



**Written Statement**

**of**

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For a Field Hearing on

**“New State Voting Laws II: Protecting The Right to Vote in the Sunshine State”**

Submitted to the

**Subcommittee on the Constitution, Civil Rights and Human Rights  
U.S. Senate Committee on the Judiciary**

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## **Introduction**

The American Civil Liberties Union (ACLU), an organization of over half a million members, countless additional supporters and activists, and fifty-three affiliates nationwide, commends the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights for focusing public attention on Florida -- one of the states that have recently enacted laws, which have severely restricted the fundamental right to vote for millions of Americans.

The ACLU of Florida, headquartered in Miami with regional offices in Tampa, Pensacola and Jacksonville, is a local affiliate of the American Civil Liberties Union (ACLU). Chartered in 1965, the ACLU of Florida operates with 18 volunteer-run chapters and 15,000 members and supporters across the state of Florida. I have served as Executive Director of the Florida ACLU Affiliate since 1997. (I served as Executive Director of ACLU's Michigan Affiliate for 23 years prior to my appoint as Florida Director.) I oversee the affiliate's legal, public education, and legislative lobbying programs. During my tenure, the ACLU of Florida has been extensively engaged in addressing the need for electoral reforms, including successful efforts to end paperless electronic voting and continuing efforts to end Florida's policy permanently disfranchising people who have been previously convicted of felonies. We are pleased to submit this written statement for the record on this hearing, addressing the serious problem of Florida's new voting restrictions.

It is often said that the right to vote is the most fundamental right of a citizen in a democracy – a right, and not a privilege extended by government.

To some this may sound like trite, quaint and outmoded philosophical rhetoric, but it is worth repeating – if only to remind ourselves that there are significant policy consequences that stem from the appreciation that voting is a right of a citizen and that the burden is on government to respect that right. For one thing, since voting is a right, government officials have the obligation to facilitate the exercise of that right by making citizen access to the ballot box as easy and as convenient as possible, consistent with good election management.

## **Overview of Voter Suppression Tactics**

Florida has an extensive history of suppression of the right to vote. This has included voter suppression tactics from the era of Jim Crow; changes to voting laws and procedures that were put in place to address the problems that were exposed in Florida during the 2000 Election; and legislation enacted by the 2011 Legislature.

Florida's current and historic voter suppression measures have included the following tactics:

- **Voting laws, procedures and policies:** In the 2011 Legislative Session, as the most recent example, the Legislature enacted House Bill 1355, a comprehensive change to Florida election law – affecting approximately 80 different provisions of the state's election laws. Four of those provisions are now pending as the State seeks preclearance under the Voting Rights Act in the federal district court in the District of Columbia.
- **Lifetime disfranchisement:** At its 1868 Constitutional Convention, the State of Florida – following its failed sojourn with the Confederacy – significantly expanded its constitutionally

mandated system of lifetime disfranchisement for those convicted of an extensively expanded list of felonies. This change was made in order to dilute the votes of the freed slaves.<sup>1</sup>

Florida is one of only four states to require lifetime disfranchisement upon conviction for a felony (Virginia, Kentucky, Iowa, and Florida). In Florida, restoration of civil and voting rights is possible only by appealing to the clemency power of the Governor and members of his Cabinet, sitting as the Board of Executive Clemency (BOEC).

The numbers paint a picture of the significance of Florida's disfranchisement system. Nearly one million Florida citizens – who account for nearly one in five disfranchised citizens in the country – have been disfranchised for life, with the opportunity to recover their right to vote only through the difficult clemency process which has resulted in very few grants of rights restoration.<sup>2</sup>

- **Gerrymandering:** In its Congressional and Legislative districts, Florida has been one of the most gerrymandered states – until the November 2010 Election when Florida voters amended their Constitution. These 2010 amendments required the redistricting process to take place in accordance with rules that prohibit redistricting to favor or disfavor an incumbent or political party; that prohibit, consistent with the Voting Rights Act, denying racial and language minorities an equal opportunity to elect candidates of their choice; and that require districts to be contiguous, compact, and where feasible to use existing city, county and geographical boundaries.

