fvrscountyballotreports/FVRSAvailableFiles.aspx>. The demographic breakdown of early voters was calculated by cross-referencing that data against Florida’s voter registration file. Voting age population totals for each county are based on 2010 Census data. For purposes of calculating the Black Voting Age Population of the five covered jurisdictions in Florida (referred to as the “DOJ BVAP”), these figures include individuals categorized by the 2010 Census as “Black alone” as well as individuals categorized as “Black in combination” with other races.

<sup>5</sup> See “Voting Law’s Sunday Punch,” *Ocala.com*, June 17, 2011, available at <http://www.ocala.com/article/20110617/opinion/110619758>.

offer voting on the last Sunday prior to Election Day<sup>6</sup>—but would now be prohibited from doing so under the proposed changes to Florida’s election laws.

Moreover, as noted, Florida has proposed to eliminate the first week of early voting, but during the first week of early voting in the 2008 General Election, African Americans constituted an even higher percentage of early voters than they did among the total pool of early voters: 20.08% of all early voters in the covered counties (as compared to being only 12.15% of the voting age population in those counties):

**First Week of Early Voting Period in the Covered Counties - 2008 General Election**

	<b><u>Demographic Breakdown of Early Voters</u></b>			<b><u>Demographic Breakdown of County</u></b>		
	<b><u># Black Early Voters</u></b>	<b><u>Total # Early Voters</u></b>	<b><u>Black Percentage of Early Voters</u></b>	<b><u>DOJ BVAP</u></b>	<b><u>VAP</u></b>	<b><u>Percentage BVAP</u></b>
Collier	1,258	21,465	5.86%	13,475	258,873	5.21%
Hardee	74	1,503	4.92%	1,446	20,056	7.21%
Hendry	427	2,311	18.48%	3,682	28,254	13.03%
Hillsborough	15,175	54,781	27.70%	136,834	935,018	14.63%
Monroe	186	5,215	3.57%	3,004	62,089	4.84%
<b>TOTALS</b>	<b>17,120</b>	<b>85,275</b>	<b>20.08%</b>	<b>158,441</b>	<b>1,304,290</b>	<b>12.15%</b>

(Data Sources: Florida Division of Elections Early Voting Reports; Florida Voter Registration File; and U.S. Census Bureau.<sup>7</sup>)

As the table above shows, during the first week of early voting in the 2008 General Election, Hillsborough County featured the highest level of racial disproportionality among early voters, with African Americans constituting only 14.63% of the voting age population, but 27.70% of early voters.

It is unsurprising that, as a group, African-American voters have taken advantage of the access currently afforded by the existing early voting period in Florida. Minorities

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<sup>6</sup> See Justin Levitt, “A Devil in the Details of Florida’s Early Voting Law,” *Election Law Blog*, May 23, 2011, available at <http://electionlawblog.org/archives/019579.html>.

<sup>7</sup> See *id.*

in Florida have lower rates of vehicle ownership<sup>8</sup> and therefore benefit from the flexibility afforded by a wider range of early voting days. Recent Census data shows that 17.6% of African Americans in Florida's covered counties live in homes without a vehicle, as compared to only 4.8% of whites.<sup>9</sup> These disparities in access to transportation mean that African-American voters are more likely to encounter greater difficulties obtaining transportation on Election Day, such that an elimination of early voting days would substantially curtail existing levels of access to the polls with a resulting discriminatory impact on minority voters.

Although LDF has not conducted a close analysis of the demographics of early voters nationwide, the statistics we have seen suggest Florida's patterns are replicated elsewhere. African Americans and other minorities tend to have less access to the polls on Election Day, whether because they lack transportation or work schedule flexibility.

Moreover, African Americans reported longer lines and waiting periods to vote on Election Day in 2008, with 27% of African-American voters nationwide having to wait half an hour or more to vote, as compared to only 11% of white voters.<sup>10</sup> Given these facts, it makes sense that African Americans have been more likely to take advantage of early voting periods, and that proposals to reduce those early voting periods would disproportionately burden African-American voters.

