

# SPECIAL REPORT

## THE NEW FACE OF JIM CROW: *Voter Suppression in America*



# THE NEW FACE OF JIM CROW: VOTER SUPPRESSION IN AMERICA

**"I don't want everybody to vote. Elections are not won by a majority of the people. They never have been from the beginning of our country and they are not now. As a matter of fact, our leverage in the elections quite candidly goes up as the voting populace goes down."**

*— Radical Right strategist Paul Weyrich, at a 1980 training session for 15,000 conservative preachers in Dallas.*

There are two ways to win an election. One is to get a majority of voters to support you. The other is to prevent voters who oppose you from casting their votes.

In the 27 years since Paul Weyrich's astonishingly candid admission, the radical right wing in America has developed an array of subtle and overt methods to suppress voter registration and turnout. The methods are targeted to constituencies most likely to oppose right-wing causes and candidates: low-income families, minorities, senior citizens and citizens for whom English is a second language.

Occasionally, attempts at voter suppression are illegal dirty tricks, such as the phone-jamming scheme carried out by Republican operatives against a Democratic phone bank in New Hampshire in 2004. Some voter suppression is unintentional, the result of applying or misapplying changes in voting laws. However, voter suppression today is overwhelmingly achieved through regulatory, legislative and administrative means, resulting in modern-day equivalents of poll taxes and literacy tests that kept Black voters from the ballot box in the Jim Crow era.

Couched in feel-good phrases such as "voter security" and "anti-voter fraud," these measures limit voter registration, turn voters away from polling places, and cast doubt on the validity of ballots. For example, stringent voter ID rules that require photo ID at the polls sound reasonable, until the estimated up to 12 percent of eligible voters who do not have a driver's license are figured in. And while "anti-fraud" measures sound good, in truth there is little evidence of organized voter fraud anywhere in the nation, while voter suppression tactics are varied and widespread:

- In Ohio, Secretary of State Ken Blackwell has implemented rules to carry out a new state elections law. Blackwell's rules make it extremely difficult for small churches and other nonprofit organizations to hire and train voter registration workers—and they expose voter registration workers to felony charges for making mistakes.

- In Texas, Congressman John Carter has suggested implementing literacy tests and English-only ballots, despite the existence of a federal law requiring minority language ballots at the polls.

- In Florida in 2004, Governor Jeb Bush was forced to deactivate a list of purported felons who were to be blocked from voting when the news media discovered that the list included Black, but not Hispanic, voters and that many people on the list were actually eligible voters.

- In California this year, nonsensical requirements for matching new voter names to existing state databases (e.g., a "Michael R. Neuman" would not match a "Mike R. Neuman" at the same address) resulted in numerous voter registrations being rejected. Between January and June, 26,824 voter registration forms received by Los Angeles County alone were rejected because of these new restrictions.

- In New Mexico, the number of "provisional ballots," which are mandated under new federal voting rules, that went uncounted exceeded the margin of victory in the presidential race in 2004.

- In Indiana, Pennsylvania, Georgia, and Arizona, since the 2002 passage of the federal Help America Vote Act, state legislatures have passed new voter identification rules that would disenfranchise thousands of senior citizens and poor voters who do not have drivers' licenses or passports. Some of these measures have been blocked, but others are now in effect.

- In Ohio in 2004, precincts in predominantly low-income and minority neighborhoods were chronically understaffed and had fewer voting machines than higher-income precincts, resulting in long lines and uncounted numbers of voters leaving the polls before they had a chance to cast a vote.

The Radical Right strategy of turning out base supporters while suppressing the votes of its opponents has often been successful. Legislatures controlled by far-right conservatives now determine the voting laws and how redistricting is conducted in many states. Governors, secretaries of state, and other election officials, supported by the Radical Right, now administer many states' elections. This report, by no means comprehensive, provides a brief overview of various suppression techniques so that citizens, community activists and the news media can recognize similar attempts as patterns of voter suppression emerge across the country.

## Harsh and Burdensome Voter ID Requirements

The most widespread modern voter suppression tactic is the imposition of new laws and rules that require voters to show specific forms of identification in order to vote. Identification requirements pose a special burden to the approximately 12 percent of voting-age Americans—mainly the poor, racial minorities, senior citizens and students—who do not have a driver’s license.<sup>1</sup>

Proponents of new voter identification requirements cite the supposed problem of voter fraud as the impetus for their action, but there’s no evidence that voter fraud exists in this country in any significant way, or that identification requirements would fix the problem if it were to exist. Indeed, the Carter-Baker Commission on Federal Election Reform acknowledged that “there is no evidence of extensive fraud in U.S. elections or of multiple voting.”<sup>2</sup> And, according to a 2005 study by the Ohio League of Women Voters, out of more than nine million ballots cast in Ohio in 2002 and 2004, just four were found to be fraudulent.<sup>3</sup>

A particularly troubling proposal came from the Carter-Baker Commission. The commission proposed requiring the use of a new national photo identification card, known as a “REAL ID” card, for all voting. REAL ID cards, which are slated to come into use in May of 2008, would be highly expensive and, if they are required for voting, would constitute a modern-day poll tax. National REAL ID cards are not yet in place, but many identification requirement proposals already have been adopted at the state level. Such proposals, usually backed strongly by Radical Right special interest groups, serve to suppress votes and intimidate voters—regardless of their supporters’ intent. In 2001, 11 states required voter IDs. But thanks in part to encouragement from Radical Right activists since the passage of the federal Help America Vote Act in 2002, 24 states now require voter identification.<sup>4</sup> A few examples follow.

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<sup>1</sup> Overton, Spencer. “The Carter-Baker ID Card Proposal: Worse Than Georgia.” Roll Call. 2005. Roll Call. 22 Aug. 2006. <<http://www.carterbakerdissent.com/rollcall.php>>.

In Overton’s Carter-Baker dissent, he cites a 2001 Carter-Ford Commission report that an estimated 6 to 10 percent of voting-age Americans (approximately 11 million to 19 million potential voters) lack any form of state-issued photo ID.