These new constitutional provisions have been challenged by two members of Congress<sup>3</sup>. The case is currently pending in the U.S. Court of Appeals for the 11<sup>th</sup> Circuit. It is noteworthy that the Florida House of Representatives has joined as an intervening plaintiff in the challenge to the constitutionality of these anti-gerrymandering provisions.

For purposes of this testimony, we will be focusing on the changes in voting laws enacted by the Legislature in 2011.

### **Voting changes enacted in 2011 in House Bill 1355**

House Bill 1355 (HB 1355) was an omnibus elections bill that contained 80 changes to Florida elections laws. It was passed by the Legislature during the 2011 legislative, signed by Gov. Rick Scott and became law – in 62 of Florida's 67 counties – on May 19, 2011.

The provisions of the law include placing new reporting requirements on third-party voter registration organizations, which subject volunteer-based groups to fines if they do not turn in completed voter registration forms within 48 hours. The law requires groups that register voters to sign up with the

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<sup>1</sup> See Plaintiffs' Expert Report from Professor Jerrell H. Shofner, Ph.D., *Johnson v. Bush*, 2001WL34842925 (S.D. Fla. 2001) (No. 00-CV-3542) ; see also Jerrell H. Shofner, Nor Is It Over Yet; Florida in the Era of Reconstruction, 1863-1877 (1974).

<sup>2</sup> See, e.g., Christopher Uggen and Jeff Manza, Locked Out: Felon Disenfranchisement and American Democracy 86-94 (2006).

<sup>3</sup> *Diaz-Balart v. Browning*, No. 11-14554-EE (11<sup>th</sup> Cir. filed Sept, 29, 2011).

state and list officers and the names and addresses of all members who will be registering voters. It requires anyone who is registering voters to swear an oath to uphold state election laws. The law also shortens the number of days allowed for early voting from 14 to 8. The law prohibits voters who live outside the county in which they are registered from changing their address at the polls and requires that these voters cast a provisional ballot. The law also reduces the validity of a citizen's signature on a petition to amend the State's Constitution from four years to two.

As discussed below, four of the provisions of HB 1355 (voter registration restriction, shortening of early voting, same-day address change, and the validity of a petition signature) are currently before the federal district court in the District of Columbia.

In this statement, we will comment on three of the four provisions currently under review.

#### **Section 4 – Restrictions on Voter Registration Efforts**

Section 4 of HB 1355 amends Florida Statutes § 97.057(3)(d) to require third party voter registration organizations to submit voter registration applications to the Division of Elections or the office of a county Supervisor of Elections within 48 hours of completion, or face penalties of \$50 per application for each day late or a maximum fine of \$1,000. Previously, organizations engaged in voter registration were allowed 10 days to submit voter registration applications.

In addition, because Florida law makes any violation of the Election Code, including this law, a first-degree misdemeanor, conviction for a violation of the new voter registration provisions could result in a term of imprisonment as long as one year.

In amending this Section, the Legislature also imposed new onerous and intimidating restrictions on volunteer-based organizations that engage in registering new voters. Where the previous law encouraged, but did not require third party voter registration organizations to register with the state, the new law requires a volunteer voter registration organization to not only register, but to submit the names and addresses of each member of the organization who will be engaging in voter registration. Each of these volunteers must also sign a statement, and each voter registration form obtained from the County Supervisor of Elections must prominently display the name of the third party voter registration organization.

Each third-party voter registration organization must also submit a sworn statement from each "registration agent" (in most cases, volunteers) in which the agent affirms that he or she "will obey all state laws and rules regarding the registration of voters." The statement must be made on the State's Form DS-DE 120, which lists the felony penalties for "false registration," though what constitutes that crime is not covered on the form.

The rationale for this change given by the Florida Secretary of State is Orwellian. "The change," the Secretary wrote in an October 11, 2011 press release, "helps ensure the voter registration process is expedited in a reasonable amount of time *for the benefit of the new voter and the voter registration organization.*" (Emphasis added) The truth is that the practical effect of these changes is to discourage volunteerism and cripple the program of third party voter registration organizations.