## **II. Racial Disparities in Access to Photo ID**

Several states, such as South Carolina and Texas, have recently passed laws requiring voters to show such photo ID before casting a ballot. Given the statistics discussed below, the inevitable effect of many of these laws will be to worsen racial disparities in access to the ballot.

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<sup>8</sup> See Letter from Bill Lann Lee, Acting Assistant Attorney General, Civil Rights Division, to Robert A. Butterworth, Attorney General, State of Florida, dated Aug. 14, 1998, available at [http://www.justice.gov/crt/about/vot/sec\\_5/ltr/1\\_081498.php](http://www.justice.gov/crt/about/vot/sec_5/ltr/1_081498.php).

<sup>9</sup> This data was obtained through the Census Bureau's Public Use Microdata Sample files ("PUMS files"), which provides data broken down into "Public Use Microdata Areas," or "PUMAs."

<sup>10</sup> R. Michael Alvarez, et al., *2008 Survey of the Performance of American Elections: Final Report* 42 (March 1, 2009), available at <http://www.pewcenteronthestates.org/uploadedFiles/Final%20report20090218.pdf>.

## A. National Statistics Concerning Photo ID Access

Photo ID laws burden minority voters disproportionately for the following two reasons: (1) racial disparities in access to photo ID; and (2) uneven enforcement of photo ID laws across racial lines.

*First*, as one nationwide survey showed, 11% of United States citizens—more than 21 million individuals—lack state-issued photo ID.<sup>11</sup> While that number is troubling in itself, there are also substantial racial disparities in rates of photo ID ownership: the same survey indicated that 25% of African-American voting age citizens have no current government-issued photo ID (or a total of over 5.5 million voting-age African-American citizens), compared to only 8% of white voting-age citizens.<sup>12</sup> Numerous regional and statewide studies show similar disparities.<sup>13</sup> Another survey found that 19% of African Americans, but only 3% of whites, do not possess a driver's license.<sup>14</sup> It is unmistakably clear, given these numbers, that the burdens of photo ID laws fall disproportionately on *qualified* and otherwise eligible African-American voters.

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<sup>11</sup> See Brennan Center for Justice, *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification* (Nov. 2006), at 3, available at [http://www.brennancenter.org/page/-/d/download\\_file\\_39242.pdf](http://www.brennancenter.org/page/-/d/download_file_39242.pdf).

<sup>12</sup> See *id.* at 3. See also *Crawford v. Marion County Bd. Of Elections*, 553 U.S. 181, 221 n.25 (2008) (Souter, J., dissenting) (observing that “[s]tudies ... suggest that the burdens of an ID requirement may also fall disproportionately upon racial minorities”) (citing Spencer Overton, “Voter Identification,” 105 *Mich. L. Rev.* 631, 659 (2007)).

<sup>13</sup> In Georgia, for example, African-American registered voters are nearly twice as likely to be without driver's licenses as white registered voters. M.V. Hood, III & Charles S. Bullock, III, *Worth a Thousand Words? An Analysis of Georgia's Voter Identification Statute*, 15 (Apr. 2007), <http://www.vote.caltech.edu/VoterID/GAVoterID> (BullockHood).pdf. Similarly, a study of California, New Mexico and Washington voters found that minority voters are less likely to have various forms of identification, such as driver's licenses, birth certificates, or bank statements. Matt A. Bareto, et al., *Voter ID Requirements and the Disenfranchisements of Latino, Black and Asian Voters*, Am. Pol. Sci. Ass'n Presentation (Sept. 1, 2007), available at [http://faculty.washington.edu/mbarreto/research/Voter\\_ID\\_APSA.pdf](http://faculty.washington.edu/mbarreto/research/Voter_ID_APSA.pdf). Evidence from individual counties is also striking: in Milwaukee County, for instance, fewer than 47% of Black adults and 43% of Latino adults, compared to 85% of White adults, have a driver's license, and for young Black males, the difference was even more striking: only 22% of African American men between the ages of 18 and 24 had a driver's license. See Daniel P. Tokaji, *If It's Broke, Fix It: Improving Voting Rights Act Preclearance*, 49 *Howard L.J.* 785, 814 (2006) (citing John Pawasarat, *The Driver License Status of the Voting Age Population in Wisconsin*, available at <http://www.uwm.edu/Dept/ETI/barriers/DriversLicense.pdf>).