<sup>2</sup> Carter, Jimmy. James Baker. “Building Confidence in U.S. Elections Report of the Commission on Federal Election Reform.” CFER. 2005. CFER. 22 Aug. 2006.18. <[http://www.american.edu/ia/cfer/report/full\\_report.pdf](http://www.american.edu/ia/cfer/report/full_report.pdf)>.

<sup>3</sup> Urbina, Ian. “New Registration Rules Stir Voter Debate in Ohio.” New York Times. 2006. New York Times. 22 Aug. 2006. <<http://www.nytimes.com/2006/08/06/us/06ohio.html?ex=1312516800&en=6090bc7fc7dce139&ei=5088&partner=rssnyt&emc=rss>>.

<sup>4</sup> Carter, Jimmy. James Baker. “Building Confidence in U.S. Elections Report of the Commission on Federal Election Reform.” CFER. 2005. CFER. 22 Aug. 2006.18. <[http://www.american.edu/ia/cfer/report/full\\_report.pdf](http://www.american.edu/ia/cfer/report/full_report.pdf)>.

## ARIZONA

In November of 2004, Arizona voters passed Proposition 200, which implemented harsh voter identification requirements (as well as proof-of-citizenship requirements—discussed in the next section of this report). The law requires voters who cast a ballot at a polling place on Election Day to present photo identification deemed “acceptable” by Arizona’s Secretary of State, such as a driver’s license, or two alternate forms of ID that include the name or address of the voter such as a utility bill or a bank statement. Such requirements can disenfranchise voters without photo ID by making it hard for them to cast ballots if they live at a residence where someone else, such as a spouse, parent, or roommate pays the bills, or if they are uninformed about the rules. Students, the poor, and senior citizens are among the groups that are most likely to be adversely affected.

A broad coalition of Arizonans, including the Inter\_Tribal Council of Arizona, Inc., the Hopi Tribe, the League of Women Voters of Arizona, the League of United Latin American citizens, the Arizona Advocacy Network, and People For the American Way Foundation, joined by State Representative Steve Gallardo, have challenged Proposition 200 in federal court . Plaintiffs are awaiting an August 30, 2006 hearing regarding an injunction.<sup>5</sup>

## GEORGIA

New voter ID requirements were signed into law in Georgia by Gov. Sonny Perdue in early 2005 despite warnings from Georgia’s Black legislators and other Democrats that thousands of voters could be disenfranchised.<sup>6</sup>

One problem with the law is that an estimated 700,000 registered Georgia voters do not have valid drivers’ licenses.<sup>7</sup> Although Georgia’s law now mandates that registered Georgians who do not have valid drivers’ licenses must be provided with free state identification documents, as of the time this report was published (with the November 7, 2006 elections rapidly approaching) the mandate had not been carried out.

The Georgia voter ID requirements generated national controversy in November of 2005, when it was revealed that senior political officials in the U.S. Justice Department had overruled a team of career Justice Department lawyers who recommended rejecting the rules because they were likely to discriminate against Black voters.<sup>8</sup> The state was

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<sup>5</sup> “Arizona Voters File Lawsuit Against Secretary of State Brewer.” Lawyers Committee. 2006. Lawyers Committee. 26 Aug. 2006. <<http://www.lawyerscomm.org/2005website/publications/press/press052406.html>>.

<sup>6</sup> Campos, Carlos. James Salzer. “Suit slams voter ID law.” The Atlanta-Journal Constitution. 2005. The Atlanta-Journal Constitution. 22 Aug. 2006. <[http://www.ajc.com/search/content/auto/epaper/editions/today/news\\_34f21b252004e02000c0.html](http://www.ajc.com/search/content/auto/epaper/editions/today/news_34f21b252004e02000c0.html)>

<sup>7</sup> “Analysis of State Databases Reveals Nearly 700,000 Registered Voters Lack Valid Driver’s License or State-Issued Georgia ID” Georgia Secretary of State’ office press release. 19 Jun. 2006 <http://www.sos.state.ga.us/pressrel/061906.htm>.

<sup>8</sup> Eggen, Dan. “Criticism of Voting Law Was Overruled.” The Washington Post. 2005. The

temporarily prevented from implementing the requirements due to the pre-clearance provision of the Voting Rights Act, but Attorney General Gonzales, who was responsible for the final decision on its implementation, signed off.

On the first day of the 2006 legislative session, Republicans in the legislature changed the bill to make it possible for voters to obtain photo identification free of cost. Despite that change, a Georgia court enjoined the requirements, finding them to be overly burdensome. In July of 2006, a week before Georgia's primary election, the Georgia Supreme Court upheld a court order blocking enforcement of the bill, ruling that voters would not have to show identification during the subsequent primary. Court injunctions appear likely to stay in place and prevent enforcement of the rules in November of 2006.

## INDIANA

In April of 2005, the Indiana legislature passed a strict voter ID bill, which was then signed into law by Governor Mitch Daniels. Under the new requirements, Indiana voters must present government-issued photo identification, displaying the voter's name, which must match the name on the voter registration record, at the polls. The ID must display an expiration date, and it may not be expired. A voter without valid photo ID must cast a provisional ballot, which can only be counted if that voter travels to a County Election Board office within 10 days of the election and presents a valid photo ID to the board.

Indiana's voter ID bill, like those in Georgia and Missouri, purports to give free state-issued photo identification cards to Hoosiers without IDs. However, Indiana's bill, unlike those in Georgia and Missouri, does not specify how these IDs are to be distributed.

The Indiana voter ID rules sparked criticism from the Indiana Democratic Party and voting rights advocacy organizations including the Indiana Civil Liberties Union. The Indiana Democratic Party filed suit in May of 2005, alleging that the law infringed on the rights of voters. The suit was thrown out by U.S. District Court Judge Sarah Evans Barker, who ruled that the plaintiffs had not produced sufficient evidence that the rules would prevent people from voting.