HB 1355 moves Florida precisely in the wrong direction. Volunteerism in encouraging the people of Florida to fully participate in our democracy should be applauded, encouraged and supported, and

there is urgent reason not to hamper efforts to increase voter participation. The U.S. Census Bureau reported that, as of 2008, the African-American voter registration rate in Florida was 53.6% and the Hispanic voter registration rate was 47.4%. Overall, the voter registration rate for all Floridians was only 62.4%.<sup>4</sup>

Volunteer voter registration efforts need to be encouraged, not discouraged. A law that punishes school teachers, for example, for encouraging their students to become fully-engaged citizens by completing voter registration applications is rightly seen around the country as absurd.<sup>5</sup>

The Legislature's rationale for the changes to the law governing third party voter registration activities – what little rationale was offered – was so thin and the official rationale from state election officials so concocted (specifically, that these changes are for the benefit of the new voter and the voter registration organization), there is a legitimate concern that the true purpose of this provision was to hamper efforts by volunteer-based organizations to register new voters.

### **Section 26 – Requiring Voters to Cast a Provisional Ballot**

Section 26 of HB 1355 amends Florida Statutes § 101.045(2)(b) to eliminate the right of a voter who is legally registered to vote in the state of Florida and who has moved from one county to another to update his/her address at the polling place on Election Day and cast a regular ballot. This change will require otherwise eligible registered voters to cast a provisional ballot, rather than a regular ballot.

It was the long-standing practice in Florida that if a person moved from one county to another and needed to update their address at the polls on Election Day, the individual was permitted to do so by swearing an affirmation as to his/her new address.

In such cases, the State's ability to administer elections free of fraud was enhanced by the State's post-2000 investment of millions of dollars in the Florida Voter Registration System (FVRS) database, which has been used to confirm the voter's registration and enable the voter to cast a regular ballot.

The Administration's rationale advanced for this change was an alleged need, asserted presented without evidence, "to combat voter fraud by preventing voters from casting a vote in multiple counties," as the Florida Secretary of State put it in his October 11, 2011 press release,<sup>6</sup> or, due to the absence of any evidence of voter fraud, to prevent "potential fraud," as the Governor acknowledged when he signed the measure into law.

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<sup>4</sup> U.S. Census Bureau, *Reported Voting and Registration of the Voting-Age Population, by Sex, Race and Hispanic Origin, for States: November 2008* (Table 4b), [www.census.gov/hhes/www/socdemo/voting/publications/p20/2008/tables.html](http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2008/tables.html) (last revised Nov. 9, 2010).

<sup>5</sup> *New Florida election law stirs up controversy*, DAYTONA BEACH NEWS-JOURNAL, Oct. 23, 2011, available at <http://www.news-journalonline.com/news/local/southeast-volusia/2011/10/23/new-florida-election-law-stirs-up-controversy.html>; Bill Gamblin, *Pace teacher might face \$1,000 fine for voter registration violation*, SANTA ROSA PRESS GAZETTE, Nov. 4, 2011, available at <http://www.srpressgazette.com/articles/teacher-14312-pace-voter.html>.

<sup>6</sup> *See, e.g.*, Press Release, Florida Department of State, Secretary Browning Renews Request for Preclearance Ruling, Amends Complaint to Challenge Constitutionality of Preclearance Coverage Formula (Oct. 11, 2011), available at <http://www.dos.state.fl.us/news/communications/pressrelease/pressRelease.aspx?id=542> [hereinafter *Sec. Browning Press Release*].