<sup>14</sup> See Charles Stewart III, “What More Can We Learn from SC?,” available at <http://electionupdates.caltech.edu/?p=4185> (citing Alvarez, *supra* note 10).

*Second*, empirical evidence demonstrates that the effects of these laws are not limited only to those voters lacking photo ID. Rather, due to uneven enforcement, these restrictions are felt disproportionately by African-American voters as a whole. Nationally, 70% of all African-American voters were asked to show photo identification at the polls during the 2008 Election, as opposed to only 51% of white voters.<sup>15</sup> These *eligible* African-American voters were forced to cast provisional ballots at a rate four times higher than were white voters.<sup>16</sup> Unfortunately, numerous studies have shown that provisional ballots are not always counted as frequently as regular ballots.<sup>17</sup> In other words, photo ID laws place disproportionate burdens on *all* African-American voters, not just those who lack a photo ID.

## **B. Socio-Economic Context**

There are also pronounced disparities in access to photo ID because of broad socio-economic disparities with respect to factors that correlate with photo ID ownership and access. The most common form of state-issued photo ID is a driver's license, but there are substantial racial disparities nationwide in terms of vehicle use and ownership: 19% of African Americans and 13.7% of Latinos nationally live in a household without a car (as compared to only 4.6% of whites).<sup>18</sup> It follows that African American voters would be less likely to possess photo ID than white voters.

Moreover, while African Americans tend to have less access to motor vehicles, they also tend to be more likely than whites to live at an address different from the one on their licenses. According to the most recent Voting and Registration Supplement released by the Census Bureau, 50% of African-American respondents stated that they had lived at their current address for four years or fewer, as compared with only 38% of white respondents, which helps explain why, even among those citizens who have driver's licenses, African Americans are less likely to have licenses with their current address on it (only 68% of African Americans, as compared to 87% of whites).<sup>19</sup>

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<sup>15</sup> See Alvarez, *et al.*, *supra* note 10, at 43; Charles Stewart III, *et al.*, CalTech/MIT Voting Technology Project, Working Paper #82, *Racial Differences in Election Administration* 29 (July 2009), available at <http://www.vote.caltech.edu/drupal/node/278>.

<sup>16</sup> See Stewart, *supra* note 15, at 31.

<sup>17</sup> See Pew Center for the States, *Provisional Ballots: An Imperfect Solution* (July 2009) (noting that 40% of provisional ballots were not counted during the 2008 election, and the rates and reasons for rejection of provisional ballots vary widely among and within states), available at [http://www.pewcenteronthestates.org/uploadedFiles/ELEC\\_ProvBallot\\_Brief\\_0709.pdf](http://www.pewcenteronthestates.org/uploadedFiles/ELEC_ProvBallot_Brief_0709.pdf).

<sup>18</sup> See Alan Berube, The Brookings Institution, *et al.*, *Socioeconomic Differences in Household Automobile Ownership Rates: Implications for Evacuation Policy* 7 (June 2006), available at [gsppi.berkeley.edu/faculty/sraphael/berubedeakenraphael.pdf](http://gsppi.berkeley.edu/faculty/sraphael/berubedeakenraphael.pdf).

<sup>19</sup> See Stewart, *supra* note 15 (citing Alvarez, *et al.*, *supra* note 10).