During the May 2006 primary, Congresswoman Julia Carson, a Democrat seeking her sixth term, was delayed at her Indianapolis polling place when the photo ID card she presented to confirm her identity didn't have an expiration date on it, as is required by the new law.<sup>9</sup> Also during the primary, a group of veterans, who arrived at the polls using their Veterans Administration medical cards as their photo ID, were turned away from the

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Washington Post. 22 Aug. 2006. <<http://www.washingtonpost.com/wp-dyn/content/article/2005/11/16/AR2005111602504.html>>.

<sup>9</sup> Relvea, Neil. "New Voter ID Law Snags Indiana Congresswoman." *WCPO 9 News*, 2006. WCPO 9 News. 22 Aug. 2006. <[http://www.wcpo.com/news/2006/local/05/02/in\\_elections\\_eve.html](http://www.wcpo.com/news/2006/local/05/02/in_elections_eve.html)>

polls because the IDs did not have an expiration date or a stamp indicating that the ID never expired.<sup>10</sup>

The Democratic Party appealed Judge Barker's decision, asking the 7th Circuit Court of Appeals in Chicago to overturn her decision. Arguments in that case are scheduled to be heard on October 18, 2006.

## MICHIGAN

The Michigan Supreme Court is currently revisiting the state attorney general's opinion against implementing Michigan's photo ID requirement. This photo ID requirement was declared unconstitutional by the state's attorney general, but the Michigan Supreme Court, in an act of judicial activism, has taken it upon itself to review the attorney general's opinion and may overturn it any day. NAACP and others have filed legal briefs urging that the attorney general's opinion be left in place, and they are awaiting a decision.<sup>11</sup>

## MISSOURI

In May of 2006, the Missouri Legislature passed Senate Bill 1014, which requires every Missouri voter to present a state-issued photo ID to be eligible to vote.<sup>12</sup> The bill passed despite the efforts of People For the American Way, SEIU, ACLU, MO Pro Vote, the Disability Vote Project, LCCRUL and others.

In July, the American Civil Liberties Union announced a state court lawsuit in St. Louis and Kansas City claiming that the law violates a Missouri constitutional prohibition on imposing costs on local governments without providing state funding. For example, the ACLU argues that the law would cost Jackson County (where Kansas City is located) \$470,000 to implement, as it costs money to notify voters about the new rules and to purchase needed equipment, hire staff, and train Election Day poll workers.<sup>13</sup> Plaintiffs are seeking a permanent injunction blocking the law from being enforced and class-action status. A federal lawsuit challenging the statute is also anticipated.

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<sup>10</sup> Green, Rebecca S. "Refusal of vets' IDs leads to hard feelings at polls." The Fort-Wayne Journal Gazette, 2006. The Fort-Wayne Journal Gazette. 22 Aug. 2006.  
<<http://64.233.187.104/search?q=cache:51sMkDc3SykJ:www.fortwayne.com/mld/fortwayne/news/local/14495810.htm+Refusal+of+vets%27+IDs+leads+to+hard+feelings+at+polls&hl=en&gl=us&ct=clnk&cd=1>>.

<sup>11</sup> Josar, David. "Groups Challenge Voter ID Plan." The Detroit News 2006. The Detroit News. 23 Aug. 2006.  
<<http://detnews.com/apps/pbcs.dll/article?AID=/20060715/POLITICS/607150350/1374/POLITICS01&template=printart>>.

<sup>12</sup> Hoover, Tim. "Missouri approves voter ID." Kansas City Star. 2006. Kansas City Star. 22 Aug. 2006.  
<<http://www.kansascity.com/mld/kansascity/news/14569094.htm?template=contentModules/printstory.jsp>>

<sup>13</sup> Wiese, Kelly. "Democrats Challenge New Mo. Voter ID Law." Boston Globe 2006. Boston Globe. 22 Aug. 2006.  
<[http://www.boston.com/news/nation/articles/2006/07/17/democrats\\_challenge\\_new\\_mo\\_voter\\_id\\_law/](http://www.boston.com/news/nation/articles/2006/07/17/democrats_challenge_new_mo_voter_id_law/)>.

As with the Georgia voter ID bill, there is a provision in the Missouri bill that purports to provide free identification cards to citizens without valid identification. But with the bill passing in mid-May, and officials still trying to tie up loose ends, there has been little time to ensure that all eligible voters have been alerted about the new rules and their need to obtain a state-issued photo ID before the November 2 elections.

## OHIO

In January of 2006, the Ohio legislature passed House Bill 3,<sup>14</sup> an election system overhaul that included new voter ID requirements.

The identification requirements imposed by HB 3 are complicated, and many local poll workers do not fully understand them. For example, during Ohio's August 8, 2006 special elections, some voters with valid drivers' licenses were required to cast provisional ballots because the drivers' licenses contained old addresses<sup>15</sup> (such provisional ballots often go uncounted—see the “provisional ballot” section of this report). Yet under HB 3, so long as a license is valid (even if the address is out of date), voters are entitled to cast regular ballots. Secretary of State Ken Blackwell has failed to make this rule clear to elections officials, and People For the American Way is currently working to make sure that elections officials are properly informed.<sup>16</sup>

## PENNSYLVANIA

In February of 2006, the Pennsylvania legislature passed House Bill 1318, a voter identification bill that purported to address the problem of “voter fraud.”<sup>17</sup>

People For the American Way supported a coalition of Pennsylvania community organizations, volunteers, concerned citizens, civic groups, community leaders and activists fighting the bill. Thankfully, as a result of this tremendous activism, Governor

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<sup>14</sup> In addition to creating new voter ID requirements, HB 3 has created problems by allowing poll workers to challenge a voter's registration at a polling place, enabling poll workers to discriminate against voters on sight. It also prevents federal election challenges from being pursued in state courts, severely hindering voters' ability to fight for their rights, and it requires people assisting voters with disabilities to have power of attorney—greatly narrowing the ability of disabled voters to cast their votes with assistance from chosen representatives. More information about HB 3's burdensome registration requirements can be found in the next section of this report.