The Legislature's rationale also failed to identify any proven need for tighter controls of elections. The chief sponsor of House Bill 1355, Rep. Dennis K. Baxley, noted that: "We're not going to wait for fraud."<sup>7</sup> When pressed to justify the changes HB 1355 would make to registration procedures, members of the Legislature referred to an alleged 31 cases of voter fraud – over some unspecified period of time. On December 7, 2011, Rep. Baxley repeated the allegation the he and other Florida Legislators made (e.g., Rep. Eric Eisnaugle<sup>8</sup>) that "Mickey Mouse registered to vote" in Florida in 2008.<sup>9</sup> Those making the allegation, in apparent justification of the new restrictions on voter registration, failed to acknowledge that the prank was unsuccessful, that Orange County elections officials rejected the application – so Mickey was never officially registered to vote – and that this was detected and prevented under the State's pre-HB 1355 existing voter rules and procedures.<sup>10</sup>

Given the flimsy evidence of any need for changes in processing of address changes, and the availability the State's Voter Registration System (FVRS) database to confirm that a person is a registered voter and whether a person has voted, there is legitimate question whether the change in voting laws had a purpose other than to combat fraud or potential fraud.

This truth is that this provision – without sufficient justification – jeopardizes the right of voters to be assured that their vote will be counted.

Requiring more Floridians to cast provisional ballots jeopardizes the right to vote because:

- Florida uses an accelerated certification deadline that reduces the time available to count provisional ballots;
- Elections offices are not uniformly staffed from one county to another, and offices have differing capacity to count provisional ballots;
- HB 1355 will have a disproportionate impact on certain counties that experience high mobility because, for example, they are the location of large state universities; and
- State law requires that an entire provisional ballot be discarded if cast in the wrong precinct.

In 2009, the Pew Charitable Trusts conducted a nationwide state-by-state analysis of the more than 2 million provisional ballots submitted in the 2008 Election. Pew reported that nationally, 70.65% of those provisional ballots were counted, but that only 48.59% were counted in Florida.<sup>11</sup>

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<sup>7</sup> Rep. Dennis Baxley, Remarks on MSNBC's PoliticsNation (Dec. 7, 2011) (transcript available at [http://www.msnbc.msn.com/id/45601057/ns/msnbc\\_tv-politicsnation/t/politicsnation-wednesday-december/](http://www.msnbc.msn.com/id/45601057/ns/msnbc_tv-politicsnation/t/politicsnation-wednesday-december/)) [hereinafter *Baxley Remarks*].

<sup>8</sup> Floor Debate, Florida House of Representatives, April 21, 2011 (video and partial transcript available at <http://www.politifact.com/florida/statements/2011/apr/26/eric-eisnaugle/mickey-mouse-was-registered-vote-florida-republica/>).

<sup>9</sup> *Baxley Remarks*, *supra* note 7.

<sup>10</sup> *Mickey Mouse was registered to vote in Florida, Republican House member claims*, TAMPA BAY TIMES/MIAMI HERALD, (APRIL 26, 2011), available at <http://www.politifact.com/florida/statements/2011/apr/26/eric-eisnaugle/mickey-mouse-was-registered-vote-florida-republica/> [hereinafter *PolitiFact Mickey Mouse Statement*].

<sup>11</sup> Pew Center on the States, *Provisional Ballots: An Imperfect Solution* (July 2009),

Even Florida election officials acknowledge that in the 2010 Election, statewide, 74.27% were counted – in other words, one in four provisional ballots were not counted.<sup>12</sup>

Further, the Pew Center noted that, in 2008, as many as fifty thousand provisional ballots cast in Florida were discarded because they were cast at the wrong precinct by voters who “may have been provided with incorrect precinct information in advance or redirected to the wrong precinct on Election Day due to administrative errors in the registration system.”<sup>13</sup>

Discounting the 2009 Pew Center study, the Florida Secretary of State continues to minimize the seriousness of the loss of a citizen’s vote. As recently as January 16<sup>th</sup>, Secretary Kurt Browning was quoted in *The Miami Herald/Tampa Bay Times* stating: “No one wants the vote to count more than I. But I want someone to show me the numbers where provisional ballots are not being counted.”<sup>14</sup>

### **Section 39 – Reducing the number of early voting days**

HB 1355’s Section 39 amends Florida Statutes §101.657(1)(d) to reduce the number of early voting days from 14 to 8, and to give County Supervisors of Elections discretion over early voting hours, changing from a mandatory 8 hours per day to a discretionary range of 6 to 12 hours per day. By converting early voting to a partially discretionary practice, this provision makes it possible for the total number of early voting hours in a county to be reduced from 96 to 48 hours – and for inconsistent practices to arise from county to county within Florida.