More broadly, there are meaningful racial disparities nationwide with respect to the poverty rate: as of 2009, 25.8% of African Americans and 25.3% of Latinos lived in poverty, compared to only 9.4% of non-Hispanic whites.<sup>20</sup> Given that citizens earning less than \$35,000 a year are more than twice as likely as others to lack a current state-issued photo ID card,<sup>21</sup> photo ID laws impose an undue burden on the right to vote for many poor people, and have a racially disproportionate impact.

This is equally true regardless of whether photo ID is offered free of charge. For instance, in Texas, although photo ID is purportedly offered free to those who cannot afford it, in order to obtain a photo ID card from the Texas Department of Motor Vehicles, a person must present another form of government-issued identification, such as a passport or a combination of documents, such as a birth certificate *and* a certified copy of court order indicating the applicant's name and date of birth.<sup>22</sup> These supporting documents are *not* offered free of charge. Obtaining a birth certificate in Texas, for example, costs \$22,<sup>23</sup> and the underlying costs are similar in other states.<sup>24</sup> Although some photo ID laws contain exemptions—for instance, for individuals who have a religious objection to being photographed—most lack adequate safeguards for those individuals who simply cannot afford an ID card.

Additionally, the direct cost of obtaining a photo ID is exacerbated by the additional transportation expenses of traveling to an office of the state Department of Motor Vehicles. Given the substantial racial disparities in vehicle access cited above, the burden of traveling to a motor vehicle office will likely be felt disproportionately by minority voters. This is not to even discuss the greater rigidity in working schedules for many minority voters.

For many individuals, these underlying costs are, as a practical matter, prohibitive. Although these amounts may not seem substantial to some, poll taxes of as little \$1.50

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<sup>20</sup> See National Poverty Center, The University of Michigan, *Poverty in the United States*, available at <http://www.npc.umich.edu/poverty/#4>.

<sup>21</sup> See Brennan Center for Justice, *supra* note 11, at 3.

<sup>22</sup> See Texas Department of Public Safety, *Identification Requirements for a Texas Driver License or Identification Card*, available at <http://www.txdps.state.tx.us/DriverLicense/identificationrequirements.htm>.

<sup>23</sup> See Texas Department of State Health Services, *Certified Copy of a Birth Certificate*, available at [http://www.dshs.state.tx.us/vs/reqproc/certified\\_copy.shtm](http://www.dshs.state.tx.us/vs/reqproc/certified_copy.shtm).

<sup>24</sup> See Julien Kern, “As Applied Constitutional Challenges, Class Actions, and Other Strategies: Potential Solutions to Challenging Voter Identification Laws After *Crawford v. Marion County Bd. of Election*,” 42 *Loyola of L.A. L. Rev.* 629, 636 (2009) (noting fees of up to \$28).

have been deemed an unconstitutional burden on the right to vote.<sup>25</sup> For impoverished individuals—who are disproportionately people of color—the \$15 that they must spend “in order to obtain their birth certificates and vote is \$15 that they must subtract from their meager ability to feed, shelter and clothe their families.”<sup>26</sup>

No one should have to choose between feeding one’s family and exercising the most fundamental right of our democracy.

Moreover, the oldest and youngest members of the African-American community will be disproportionately burdened by these laws. At one end of the spectrum, photo ID laws have a uniquely burdensome impact on elderly African-American voters, many of whom, because they were born when *de jure* segregation prevented equal access to hospitals,<sup>27</sup> lack the requisite birth certificates necessary to obtain a government-issued photo ID.<sup>28</sup> As a state-issued photo ID generally cannot be obtained without a birth certificate, many elderly African Americans are, by virtue of history and their race, entirely incapable of satisfying the requirements of these laws.

