

National Office
99 Hudson Street, Suite 1600
New York, NY 10013

T 212.965.2200
F 212.226.7592

www.naacpldf.org



Washington, D.C. Office
1444 Eye Street, NW, 10th Floor
Washington, DC 20005

T 202.682.1300
F 202.682.1312

**Testimony of Kristen Clarke
Co-Director, Political Participation Group
NAACP Legal Defense and Educational Fund, Inc.**

U.S. Senate Committee on Rules and Administration

**In Person Voter Fraud:
Myth and Trigger for Disenfranchisement**

March 12, 2008

Hearing on Vote Fraud and Voter Disenfranchisement

Introduction

As the nation's oldest civil rights law firm, the NAACP Legal Defense and Educational Fund (LDF) has served as legal counsel for African Americans in numerous federal voting rights cases over the course of the last several decades. Through a combination of litigation, advocacy and public education efforts, LDF has developed significant expertise regarding barriers to political participation. I currently serve as the Co-Director of LDF's Political Participation Group. Prior to joining LDF, I served for several years in the Civil Rights Division of the U.S. Department of Justice, handling matters arising under the Voting Rights Act of 1965 and other federal voting rights statutes. On behalf of LDF, I submit the following written testimony sharing our observations and concerns regarding the emergence of new laws and policies that aim to combat vote fraud at the expense of voter access to the polls.

In recent years, LDF has conducted significant litigation and advocacy around the resurgence of restrictive barriers to political participation, including purge programs and mandatory voter identification requirements. LDF is pleased that the Senate Rules Committee is conducting a hearing to study whether the myth of in-person vote fraud is leading to widespread voter disenfranchisement. We have seen a number of states adopt or attempt to adopt mandatory voter identification requirements, claiming that such laws are necessary to prevent vote fraud. However, in our view, these restrictive laws have been adopted despite a lack of empirical evidence demonstrating that such fraud exists or poses a substantial threat to the integrity of our political process. In addition, a number of states have adopted purge programs or undertaken efforts to remove presumably ineligible voters from their registration rolls. Here, too, state officials often claim that such programs are necessary to prevent impersonation fraud or other election-related offenses. These efforts to combat voter fraud not only disenfranchise eligible voters, but also have a substantial chilling effect that may discourage legitimate voters from participating in the political process.

Although the right to vote is widely recognized as a constitutionally-protected right,¹ barriers that make it more difficult for citizens to access the ballot box on Election Day can render that right meaningless. Although we recognize that states and localities retain significant discretion over the structure of their election systems, we urge Congress to carefully scrutinize efforts that may make it more difficult for eligible citizens to participate in federal elections.

¹ See *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886); see also *Williams v. Rhodes*, 393 U.S. 23, 31 (1968); *Reynolds v. Sims*, 377 U.S. 533, 562 (1964).

The Threat Posed by Mandatory Voter Identification Requirements

In recent years, mandatory, government-issued voter identification requirements have emerged as a legislative response to purported voter fraud. Proponents of restrictive voter identification requirements often argue that such laws are necessary to combat voter fraud without proffering substantial evidence that such fraud exists. In particular, proponents claim that such laws will help prevent Election-Day impersonation fraud at the polls. However, in the absence of any evidence that in-person voter fraud takes place on any significant level, voter identification requirements appear to be a remedy in search of a problem. Moreover, voter identification requirements bear a striking resemblance to other facially-neutral tools that were initially defended as good-government or anti-fraud measures but ultimately invalidated because of the burden imposed on the effective exercise of the franchise.² Finally, voter identification requirements can also be viewed as analogous to “reregistration” or “reidentification” measures adopted by those jurisdictions seeking to fence out certain groups of voters from the political process in order to reshape the electorate.

LDF has recently focused its efforts on the adoption of new voter identification requirements or changes to existing requirements in the States of Indiana, Georgia, Louisiana and Michigan. Indiana’s mandatory photo identification law that is now pending for review by the U.S. Supreme Court is one of the most restrictive in the nation. While “the benefits of voting to the individual” were deemed “elusive” by Judge Richard Posner in the Seventh Circuit’s opinion on the challenge to that law, *Crawford v. Marion County Bd. of Elections*, 472 F.3d 949, 951 (7th Cir. 2007), LDF has long viewed, and the Constitution affirms, that “the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civic and political rights.”³ Significant numbers of Americans do not possess the form of government-issued photo identification required under Indiana’s law. As a result, laws like Indiana’s photo identification requirement unfairly burden the rights of those who are least likely to possess government-issued identification: racial minorities and poor persons.⁴

