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October 31, 2011

The Honorable Lamar Smith
Chairman
Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Smith:

We write to request a hearing to address the wave of recent changes in state voting laws that make it more difficult for Americans to cast a ballot. A recent report released by the Brennan Center for Justice entitled "Voting Law Changes in 2012" has concluded that more than 5 million voters could be impacted by the recently enacted legislation.[1] The provisions that present the most serious concerns include:

- Provisions that limit voting by requiring the presentation of photo identification.[2]
- Laws that exclude the most common forms of identification (e.g., student IDs and Social Security cards), yet offer no alternate identification procedures for eligible voters.[3]
- Changes requiring proof of citizenship as a condition for voter registration.[4]

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[1] Wendy R. Weiser & Lawrence Norden, Brennan Center for Justice, Voting Law Changes in 2012, *available at* http://www.brennancenter.org/content/resource/voting_law_changes_in_2012. [hereinafter Brennan Center Report].

[2] *See* Ala. Code § 17-9-30 (2011); H.B. 2067, 2011 Leg., Reg. Sess. (Kan. 2011) (amending and/or repealing multiple sections of existing code); R.I. Gen. Laws § 17-19-24 (2010) *amended by* P.L. 2011 ch. 201, § 1; H. 3003, 119th Gen. Assemb., Reg. Sess. (S.C. 2011) (amending multiple sections of existing code); Tenn. Code Ann. § 2-7-101-42 *amended by* S.B. 16, 107th Gen. Assemb., 2011 Reg. Sess.; S.B. 14, 82d Leg., Reg. Sess. (Tex. 2011) (amending multiple sections of existing code); 2011 Wis. Sess. Laws 23 (Assemb. B. 7, 2011 Leg., Reg. Sess.).

[3] Of the seven states that have passed photo ID laws this session, *supra* note 2, the list of acceptable IDs vary in several respects. Tennessee expressly excludes student IDs from consideration. Only Alabama, Kansas and Rhode Island accept student photo IDs issued by state institutions of higher education. Only Alabama and Wisconsin accept a tribal ID card with a photo. Rhode Island is the only state that accepts non-governmental photo IDs. Because Social Security cards do not include photos, they would no longer be considered an acceptable form of ID.

[4] S.B. 256, 2011 Gen. Assemb., Reg. Sess. (Ala. 2011); H.B. 2067, 2011 Leg., Reg. Sess. (Kan. 2011) (amending and/or repealing multiple sections of existing code); S.B. 352, 107th Gen. Assemb., 2011 Sess. (Tenn. 2011).

- Limitations or outright elimination of early voting opportunities.[5]
- Barriers to first time voters, such as the elimination of same day registration and limitations on voter mobilization efforts.[6]

These changes in state voting laws raise serious constitutional concerns under both the Equal Protection Clause of the Fourteenth Amendment and the Fifteenth Amendment. For example, requiring citizens to expend significant funds to obtain a photo ID to vote runs afoul of the prohibition on poll taxes set out by *Harper v. Virginia Board of Elections*.[7] The Supreme Court in *Crawford v. Marion Co. Election Board* noted that elderly persons born out of the state, persons with economic limitations, homeless people, and even people with religious objections to being photographed may be burdened by photo ID laws.[8] We are also concerned that these prohibitions violate the spirit and the letter of the Voting Rights Act of 1965,[9] the Help America Vote Act,[10] and the National Voter Registration Act.[11]

The Brennan Center Report found that these changes in state election regulations will have a particularly significant impact on minority voters. The report concluded that African American and Hispanic voters were more likely to take advantage of early voting opportunities and register to vote through the types of voter registration drives now curtailed or eliminated by the new laws.[12]

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[5] H.B. 1355, 2011 Leg. Sess. (Fla. 2011); H.B. 92, 2011 Gen. Assemb. (Ga. 2011); H.B. 194, 129th Gen. Assemb., Reg. Sess. (Ohio 2011); S.B. 772, 107th Gen. Assemb., 2011 Reg. Sess. (Tenn. 2011); S.B. 581, 80th Leg., 1st Sess. (W. Va. 2011).

[6] H.B. 1355, 2011 Leg. Sess. (Fla. 2011); H.B. 1570, 82d Leg., Reg. Sess. (Tex. 2011); H.B. 2194, 82d Leg., Reg. Sess. (Tex. 2011).