In South Carolina—which recently submitted a proposed photo ID law for review under Section 5 of the Voting Rights Act—one local news station recently carried a story of one such individual: 85 year-old Larrie Butler, an African-American man who was born without a birth certificate, and cannot obtain a state-issued photo ID card.<sup>29</sup> Even where the burden of cost can be overcome, obtaining accurate birth certificates still presents a significant hurdle because of inaccurate and incomplete records. This is particularly in rural areas, and for individuals born before the 1970s.<sup>30</sup> Given the history of segregation in many states, Mr. Butler is likely to be one of thousands of examples of

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<sup>25</sup> See *Harper v. Va. Bd. of Elections*, 383 U.S. 663, 670 (1966) (striking down poll tax of \$1.50, and holding that “[w]ealth or fee-paying ... has no relation to voting qualifications; the right to vote is too precious, too fundamental to be so burdened”).

<sup>26</sup> *Weinschenk v. State*, 203 S.W.2d 201, 214 (Mo. 2006).

<sup>27</sup> See David Barton Smith, *Health Care Divided: Race and Healing a Nation* 14 (1999).

<sup>28</sup> See Sam Shapiro, “Development of Birth Registration and Birth Statistics in the United States,” 4 *Population Studies* 86, 99 (1950); Kevin Outterson, “Tragedy and Remedy: Reparations for Disparities in Black Health,” 9 *DePaul J. Health Care L.* 735 (2005).

<sup>29</sup> See Steven Dial, “DOJ Requests More Information on SC’s Voter ID Law,” WLTX.com, Columbia, SC, Aug. 29, 2011, available at <http://www.wltx.com/news/article/149280/2/DOJ-Requests-More-Information-on-SCs-Voter-ID-Law>.

<sup>30</sup> See Dawn Hinshaw, “No Photo ID? These Doctors Are on the Case,” *The State*, July 18, 2011, available at <http://www.thestate.com/2011/07/18/1901858/no-photo-id-these-doctors-are.html> (describing rural doctors in South Carolina who have encountered thousands of patients without state-issued photo ID).

elderly African Americans who will be unable to exercise the right to vote because he literally cannot comply with the requirements of a proposed photo ID law.

At the other end of the spectrum, participation of the newest generation of African American voters is also threatened by the proposed photo ID laws. For instance, the State of Texas has proposed a photo ID law pursuant to which students will not be permitted to rely on their student identification cards—even those identification cards issued by the State itself—in order to verify their identities at the polls.<sup>31</sup>

One recent investigation conducted by the League of Young Voters indicated that Texas’s proposed photo ID law will effectively disfranchise hundreds of students at Texas’s historically Black colleges and universities, where many students do not have and cannot obtain a Texas state-issued identification card other than a student ID card. Many of these students do not have underlying documentation necessary to obtain a state-issued photo ID, cannot afford to pay for those underlying documents, come from out of state and cannot locate those underlying documents, or simply lack transportation to obtain a state-issued photo ID.

For example, in explaining the hardship that the proposed photo ID law would impose on them, students at the historically Black college Prairie View A&M students told investigators:

- “[M]y hometown is 500 miles away and it will be nearly impossible to get my birth certificate in a timely manner.”
- “I am an out of state student and do not have the funds to get my birth certificate.”
- “I will not [be able to] vote because I do not have enough money to get my birth certificate.”
- “[H]aving my birth certificate sent here would be too long and [would cost] too much money.... I am now a freshman at Prairie View without the ability to drive, [and] I am not able to get the items that I need” to obtain a state-issued photo ID card.
- “I don’t have money to get another birth certificate because I am a college student...”
- “I do not have my birth certificate with me at the university.”

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<sup>31</sup> See *Texas SB 14* § 14 (listing acceptable forms of identification).

- “I don’t have a car ... and my birth certificate is in Washington State.”
- “I do not have transportation [to travel] to the voter registration building...”
- “This law would prevent me from voting because I don’t have a car...”
- “It would be a burden to me to have to obtain the documents necessary.... I do not own a car...”

Dozens of students at Prairie View A&M indicated that they would be effectively prohibited from voting by the proposed photo ID law. In all, thousands of students across the state at Texas’s historically Black colleges and universities—a new generation of citizens who are eligible to vote or who are already registered to vote—would be disfranchised by Texas’s proposed photo ID law. Unfortunately, for many young African Americans, the discouraging burdens of these laws will shape their very first experiences with voting and political participation; the effects of these laws on young voters may be long-lasting.