LDF’s concerns regarding the burden imposed by these laws are supported by a 2007 study presented to the United States Election Assistance Commission (EAC), which found a correlation between identification requirements and reduced voter turnout in the 2004 presidential election. According to the study, prepared by scholars at Rutgers and Ohio State Universities, Latinos were 10 percent less likely to vote, Asians 8.5 percent

² Harper v. Va. Bd. of Elections, 383 U.S. 663 (1966) (invalidating poll taxes); Voting Rights Act of 1965, 42 U.S.C. § 1973aa (1994) (suspending use of literacy tests nationwide); Guinn v. United States, 238 U.S. 347 (1915) (striking down a “grandfather” clause in a state constitution exempting from the requirement that voters be literate any person or the descendants of any person who had been entitled to vote before January 1, 1866).

³ Reynolds v. Sims, 377 U.S. 533, 562 (1964).

⁴ See Brief of the NAACP Legal Defense and Educational Fund, Inc. as *Amicus Curiae* in Support of Petitioners at 4-10, *Crawford v. Marion County Election Board*, Nos. 07-21, 07-25 (U.S. Nov. 13, 2007).

less likely to vote and African Americans 5.7 percent less likely to vote in states requiring documentation establishing their identity at the polls.⁵

In addition, the 2001 Commission on Federal Election Reform found that six to ten percent of Americans of voting age do not have any state-issued identification, and that these Americans are disproportionately poor and urban.⁶ Closer analysis of these numbers confirms that the burdens associated with identification requirements fall more heavily upon African Americans and other racial minorities.⁷ A recent national survey sponsored by the Brennan Center for Justice at NYU School of Law found that 25 percent of African-American voting age citizens do not possess current government-issued photo identification, compared to 8 percent of white voting-age citizens.⁸ This conclusion accords with the results of the U.S. Department of Transportation's 2001 National Household Travel Survey, which revealed that only 57 percent of African Americans are drivers, as compared to 73 percent of whites.⁹

Overall, mandatory photo identification laws place considerable burdens on African Americans, other racial minorities, the elderly, persons with disabilities, rural and low-income voters – disproportionate numbers of these voters do not have photo identification or the means to acquire one. Claims that these laws are necessary to combat fraud in the absence of any empirical or documented evidence that such fraud exists are not sufficient to justify the burden imposed on the Constitutionally-guaranteed right to vote. Similarly, the claims of proponents who argue that the lack of evidence of fraud is attributable to the difficulties associated with detecting these crimes when they are committed also fail. These unsupported and conjectural claims should lead courts and

⁵ See Timothy Vercellotti & David Anderson, *Protecting the Franchise, or Restricting It? The Effects of Voter Identification Requirements on Turnout*, presented at the annual meeting of the American Political Science Association, Marriott, Loews Philadelphia, and the Pennsylvania Convention Center, Philadelphia, PA (Aug 31, 2006) (available at http://www.eagleton.rutgers.edu/News-Research/VoterID_Turnout.pdf).

⁶ See John Mark Hansen, Coordinator, Task Force on the Federal Election System, *Report*, at VI-4 in *Task Force Reports to Accompany the Report of the National Commission on Election Reform* (Aug. 2001); National Commission on Election Reform, *To Assure Pride and Confidence – Task Force Reports to Accompany the Report of the National Commission on Election Reform*, Chapter I – Verification of Identity, at 4 (2001), available at http://millercenter.virginia.edu/programs/natl_commissions/commission_final_report/task_force_report/complete.pdf.

⁷ According to a Census 2000 Special Report, of the almost 8 million people who lived in areas of concentrated poverty (more than 40% poor) in 1999, 24.1 % were non-Hispanic White, 39.9% were African-American, and 28.9% were Hispanic. This, despite the fact that non-Hispanic Whites make up over 75% of the general population, African-Americans comprise just over 12%, and Hispanics are also just over 12% of the population. ALEMAYEHU BISHAW, U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, *CENSUS 2000 SPECIAL REPORTS: AREAS WITH CONCENTRATED POVERTY: 1999* (Jul. 2005) (available at <http://www.census.gov/prod/2005pubs/censr-16.pdf>)

⁸ BRENNAN CENTER FOR JUSTICE, *CITIZENS WITHOUT PROOF: A SURVEY OF AMERICANS' POSSESSION OF DOCUMENTARY PROOF OF CITIZENSHIP AND PHOTO IDENTIFICATION* (Nov. 2006) (available at http://brennancenter.org/page/-/d/download_file_39242.pdf)

⁹ See FEDERAL HIGHWAY ADMINISTRATION, U.S. DEP'T OF TRANSPORTATION, *NATIONAL HOUSEHOLD TRAVEL SURVEY* (2001)

Congress to look with tremendous skepticism upon the recent resurgence of voter identification requirements and other purported anti-fraud measures.