Section 39 also eliminates the first week of early voting, and bans early voting on the Sunday before Election Day.

The administration’s rationale for these changes is less than forthright. The Secretary of State’s October 11<sup>th</sup> press release states that this Section “increases the maximum number of voting hours in a day from eight to 12 hours a day,”<sup>15</sup> without acknowledging that the number of hours will be at the discretion of each County Supervisor. Nor does the Secretary acknowledge that the change eliminates early voting on the Sunday before Election Day, perhaps the most important voting day for African-American voters, in no small part due to the “Souls to the Polls” program organized by many African-American churches.

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[http://www.pewcenteronthestates.org/uploadedFiles/ELEC\\_ProvBallot\\_Brief\\_0709.pdf](http://www.pewcenteronthestates.org/uploadedFiles/ELEC_ProvBallot_Brief_0709.pdf) [hereinafter *Pew Provisional Ballots Report*]

<sup>12</sup> Department of State Division of Elections, November 2010 General Election: Provisional Ballots, <http://doe.dos.state.fl.us/reports/pdf/2010ProvisionalBallots.pdf>.

<sup>13</sup> *Pew Provisional Ballots Report*, *supra* note 11, at 4.

<sup>14</sup> Steve Bousquet, *Election law oddity will leave Hillsborough and Pinellas operating under different rules*, TAMPA BAY TIMES, Jan. 15, 2012, at 1B.

<sup>15</sup> *Sec. Browning Press Release*, *supra* note 6.

The Legislature's rationale was equally strained. The rationale offered by the Senate's chief sponsor of HB 1355, Sen. Miguel Diaz de la Portilla, was that this provision aims to increase cost effectiveness, and was necessitated by under usage of early voting. During an April 15, 2011 meeting of the Rules Committee, he claimed that, "Generally, early voting in Miami-Dade County has not been very efficient. What you see more often than not is that there is a trickle of two or three people a day at a very high cost to keep those public libraries and polls open. ... We felt it was an efficiency measure."<sup>16</sup>

This is a claim that *The Miami Herald/Tampa Bay Times PolitiFact* rated as "False." In 2008, 2.6 million Floridians (approximately 31.25% of all votes cast) voted in-person at early voting locations.<sup>17</sup> Early voting options are used most often by people of color, and their withdrawal is likely to have a disproportionate chilling impact on African Americans and other historically disfranchised voters. A study by the *Orlando Sentinel*<sup>18</sup> reported that, in 2008, a majority of Florida's African-American voters - nearly 54% - cast their ballots during early voting.

The impact of this change is to make voting less convenient for all Floridians, especially working people who have difficulty obtaining transportation to polling places or taking time off from work to vote and Florida's African-American voters. The reduction in early voting also exacerbates long lines at the polls on Election Day which discourage people from voting.

### **The Status of Litigation Challenging the State's Voter Suppression Measures**

Since the 2000 Election and the influential role that our organization played in ensuring that Florida officials addressed a succession of problems with voting technology, leading to the adoption of a blended system of optical scan and electronic voting uniformly throughout the state, the ACLU's recent efforts to protect the right to vote, to prevent a person's vote from being diluted and to ensure that a citizen's vote is counted have included the following actions:

- Preclearance review by DOJ: Florida's Legislature enacted, and Governor Scott signed, HB 1355 in 2011. Breaking with the longstanding practice of awaiting preclearance by DOJ before implementing a new voting law anywhere in the State, Secretary Browning ordered the law into effect in 62 Florida counties not subject to Section 5 of the Voting Rights Act's preclearance requirements. As DOJ undertook review of Florida's preclearance application, a number of organizations including the ACLU of Florida submitted comment letters urging the Department to object to four controversial provisions of HB 1355.<sup>19</sup>

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<sup>16</sup> Senate Rules Committee, April 15, 2011; *see also PolitiFact Mickey Mouse Statement, supra* note 10.