### C. The Absence of a Rationale for Photo ID Laws

Although I do not in this testimony today purport to address in detail the impoverished rationale for photo ID laws—namely, to prevent in-person electoral fraud—it is important to underscore that there appears to be no record of voter fraud with respect to in-person voting that would justify the photo ID laws that have recently been passed or proposed. As Royal Masset, the former Political Director of the Republican Party of Texas has stated in reference to rumors of in-person voter fraud in Texas: “It’s a lie. It’s not true. It does not exist.”<sup>32</sup>

To be sure, there have been limited, isolated instances of voter fraud that can and should be addressed—but these cases have almost always involved absentee ballots, which photo ID laws do not implicate in any way.<sup>33</sup> By contrast, there have been a grand

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<sup>32</sup> R.G. Ratcliffe, “Voter fraud in Texas: ‘It’s a lie.’”, *Houston Chron.*, May 17, 2007, available at <http://blog.chron.com/texaspolitics/2007/05/voter-fraud-in-texas-its-a-lie/>

<sup>33</sup> See, e.g., Tom Glaze, *Waiting for the Cemetery Vote: The Fight to Stop Election Fraud in Arkansas* (2011); Bob Gardinier, “Democrat Admits Role in Voter Fraud Case,” *Albany Times-Union*, Aug. 26, 2011, available at <http://www.timesunion.com/local/article/Democrat-admits-role-in-voter-fraud-case-2142541.php>; Sid Salter, “Absentee Ballot Fraud More a Threat than Voter ID,” *Hattiesburg American*, Aug. 24, 2011, available at <http://www.hattiesburgamerican.com/article/20110825/OPINION/108250307/Absentee-ballot-fraud-more-threat-than-voter-ID>; Meg Coker, “Sowers Guilty on Ten Voter Fraud Counts,” *Tunica Times*, April 21, 2011, available at

total of 9 suspected fraudulent votes that could have been prevented by restrictive photo ID laws since 2000—a period in which over 400 million votes were cast in general elections alone.<sup>34</sup> Against this alleged of 0.000002% fraud rate, photo ID laws that would prevent thousands of eligible citizens—and perhaps more—make little sense.

These statistics are troubling. In balancing the virtually non-existent risk of in-person vote fraud against the measurable and identifiable record of actual disfranchisement of qualified voters, we should err on the side of permitting qualified voters access to the polls.<sup>35</sup>

### Conclusion

As the statistics and examples above demonstrate, many of the recently proposed and enacted voting measures will present significant hurdles for qualified voters who seek to exercise their right to vote. Disproportionately, these disfranchised Americans will be people of color. LDF urges that these efforts be carefully scrutinized in order to determine whether the costs and burdens imposed on the rights of voters far outweigh any conjectural benefits. Moreover, LDF urges Congress to prioritize those efforts that are aimed at ensuring equal and full participation for all voters. The future of American democracy remains tied to our ability to address the persisting discriminatory barriers that exclude scores of citizens from being able to register and cast their ballots for their candidates of choice.

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[http://www.tunicatimes.com/index.php?option=com\\_content&view=article&id=1176:sowers-guilty-on-ten-voter-fraud-counts&catid=2:paid&Itemid=26](http://www.tunicatimes.com/index.php?option=com_content&view=article&id=1176:sowers-guilty-on-ten-voter-fraud-counts&catid=2:paid&Itemid=26).

<sup>34</sup> Justin Levitt, “The Real Victims of Election ID Laws,” *Politico.com*, June 14, 2011, available at <http://www.politico.com/news/stories/0611/56939.html>.

<sup>35</sup> See *Purcell v. Gonzalez*, 126 S. Ct. 5, 7 (2006) (*per curiam*) (“[T]he possibility that qualified voters might be turned away from the polls would caution any district judge to give careful consideration to the plaintiffs’ challenges”).