<sup>15</sup> Woods, Jim and Dana Wilson. “Voters handle ID requirement; Only minor confusion mars first test of new rule,” The Columbus Dispatch. 2006. The Columbus Dispatch. 22 Aug. 2006. <<http://www.columbusdispatch.com/election/election.php?story=204016>>.

<sup>16</sup> On August 15, 2006, People For the American Way sent a letter to Secretary of State Blackwell asking that he issue a directive to election officials that voters with a current license that has an old address can cast a regular ballot. Following the August 11, 2006 primary, several Ohio papers reported that some voters had to cast a provisional ballot because poll workers were unaware of the rules. See PFAW's letter to Blackwell at: <http://media.pfaw.org/pdf/8-15-06LetterToBlackwell.pdf>

<sup>17</sup> Levy, Marc. “Senate approves bill to require ID from voters.” Times-Gazette. 2005. Times-Gazette. 22 Aug. 2006. <<http://www.post-gazette.com/pg/05350/623437.stm>>



Ed Rendell vetoed the measure in March, and its burdensome voter identification requirements did not become law.<sup>18</sup>

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<sup>18</sup> “Governor Rendell Signs Veto Message Protecting Fundamental Right to Vote of PA Citizens, Says Bill Places Unnecessary Burden on Voters.” PA Govt. 2006. PA Govt. 22 Aug. 2006. <<http://www.vote.pa.us/newsarchive/rendellveto1318.html>>.

## **Barriers to voter registration**

Votes can also be suppressed well in advance of elections when efforts to register new voters are hindered. Barriers to voter registration include proof-of-citizenship requirements, rules mandating that registration applications be sealed, and regulations that make it difficult for nonpartisan civic engagement groups to distribute and collect voter registration forms. Such registration suppression tactics have been employed—and fought with a degree of success—in a number of states in 2006. Some examples follow:

### ARIZONA

Proposition 200 requires citizens to present proof-of-citizenship documents in order to register to vote. Such documents include driver's licenses, birth certificates, and passports. Groups that independently register voters are required to obtain proof of citizenship in order to carry out their work, and the result has been impeded registration efforts.<sup>19</sup> In addition, even when forms are submitted, Proposition 200 has led to a large proportion of them being rejected. For example, the election director of Maricopa County, the largest county in Arizona, has testified that approximately 30 percent of registration applications received by her office have been rejected because of Proposition 200's restrictions.<sup>20</sup>

Such proof-of-citizenship requirements are often rationalized through fear tactics—namely the claim that non-citizens (especially “illegal immigrants”) are attempting to register to vote. But no evidence exists to indicate that this is a problem. Congressman Raul Grijalva, who represents the Tucson area, has strongly criticized Proposition 200, saying, “The objective to me appears to be to begin to erect obstacles to voting by affixing a solution to a non-existent problem.”<sup>21</sup>

The lawsuit filed by People For the American Way Foundation and other organizations to challenge Proposition 200's voter ID requirements also challenges its proof-of-citizenship provisions for voter registration.

### FLORIDA

On May 18, 2006, the Brennan Center, in conjunction with the Advancement Project and pro bono counsel filed a lawsuit in federal district court on behalf of the League of Women Voters and other groups challenging as unconstitutional a new Florida law that restricts the activities of voter registration groups. This law requires third-party voter registration groups to meet artificially short deadlines for the return of forms, and

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<sup>19</sup> “Arizona Voters File Lawsuit Against Secretary of State Brewer.” *Lawyers Committee*. 2006. Lawyers Committee. 26 Aug. 2006. <<http://www.lawyerscomm.org/2005website/publications/press/press052406.html>>.

<sup>20</sup> *Ibid.*

<sup>21</sup> “National voter verification requirements mostly a partisan question, Dems charge.” *The Douglas Daily Dispatch*. 2006. *The Daily Dispatch*. 5 August 2006. <<http://www.douglasdispatch.com/articles/2006/08/05/news/news1.txt>>

imposes hefty fines under a strict liability scheme. The suit argues the resulting burden on plaintiffs' speech is unconstitutional. The new law also specifically exempts political parties from its reach, discrimination that plaintiffs argue is clearly unconstitutional.<sup>22</sup> A preliminary injunction hearing took place in early August of 2006.

## GEORGIA

In August of 2006, ACORN filed suit in federal court in Atlanta against Georgia Secretary of State Cathy Cox and the State Elections Board, claiming that voter registration restrictions implemented by the board violate the National Voting Rights Act. Other plaintiffs in the lawsuit include the NAACP, Project Vote, and the Georgia Coalition for People's Agenda. The restrictive registration rules under scrutiny require groups registering voters to accept only sealed voter registration applications and prohibit the copying of such forms. These rules prevent the groups from reviewing applications to make sure they are filled out correctly, and the rules also hinder get-out-the-vote efforts.<sup>23</sup> A preliminary injunction hearing was held on August 21, 2006.

## OHIO

In addition to containing voter identification requirements, Ohio's HB 3 implemented new voter registration rules.<sup>24</sup> Those rules—and Secretary of State Ken Blackwell's interpretation of them—have thrown up substantial barriers to voter registration.

In early June of 2006, Blackwell issued his guidelines, which made it difficult for nonpartisan groups to carry out their work, diminishing registrations of young people, first-time voters, racial minorities, poor people, and new citizens.<sup>25</sup> By preventing efforts to register these potentially eligible voters, the rules have the effect of suppressing the vote.

The new restrictions require that when nonpartisan organizations pay staffers to help register voters, each individual staffer must hand deliver completed registration applications to the Secretary of State's office or county board of elections, instead of using the postal service to deliver the applications. Failure to abide by this rule is a fifth-degree felony—election falsification—that carries a penalty of jail time or a maximum

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<sup>22</sup> "League of Women Voters of Florida, et al. v. Cobb, et al." Brennan Center. 2006. Brennan Center. 22 Aug. 2006.