[7] 383 U.S. 663 (1966); Alabama, Kansas, and Tennessee have enacted citizenship proof bills.

[8] 553 U.S. 181 (2008). The court noted these possible unconstitutional outcomes; however, ruled that Indiana's law did not impose "excessively burdensome requirements" on any class of voters and that the state's interest in preventing voter fraud and safeguards of voter confidence justified the general burden imposed on voters.

[9] 42 U.S.C. §§ 1973-1973aa-6. As you know, jurisdictions covered by Section 5 are required to submit changes in voting procedures to the Department of Justice before they can take effect to determine whether the new regulations have a retrogressive impact on minority voters. Both Texas and South Carolina have submitted their changes in election law for DOJ review, but the provisions have yet to be precleared for implementation. Section 5 of the Act requires that the United States Department of Justice, through an administrative procedure, or a three-judge panel of the United States District Court for the District of Columbia, through a declaratory judgment action "preclear" any attempt to change "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting..." in any "covered jurisdiction," *available at* http://www.justice.gov/crt/voting/sec_5/about.php. *See* DOJ Letter to Texas, *available at* http://www.scribd.com/doc/66103249/Texas-Voter-ID-Letter-Sept-23-2011; *see also* DOJ Letter to South Carolina *available at* http://www.wltx.com/news/pdf/2011-2495_ltr.pdf.

[10] Help America Vote Act, 42 U.S.C. 15301 (2002).

[11] National Voter Registration Act, 42 U.S.C. 1973gg, et seq. (1993).

[12] *See* Brennan Center Report, *supra* note 1, where researchers note that among the most controversial voting changes have been the partial or full elimination of early voting on Sunday, which has been criticized for aiming squarely at large African-American turnouts, and to a lesser extent Hispanic communities, typically executed by church and religious groups.

Most critically, the Report noted that many of the new voter identification laws do not allow voters to present many forms of identification frequently used by minorities, the elderly, and the young. For example, the new Texas law allows for the use of a concealed carry gun permit to vote, but fails to recognize student IDs, Texas Veterans' Administration identification and even Congressional identification.[13] Further, Texas citizens must also spend $22 to obtain a birth certificate or up to $145 to obtain a passport to present the documentation necessary to acquire a form of ID required to cast a ballot.[14]

Numerous examples of the anti-democratic impact of these new laws have already come to our attention. A 96-year old woman was denied a voter ID under Tennessee's new law even though she has voted in all but two elections over the last 70 years and produced a rent receipt, a copy of her lease, her voter registration card, and her birth certificate. Because her birth certificate had her maiden name, Dorothy Alexander, rather than her married name, officials demanded her marriage certificate which she did not have.[15] Another 91-year-old woman in Tennessee was unable to receive her ID because she was physically unable to stand in the long and crowded lines at the DMV with her cane.[16] Two days ago, we learned of an 86-year-old United States veteran and retired print shop worker who had to pay for a voter photo ID.[17] A young voting age citizen seeking a free ID in Wisconsin was questioned by a Wisconsin DMV employee about how much money he had in his bank account and how much activity his bank account experienced.[18] It has also been reported that in Wisconsin, the state's DMVs have been charging citizens improperly for an ID because employees were instructed not to clarify for citizens that the ID's were free.[19]

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[13] S.B. 14, 82d Leg., Reg. Sess. (Tex. 2011).

[14] New State Voting Laws: Barriers to the Ballot? Hearing Before the Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. Comm. on the Judiciary, 112th Cong. (2011) (statement of Judith Brown Dianis, Co-Director, Advancement Project). The cost of obtaining valid voter identification can present a significant barrier to participation. Documentation such as a birth certificate, naturalization papers, or a social security card are typical examples of documents required for obtaining voter identification. According the Brennan Center, some of the documentation necessary to prove eligibility can cost up to $200.00. Brennan Center For Justice, Cast Out 20-21 (2006), *available at* http://brennan.3cdn.net/1d92eeaf94232a9031_zdm6b6okf.pdf.

[15] Ansley Haman, *96-year-old Chattanooga resident denied voting ID*, Chattanooga Times Free Press, October 5, 2011, *available at* http://timesfreepress.com/news/2011/oct/05/marriage-certificate-required-bureaucrat-tells/.