<sup>17</sup> Florida Department of Elections, *County Absentee and Early Voting Reports*, <http://doe.dos.state.fl.us/fvrscountyballotreports/FVRSAvailableFiles.aspx> (last visited Jan. 16, 2011).

<sup>18</sup> Aaron Deslatte and Vicki McClure, *Battle for Florida: Blacks Turn Out in Drove, but Few Young People Have Voted*, ORLANDO SENTINEL, October 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>19</sup> The ACLU of Florida, representing a number of individuals, filed a Section 5 challenge, arguing that the implementation of HB 1355 in 62 counties was having an adverse effect on voters in the five covered jurisdictions. *Sullivan v. Scott*, No. 4:11-cv-10047-KMM (S.D. Fla. filed June 3, 2011). That lawsuit was dismissed on procedural grounds of standing and ripeness.



- Reducing the number of days for early voting from fourteen days to eight days - from the 10th to the 3rd day before the election. Fla. Stat. §101.657(1)(d) (HB 1355, Sec. 39);
  - Requiring third-party voter registration organizations to submit voter registration applications within 48 hours of receipt instead of ten days as provided by existing law, and imposing a fine of \$50 for each failure to comply with the deadline, and imposing fines of up to \$1,000 for failing to comply with other provisions. Fla. Stat. §97.057 (3)(d) (HB 1355, Sec. 4);
  - Disallowing voters who move from one Florida county to another to make an address change at the polls on the day of an election and vote a regular ballot. This change does not apply to active military voters and their family members. Fla. Stat. §101.045(2)(b) (HB 1355, Sec. 26); and
  - Reducing the shelf-life of signatures on citizen initiative petitions proposing constitutional amendments from four years to two years. Fla. Stat. §100.371(3) (HB 1355, Sec. 23).
- Preclearance review by the federal court: Just prior to the sixty day deadline within which DOJ was required to respond to Florida’s application, the State withdrew these provisions from DOJ consideration<sup>20</sup> and filed an action seeking preclearance in federal district court in the District of Columbia.<sup>21</sup> A number of individuals and organizations intervened as defendants to challenge HB 1355 under the Voting Rights Act. The ACLU Foundation of Florida, along with Project Vote, intervened to represent two County Supervisors of Elections, the Florida AFL-CIO, Project Vote and several individuals in this litigation. Discovery is underway with a briefing schedule set to conclude in April 2012. A decision by the court is expected before the November 2012 elections, although the losing side could seek review by the U. S. Supreme Court.
  - Restrictions on voter registration activities: A substantive challenge to the newly enacted third party voter registration restrictions that are part of HB 1355 was filed in federal district court in Tallahassee.<sup>22</sup> This suit seeks to prevent enforcement of the new provision and the implementing regulations that impair the efforts of plaintiffs and other individuals and community-based groups to encourage civic engagement and democratic participation. The plaintiffs are represented by the Brennan Center for Justice at New York University School of Law, American Civil Liberties Union Foundation of Florida, Paul, Weiss, Rifkind, Wharton & Garrison LLP, and Coffey Burlington. A motion for preliminary injunction has been filed and a hearing scheduled for March 1, 2012.
  - Gerrymandering: Shortly after the constitutional amendments on redistricting were approved by nearly 63% of Florida’s voters, then-Governor Crist submitted the legislation to the Department of Justice (“DOJ”) for preclearance. After taking office, however, Governor Scott

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<sup>20</sup> The DOJ pre-cleared all other provisions of the Act.

<sup>21</sup> *State of Florida v. United States of America*, No. 1:11-cv-01428-CKK-MG-ESH (D.D.C. filed Aug. 1, 2011).