<[http://www.brennancenter.org/programs/dem\\_vr\\_lit\\_flvoterregistration.html](http://www.brennancenter.org/programs/dem_vr_lit_flvoterregistration.html)>.

<sup>23</sup> Campos, Carlos. "Election board rules challenged." The Atlanta Journal-Constitutional. 2006. The Atlanta Journal-Constitutional. 22 Aug. 2006.

<<http://www.ajc.com/metro/content/metro/atlanta/stories/0817metvote.html>>.

<sup>24</sup> Siegal, Jim. "Coming this fall: voters must show ID at polls." The Columbus Dispatch. 2006. The Columbus Dispatch. 22 Aug. 2006. <<http://www.columbusdispatch.com/news-story.php?story=dispatch/2006/02/01/20060201-A1-01.html>>.

<sup>25</sup> Provance, Jim. "Panel supports Blackwell on voter registration rules." The Toledo Blade. 2006. The Toledo Blade. 22 Aug. 2006.

<<http://www.toledoblade.com/apps/pbcs.dll/article?AID=/20060616/NEWS09/606160338>>.

\$2,500 fine. The rules discourage workers who may be concerned about unintentionally committing a crime, and make it more difficult for groups to exercise quality control over the registrations filled out by the workers to prevent mistakes and discover problems.

Additionally, the rules require all compensated voter registrars to first complete a training regimen via an online program. This creates an unnecessary barrier for groups and citizens who cannot afford or do not have access to a computer, the Internet, and a printer. It disadvantages groups such as churches that may have only dial-up service and an antiquated computer, as opposed to wealthier groups that have greater resources for training.

Pressure from People For the American Way Foundation and other nonpartisan organizations, the media, and the public, led Blackwell to change one rule and allow paid staffers to use the postal service to deliver registrations. It was a piecemeal fix that solved only one problem among many. People For the American Way Foundation filed suit with Project Vote, Association of Community Organizers for Reform Now (ACORN), Communities of Faith Assemblies Church, and Common Cause Ohio against Blackwell and other state officials to address outstanding problems and overturn these burdensome voter registration restrictions. A preliminary injunction hearing is scheduled for September 1, 2006.

## Provisional Ballots

In the 2004 election, more than one million provisional ballots were cast but not counted in the United States.<sup>26</sup> Provisional ballots are alternatives to regular ballots that are provided to voters whose names do not appear on voter lists, who do not present required forms of voter identification, or who are otherwise deemed ineligible at the polls to vote normally. Meant to address widespread problems seen in the 2000 elections, they are a well-intentioned idea that has been exploited by those who would discourage certain communities from voting.

The Help America Vote Act of 2002, or HAVA, set new nationwide standards intended to protect every American's right to vote. The new rules included the provisional ballot, which voters would use if their eligibility was in doubt. The idea was that eligibility could be determined after the election, and eligible provisional ballots would be counted. That's not what has happened.

Instead, as author Greg Palast puts it, provisional ballots created "a whole new category of 'spoilage'" and were "kind of a voting placebo."<sup>27</sup> Although HAVA requires a provisional ballot to be provided to anyone not given a regular ballot who asserts he or she is an eligible voter, HAVA does not require those provisional ballots to be counted. States have wide latitude to determine which, if any, provisional ballots to count, resulting in a vast number of them never being counted.<sup>28</sup>

Further, poll workers sometimes provide provisional ballots to voters who should actually cast regular ballots. For example, a voter who shows up at the wrong precinct might receive a provisional ballot instead of being directed to the correct precinct. A voter without proper identification might be asked to fill out a provisional ballot instead of advised to return home for valid identification. In each case, the voters could, given proper advice from poll workers, cast regular ballots. Sadly, many voters walk away from the polls believing their votes will be counted when in fact, they will not.

### PROBLEMS IN 2004

Provisional ballots were especially problematic in Ohio in 2004, where Secretary of State Ken Blackwell, who was also state chairman of President Bush's reelection campaign, implemented restrictive rules about which provisional ballots were to be counted. For example, Blackwell said that all provisional ballots cast in the wrong precincts should be thrown out, even if the voter was an eligible voter. On some

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<sup>26</sup> Palast, Greg. *Armed Madhouse*. New York: Penguin Group, 2006. 208.

<sup>27</sup> Palast, Greg. "Kerry Won..." *TomPaine.com*. 2004. TomPaine.com. 4 Nov. 2004. <[http://www.tompaine.com/articles/kerry\\_won\\_.php](http://www.tompaine.com/articles/kerry_won_.php)>.

<sup>28</sup> Palast, Greg. *Armed Madhouse*. New York: Penguin Group, 2006. 208.

occasions the difference between one precinct and another was a neighboring table in the same school gym polling place.<sup>29</sup>

Provisional ballots also surfaced as a significant problem in New Mexico in 2004. There, uncounted provisional ballots outnumbered the difference in votes between the presidential candidates, so it is possible that the outcome of the presidential election in that state might have changed if all uncounted provisional ballots had been counted.<sup>30</sup>

## A VICTORY IN PENNSYLVANIA

Since policies about which provisional ballots to count are determined at the state level, some states are getting it right. Pennsylvania Governor Ed Rendell recently vetoed a measure in that state (H.B. 1318) that would have likely increased uncounted provisional ballots by requiring many provisional voters to travel to the county board of elections after Election Day in order to have their ballots counted.<sup>31</sup>

## DISPROPORTIONATE EFFECTS ON SOME GROUPS

Despite a handful of victories at the state level, the system is not working, and the adverse effects of the flawed provisional ballot system are borne unevenly among the population. Analysis of the areas where provisional ballots were least likely to be counted indicates a higher concentration in areas with large populations of African Americans and other racial minorities. Mark Salling, a Cleveland State University Professor who analyzed the discarded ballots, found they were “overwhelmingly” from African American precincts.<sup>32</sup>

Rather than addressing the reasons that some voters are initially determined to be ineligible—and then allowing them to cast regular ballots that will be counted—many eligible voters are now encouraged to cast provisional ballots, under the misimpression that their provisional ballots will definitely be counted. This suppression of actual voting and its replacement with provisional voting that often does not count disenfranchises voters and threatens our democracy.