[16] Joan McCarter, *Elderly Tennessee voter can't register to vote because she can't stand in line*, Daily Kos, October 24, 2011, *available at* http://www.dailykos.com/story/2011/10/24/1029638/-Eldery-Tennessee-voter-cant-register-to-vote-because-she-cant-stand-in%C2%A0line?via=search.

[17] Sam Stockard, *Veteran had to pay for voter photo ID*, The Daily News Journal, October 26, 2011, *available at* http://www.dnj.com/article/20111026/NEWS05/110260320/Veteran-had-pay-voter-photo-ID?odyssey=nav|head.

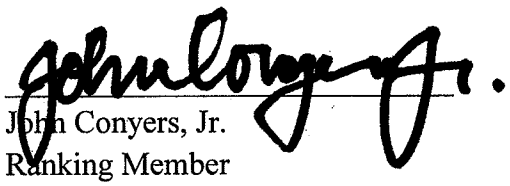
[18] WePartyPatriots, *VIDEO: WI DMV Tells Boy His Bank Account Doesn't Show Enough 'Activity' To Get a Voter ID,* Daily Kos, July 26, 2011, *available at* http://www.dailykos.com/story/2011/07/26/998944/-VIDEO:-WI-DMV-Tells-Boy-His-Bank-Account-Doesn%E2%80%99t-Show-Enough-%E2%80%9CActivity%E2%80%9D-To-Get-a-Voter-ID.

[19] James B. Kelleher, *Wisconsin official told DMV not to push free voter ID cards*, Reuters, September 8, 2011, *available at* http://www.reuters.com/article/2011/09/08/us-wisconsin-voter-id-idUSTRE78713P20110908. The cost of obtaining valid voter identification can present a significant barrier to participation. Documentation such as a birth certificate, naturalization papers, or a social security card are typical examples of documents required for obtaining voter identification. According the Brennan Center, some of the documentation necessary to prove eligibility can cost up to $200.00. Brennan Center for Justice, Cast Out 20-21 (2006), *available at* http://brennan.3cdn.net/1d92eeaf94232a9031_zdm6b6okf.pdf.

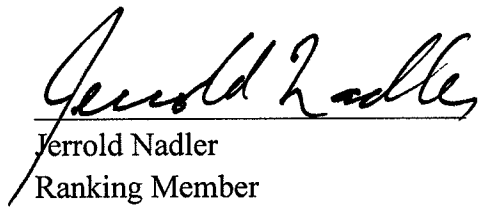
Assertions that these broad restrictions are needed to counter pervasive voter fraud do not appear to be supported by the evidence. For example, studies have found that only 24 people were convicted of, or pled guilty to, illegal voting at the federal level between the two Presidential and Congressional elections leading up to the 2008 elections.[20] Moreover, only 19 instances of ineligible voting were determined at the state level.[21]

The right to vote is the foundation of all our other rights. In view of the gravity of this situation, we urge you to schedule hearings soon to address an issue so critical to our democracy. As voting rights experts have noted, the recent stream of laws passed at the state level are a reversal of policies – both federal and state – that were intended to combat voter disenfranchisement and boost voter participation.[22] Ensuring the right to vote should not be a partisan issue; rather it is the very lynch pin of our democracy.

Sincerely,



John Conyers, Jr.
Ranking Member
Committee on the Judiciary



Jerrold Nadler
Ranking Member
Subcommittee on the Constitution

cc: Hon. Trent Franks, Chairman, Subcommittee on the Constitution

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[20] Eric Lipton & Ian Urbina, *In 5-year effort, scant evidence of voter fraud*, The New York Times, April 12, 2007, *available at* http://www.nytimes.com/2007/04/12/washington/12fraud.html.
[21] *Id.*
[22] *See* American Civil Liberties Union, *2011: Voting Rights Attack in State Legislatures*, "The history of our nation is characterized by a gradual expansion of voting rights. These discriminatory restrictions suppress the vote and turn back the clock," *available at* http://www.aclu.org/maps/2011-voting-rights-under-attack-state-legislatures ; *see also* Brennan Center Report, *supra* note 1, " . . . the extent to which states have made voting more difficult is unprecedented in the last several decades . . . [M]any of these laws will disproportionately impact low-income and minority citizens, renters, and students—eligible voters who already face the biggest hurdles to voting."