Purge Programs

In addition to the recent emergence of mandatory voter identification requirements, programs that purport to remove ineligible persons from registration rolls have also emerged as a significant threat to voter access. Officials often claim that such programs are necessary to preserve the integrity of the registration rolls and to prevent impersonation fraud despite the lack of evidence that such fraud exists.

One example of a purge program that purports to remove presumably ineligible persons from the rolls concerns a recently adopted voter registration cancellation program in Louisiana that targets persons identified as dual-registrants – persons registered to vote in more than one state. Under Louisiana’s program, state officials have conducted a comparison of the state’s registration rolls with the rolls of several other states and cities, including Florida, Georgia, Tennessee and Texas. Individuals bearing the same first name, last name and date of birth are presumed to be a “match” for purposes of determining those targeted for removal under the program.

Louisiana’s voter registration cancellation program establishes onerous and burdensome requirements that must be satisfied by voters who are presumed to be dual-registrants. Voters targeted for removal must respond to the state’s initial notice within a short 30-day time frame; must obtain a copy of a certified cancellation statement from an out-of-state Registrar; and must bear costs associated with transmitting the certified notice to a Louisiana Registrar by mail, fax or in-person. In addition, those voters who receive a second notice are faced with the burdensome task of appearing in-person at their Registrar’s Office to maintain their status on the state’s registration rolls.

In our careful examination of Louisiana’s program, we have determined that the reliability of the database matching methodology used to identify presumed dual-registrants is both error-prone and flawed. First, frequent name changes and variations render numerical matching a difficult process. Second, such matching programs are also vulnerable to computer glitches, technological limitations, typographical and data entry errors, or other problems that lie beyond the control of the voter. Third, mathematical studies indicate certain first names are more common for persons born in certain decades, thus increasing the likelihood that voters born during a certain time period in Louisiana may appear as a false match with other voters born during that same time period in other states. Finally, Louisiana’s purge program includes no “fail-safe” measures that would secure the voting rights of persons improperly removed from the rolls as a result of a false match.

Purge programs, such as that implemented in the State of Louisiana, often purport to preserve the integrity of registration lists at the expense of the rights of legitimate and eligible voters. Moreover, such programs also appear to conflict with long-standing aspects of the National Voter Registration Act (NVRA) which include certain safeguards

that must be followed to ensure that eligible voters are not prematurely purged from the rolls. Indeed, state programs concerning the purging of voters have been and continue to be limited by the NVRA which imposes limits on a state's ability to remove names from the voting rolls. In particular, the NVRA states that:

(1) A State shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence unless the registrant--

(A) confirms in writing that the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered; or

(B)(i) has failed to respond to a notice described in paragraph (2); and

(ii) has not voted or appeared to vote (and, if necessary, correct the registrar's record of the registrant's address) in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice.

42 USC §1973gg-10. Efforts that seek to remove ostensibly ineligible persons from the rolls often fail to contain adequate “fail-safe” measures or safeguards for voters who may be improperly targeted and removed from voter registration lists. It is important that state efforts that purport to preserve ballot integrity and combat vote fraud do not undermine the core requirements of the NVRA which contemplates protection for the rights of voters through at least two federal election cycles. The absence of any safeguards further exacerbates the burden placed on the rights of legitimate voters who are improperly targeted under these anti-fraud schemes.

Conclusion

Mandatory voter identification requirements and purge programs, the most common laws proposed by local and state officials seeking to combat alleged vote fraud, further compound existing levels of voting discrimination faced by African American and other racial minorities seeking to participate in the political process. Indeed, voter identification requirements exacerbate problems faced by minority voters in those jurisdictions where voter intimidation, deceptive practices, aggressive Election Day challenging, and other similar problems prevail. Purge programs, often reliant upon flawed and error-prone methodologies, also interact with other forms of voting discrimination to discourage and deter participation among minority voters.

Efforts that aim to combat alleged vote fraud or promote ballot integrity are often unsupported by any meaningful or empirical evidence that such fraud exists. Thus, 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.