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<sup>29</sup> Ibid. 209.

<sup>30</sup> Ibid. 210.

<sup>31</sup> “Governor Rendell Signs Veto Message Protecting Fundamental Right to Vote of PA Citizens, Says Bill Places Unnecessary Burden on Voters.” PA Govt. 2006. PA Govt. 22 Aug. 2006. <<http://www.vote.pa.us/newsarchive/rendellveto1318.html>>.

<sup>32</sup> Jackson, Jesse and Greg Palast. “Jim Crow Returns to the Voting Booth,” Seattle Post-Intelligencer, 2005. Seattle Post-Intelligencer. 10 Aug. 2006. <<http://www.organicconsumers.org/corp/blackout012605.cfm>>.

## ***Long lines and inequality in resource distribution at the polls***

Long lines at the polls constitute a form of voter suppression because they can compel eligible voters to give up on waiting or discourage people from even showing up at the polls. The problem is usually caused by an inadequate number of voting booths, faulty voting equipment, a lack of poll workers, or poorly trained poll workers who are not able to move voters through the process efficiently.

While long lines can suppress the vote in any precinct, evidence indicates that such lines often form at polling places that are frequented by students, people of color, and low-income voters who often do not have the time or the resources to wait many hours. Some work more than one job, have trouble obtaining permission to vote from employers, or must meet child-care deadlines. These are often the precincts which receive the fewest resources for voting equipment, poll workers and poll worker training.

In the 2004 election, many voters waited in lines for well over an hour before casting their ballots.<sup>33</sup> And in some places, the lines were much longer—for example, there were reports of five- and even ten-hour long lines at some precincts in Ohio.<sup>34</sup> Even the most dedicated citizens cannot typically spend five or ten hours to cast a vote.

People For the American Way Foundation worked with a number of other civil rights and public interest organizations to implement the Election Protection (EP) program in 17 states during the 2004 election. EP poll monitors received numerous complaints of long lines at polling places around the country. In its post-election report titled “Shattering the Myth,”<sup>35</sup> the Election Protection coalition summarized the numerous complaints it had received:

[There were complaints] of long lines and waits of up to ten hours to cast a ballot, especially in urban districts with too few voting stations. The lines inevitably led to untold numbers of voters who were disenfranchised because they could not afford to wait, and had to return to their jobs or their children before they had a chance to cast a vote. Further, reports of these long lines discouraged large numbers of voters from even attempting to cast their vote. Voters faced not only long lines, but also antiquated and faulty equipment and polling places with too few adequately trained poll workers or voting machines. In some minority

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<sup>33</sup> Jones, Tamara. Jo Becker. “A Passionate, Patient Electorate” *Washington Post*. 2004. *Washington Post*. 10 Aug. 2006. <<http://www.washingtonpost.com/wp-dyn/articles/A18034-2004Nov2.html>>.

<sup>34</sup> Fitrakis, Bob. Harvey Wasserman. “Hearings on Ohio Voting Put 2004 Election in Doubt.” *FreePress.org*. 2004. *FreePress.org*. 22 Aug. 2006. <[http://www.truthout.org/docs\\_04/112104W.shtml](http://www.truthout.org/docs_04/112104W.shtml)>.

<sup>35</sup> “Shattering the Myth.” People For the American Way Foundation, NAACP, Lawyers’ Committee for Civil Rights Under Law. December 2004. 3. <[http://www.pfaw.org/pfaw/dfiles/file\\_477.pdf](http://www.pfaw.org/pfaw/dfiles/file_477.pdf)>

communities there appeared to have been inequitable distribution of voting machines and Election Day resources that likely contributed to longer lines.

## EXAMPLES OF THE PROBLEM: FLORIDA, OHIO AND ILLINOIS

The following are just a few examples of how inadequate resources at some polling places created long lines that suppressed votes in 2004:

In Florida, where long lines were evident from the start of early voting through Election Day, reports of senior citizens and disabled voters waiting in long lines during hot weather created additional concerns. There appeared to be a lack of clarity on the part of poll workers about special accommodations that could be made for these voters.<sup>36</sup>

In Ohio, an entire polling place in Cuyahoga County had to shut down at 9:25 a.m. on Election Day because there were no working machines.<sup>37</sup>

And in Cook County, Illinois, long lines at one polling place were explained by a voter who reported that it took 45 minutes to vote because only one person was voting at a time even though there were five booths. There was a single poll worker checking names and monitoring the process.<sup>38</sup>

The problems have persisted. During a primary election in May of 2006, a precinct in Cleveland, Ohio, didn't open until 1:30 p.m. because poll workers weren't adequately trained and didn't know how to set up the voting equipment.<sup>39</sup> Many people who came to vote in the morning could not return and were disenfranchised.

On July 28, 2005, PFAWF and other voting rights organizations filed suit in federal court on behalf of the League of Women Voters and a group of individual plaintiffs seeking changes in Ohio's maladministration of the voting process. Among other concerns, the lawsuit challenged the uneven allocation of voting machines and other resources, which led to long lines in poor and minority neighborhoods. On December 2, 2005, the district court denied the Secretary of State's motion to dismiss on immunity grounds and set the case on a fast track for trial. It was scheduled to begin on June 13, 2006. The state then appealed, however, and the case has been stayed pending that appeal.

The solution to the problem of unequal resource allocation is obvious, requiring a fundamental commitment to democracy. To be fair, and to ensure that some groups of voters aren't given preference over others, states should implement uniform poll worker

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<sup>36</sup> Ibid. 18-19.

<sup>37</sup> Ibid. 22.

<sup>38</sup> Ibid. 36.

<sup>39</sup> "Cleveland Polling Place Delays Statewide Election Results." [Newsnet5.com](http://www.newsnet5.com) 2006. Newsnet5. 10 Aug. 2006. <<http://www.newsnet5.com/politics/9144311/detail.html>>.



training, adequate poll worker recruitment, and sufficient numbers of voting machines and voting booths in each precinct where voting will take place.

## ***Disenfranchisement of citizens with past felony convictions***

The disenfranchisement of felons and ex-felons currently excludes 5.3 million Americans—disproportionately racial minorities and low-income Americans—from participating in the democratic process.<sup>40</sup> And felon disenfranchisement rules sometimes result in the further exclusion of eligible voters from the polls because their names incorrectly appear on felon lists or match the names of other people on those lists.

Because states control their own laws when it comes to voter eligibility, disenfranchisement varies widely. Forty-eight states and the District of Columbia prohibit citizens from voting while incarcerated for a felony; Maine and Vermont are the only exceptions to the rule. Thirty-six states continue to prohibit citizens with felony convictions to vote while on parole. Thirty-one states exclude probationers as well. Only three states—Virginia, Kentucky, and Florida—permanently bar felons from voting, even years after they have completed their sentences and reintegrated themselves into their communities. Nine states either permanently disenfranchise those convicted of certain offenses or require ex-felons to wait a set number of years before re-registering to vote.<sup>41</sup>

As a point of comparison, no other democracy in the world takes away the right to vote for citizens who have completed their sentences. Many other countries, including Denmark, Norway, Israel, France and Zimbabwe, allow those who are still in prison to cast a vote.<sup>42</sup>

### **LAWS DISPROPORTIONATELY AFFECT AFRICAN AMERICANS**

Supporters give various reasons for their support of disenfranchisement of felons, but the historical motivation behind such laws is unambiguous: they sought to keep African Americans from the voting booth and were passed before the civil rights movement.<sup>43</sup> Today, these laws still disproportionately affect African Americans and other racial minorities.

Nationwide, more than thirteen percent of adult African American males are denied the right to vote because of past felony convictions, and Black men make up over a third of the total disenfranchised population.<sup>44</sup> In six of the states that deny the right to vote to ex-offenders one in four Black men is permanently disenfranchised. The laws disproportionately affect Latino men as well: sixteen percent of Latino men will enter prison in their lifetime, compared to less than five percent of white men.<sup>45</sup>

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<sup>40</sup> “Felony Disenfranchisement in the Laws in the United States.” *Sentencing Project.org*. 2006. Sentencing Project. 11 Aug. 2006. <<http://www.sentencingproject.org/pdfs/1046.pdf>>.

<sup>41</sup> *Ibid.*

<sup>42</sup> “About Felon Re-enfranchisement.” *Demos.org*. 2004. Demos. 11 Aug. 2006. <<http://www.demos.org/page26.cfm>>.

<sup>43</sup> Ewald, Alec. *Punishing at the Polls*. New York: Demos: A Network for Ideas and Action. 2003.9.

<sup>44</sup> “Felony Disenfranchisement in the Laws in the United States.” *Sentencing Project.org*. 2006. Sentencing Project. 11 Aug. 2006. <<http://www.sentencingproject.org/pdfs/1046.pdf>>.

<sup>45</sup> *Restoring Voting Rights to Citizens with Felony Convictions*. New York: Demos: A Network for

## FAULTY LISTS DISENFRANCHISE ELIGIBLE VOTERS

One of the major problems involved in disenfranchising felons is the difficulty of keeping an accurate list. In Florida in particular, errors in the list appear to have suppressed votes and have undoubtedly impacted the results of elections, notably in 2000 but also in earlier years.

In 2000, Governor Jeb Bush's administration contracted with a private company to purge the names of convicted felons, past and present, from the voter rolls. In doing so, the company also purged the names of thousands of non-felons, mostly African Americans, who subsequently were denied the right to vote. Ultimately, the Presidential election of that year came down to only hundreds of votes in that state and faulty felon lists may have played a role in the outcome.<sup>46</sup>

Four years later, Governor Bush came under fire when it was revealed that once again, eligible voters were wrongly listed. Bush was forced to abandon use of the list completely after news reports revealed that thousands of Hispanic voters (who tend to vote Republican in Florida) had been returned to the voter rolls, while the list continued to exclude African Americans (who tend to vote Democratic).<sup>47</sup>

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Ideas and Action. 2006.2.

<sup>46</sup>Getter, Lisa. "Florida's Voter Purge Overzealous, Records Confirm the Thousands of Wrongly Targeted Legitimate Voters May Have Changed the 2000 election's outcome." Los Angeles Times. 2001. Los Angeles Times. 22 Aug. 2006.  
<<http://proquest.umi.com/pqdweb?did=73167215&sid=2&fmt=3&clientId=67333&rqt=309&vname=pqd>>.

<sup>47</sup>Waite, Matthew. "Florida scraps felon vote list." St. Petersburg Times Online. 2004. St. Petersburg Times. 22 Aug. 2006.  
<[http://www.sptimes.com/2004/07/11/state/florida\\_scraps\\_felon\\_.shtml](http://www.sptimes.com/2004/07/11/state/florida_scraps_felon_.shtml)>.

## ***Emerging suppression strategies***

In addition to the suppression strategies noted above, voting rights advocates should be aware of other emerging strategies appearing around the country that could spread if they are effective.

### **RESTRICTING EARLY VOTING**

In early 2005, the Maryland legislature passed new rules to expand the right to vote in the state by allowing early voting. Governor Bob Ehrlich vetoed the legislation on May 20, 2005, providing unfounded allegations of the potential voter fraud as his rationale.<sup>48</sup> The legislature overrode the governor's veto, but a judge's decision recently struck down the early voting provisions. The case is on appeal.

### **ENDING SAME-DAY VOTER REGISTRATION**

In Wisconsin, during his 2006 campaign to win the state's Republican gubernatorial primary, Milwaukee County Executive Scott Walker proposed repealing the state's same-day voter registration rules in order to make poll workers' job easier.<sup>49</sup> Walker's proposed repeal of same-day registration would be especially harmful to young voters and college students, and could change the outcome of elections. Same-day voter registration was credited with increasing the student vote considered essential to former Governor Jesse Ventura's 2000 win as an independent in neighboring Minnesota.

### **DATABASE MATCHING**

In Washington State, a 2005 election law that required the state to precisely match voter ID data from registration forms to a government database was likely to disenfranchise numerous voters at the polls until it was enjoined. The law, formulated on a "no match, no vote" practice, was recently challenged this past May by a coalition of individuals and organizations led by ProjectVote and the Brennan Center for Justice. As of August 1, 2006 a preliminary injunction was granted by a federal judge on the grounds of this law's violation of the federal Help America Vote Act of 2002.<sup>50</sup>

Also, in California this year, the Secretary of State imposed a requirement that new registrations and registration renewals be matched precisely with other existing state

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<sup>48</sup> Ehrlich Jr., Robert L.. "Governor Ehrlich's Veto Messages for Senate Bill 478."  
MD Govt.2005. MD Govt. 22 Aug 2006.

<[http://www.gov.state.md.us/billvetoes/2005/message\\_sb478.html](http://www.gov.state.md.us/billvetoes/2005/message_sb478.html)>.

<sup>49</sup> Anderson, Scott. "Walker Pushes Tax Freeze in his GOP Campaign for Governor." Journal Times. 2006. Journal Times. 22 Aug 2006.

<<http://www.journaltimes.com/articles/2006/01/07/local/doc43c027c06543a844601623.txt>>.

<sup>50</sup> "Washington Association of Churches et. al v. Reed." ProjectVote.org. 2006.  
ProjectVote.org.22 Aug 2006.

<<http://projectvote.org/clearinghouse/washington-council-of-churches-v-reed.html>>.

databases.<sup>51</sup> The criteria were so strict that one different letter in a name or numeral in an address, or the inclusion of a middle initial, could prevent a citizen's registration from going through. Between January and June, 26,824 voter registration forms received by Los Angeles County alone were rejected because of these new restrictions.<sup>52</sup> Because rejected registrations quickly mounted by the tens of thousands, the Secretary of State revised his rules to make them less restrictive, but People For the American Way Foundation and others continue to monitor the situation to determine whether problems persist.

## LITERACY TESTS

Congressman John Carter of Texas recently proposed re-instituting literacy test requirements for voting.<sup>53</sup> Such tests were a mainstay of Jim Crow disenfranchisement policies and would likely disenfranchise millions of voters. Congressman Carter's proposal was roundly criticized and went nowhere, yet it should not be counted out as a strategy that could be pursued by other elected officials in the future.

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- <sup>51</sup> Rau, Jordan. "New ID System May Block Voters; A statewide database has rejected otherwise valid registrations because of computer glitches or slight discrepancies in the spelling of names." *Los Angeles Times*, 2006. Los Angeles Times. 22 Aug. 2006.  
<[http://www.debrabowen.com/index.php?option=com\\_content&task=view&id=105&Itemid=30](http://www.debrabowen.com/index.php?option=com_content&task=view&id=105&Itemid=30)>
- <sup>52</sup> McCormack, Conny. "Chronology of events and L.A. County Stats re VR database issue." Email to Melissa Darr. 4 August 2006.
- <sup>53</sup> Kronberg, Harvey. "Objections to renewal of the Voting Rights Act." *News8austin.com*, 2006. News8austin.com. 22 Aug. 2006.  
<[http://news8austin.com/content/commentary/on\\_the\\_agenda/?ArID=165273&SecID=76](http://news8austin.com/content/commentary/on_the_agenda/?ArID=165273&SecID=76)>.

## ***Cause for optimism—fighting voter suppression and winning***

People For the American Way and People For the American Way Foundation, other civil rights and voting rights groups, political leaders, civic organizations, and vigilant citizens have refused to stand by as the Radical Right has tried to suppress votes.

In Arizona, as noted above, People For the American Way Foundation and a coalition of civic participation organizations and Arizona voters have filed suit against Secretary of State Jan Brewer to end burdensome voter ID, voter registration, and proof of citizenship requirements. In Georgia, Indiana, and Missouri, groups including the AARP, ACLU, NAACP and MALDEF are working through the courts to do the same thing.

People For the American Way Foundation and allied organizations are suing to ease restrictive voter registration rules in Ohio, and People For the American Way and its allies have successfully persuaded Governor Rendell to veto Pennsylvania's suppressive HB 1318. Testimony from People For the American Way helped persuade the Minnesota legislature to defeat restrictive voter ID requirements in 2006. People For the American Way also worked with Common Cause to defeat similar requirements in Colorado in the 2006 regular and special legislative sessions. And Wisconsin Governor Jim Doyle has vetoed suppressive voter identification legislation three times.

In addition to fighting suppressive measures, People For the American Way and coalition allies are working around the country to pass components of comprehensive electoral reform proposals such as the federal one sponsored by Senator Hillary Clinton and Congresswoman Stephanie Tubbs Jones, that will expand the right to vote. Additionally, we are supporting, and have seen some success with, state-level vote-by-mail proposals, early voting, same-day voter registration, and versions of the anti-deceptive practices legislation that is sponsored at the national level by Senator Barack Obama of Illinois.

Nevertheless, it is far easier to suppress votes than to bring new voters to the polls. As long as the Radical Right continues to follow the advice Paul Weyrich gave in 1979, and continues to believe that suppressing votes favors its candidates, voter suppression will continue and new strategies will emerge. Proponents of good government and the news media must remain vigilant in identifying voter suppression, and civic participation advocates must continue to oppose it. Every American citizen is guaranteed the right to cast a vote that counts. As a nation, we have the responsibility to make that ideal become reality.