<sup>22</sup> *The League of Women Voters, v. Browning*, No. 4:11-cv-00628-RH-WCS (N.D. Fla. filed Dec. 15, 2011).

quietly withdrew the amendments from DOJ consideration. A lawsuit was filed in federal district court in Miami to compel the Governor and Secretary of State Browning to submit the amendments for preclearance.<sup>23</sup> The ACLU Foundation of Florida and the ACLU's Voting Rights Project were part of the legal team in that challenge. Ultimately the Florida House of Representatives and the Florida Senate re-submitted the amendments for DOJ consideration, and the lawsuit was dismissed. DOJ pre-cleared the amendments and they are now in effect.<sup>24</sup>

### **Lifetime Disfranchisement**

In April 2007, the BOEC during the administration of former Governor Charlie Crist made modest changes to the Rules of Executive Clemency. A distinction was drawn between those who were convicted of a non-violent felony and who would be eligible for "automatic" clemency upon completion of all terms and conditions of their sentence, and those convicted of violent and other more serious felonies whose application for clemency would require a hearing before the BOEC.

On March 9, 2011, in one of the first acts of the Rick Scott Administration, the BOEC repealed the Crist Rules and replaced them with, among many other changes, the requirement of a five year or seven year waiting period – depending upon whether the offense was non-violent or a more serious offense – to petition for the Restoration of Civil Rights in order to register to vote.

On April 25, 2011, The American Civil Liberties Union of Florida and the ACLU's National Voting Rights Project wrote to the Chief of the Voting Section of the Department of Justice's Civil Rights Section urging that the Department require Florida officials to submit the revised rule changes for preclearance in accordance with the Voting Rights Act.

No response has been received from the Department.

### **Recommendations for the Federal Government**

We urge Congress to take appropriate action that will increase the percentage of our citizens who are registered to vote, and who exercise the franchise. Congress should also take action to discourage and prevent policies that interfere or discourage the exercise of the right to vote, including policies that dilute the power of the vote or jeopardize whether a citizen's vote will be counted.

Congress should take the following actions:

1. Require more uniformity in federal voting policies and procedures to reduce confusion regarding practices that are determinative of whether individuals are allowed to vote, and whether their votes are counted. We applaud Congress' efforts in the Help America Vote Act to create uniform standards, but more is required. For example, in federal elections, legislation

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<sup>23</sup> *The League of Women Voters of Florida, et al., v. Scott*, No. 11-cv-10006-KMM (S.D. Fla. filed Feb. 3, 2011).

<sup>24</sup> U.S. Representatives Mario Diaz-Balart and Corrine Brown challenged the federal redistricting amendment within hours after the 2010 election. *Diaz-Balart v. Browning*, No. 10-CV-23968-UU (S.D. Fla.). The Florida House of Representatives intervened as a plaintiff and the ACLU of Florida and others intervened as defendants. The amendment was upheld by the district court. The Florida House and the Representatives appealed the decision to the Eleventh Circuit. Oral argument was held on January 10, 2012.

should address such practices as the length and timing of early voting periods (for those states that provide early voting), circumstances under which provisional ballots may be required, and procedures for determining when to count provisional ballots.

For example, Congress should consider how to protect the right of an eligible voter to cast a ballot in Presidential and Congressional elections when state law requires that the entire ballot of the eligible voter be discarded because the ballot was cast in the wrong precinct.

Uniform federal voting procedures would go a significant way towards eliminating the potential problem of unequal treatment. If the U.S. Supreme Court's decision in *Bush v. Gore*<sup>25</sup> stands for anything beyond its application to the facts of the 2000 Presidential Election, it stands for the proposition that equal protection under the law is violated if a state's voting policies and procedures treat voters in federal elections differently from county to county within a state.

2. Congress should urge the Department of Justice to require Florida officials to submit the March 2011 amended Rules of Executive Clemency that affected the Restoration of Civil (and voting) Rights to the preclearance process in accordance with the Voting Rights Act.
3. Congress should enact federal legislation to restore the right to vote in federal elections for those who have been disfranchised because of a prior criminal conviction and who are no longer incarcerated. Sen. Ben Cardin of Maryland and Rep. John Conyers of Michigan have introduced such legislation, the Democracy Restoration Act (S. 2017/H.R. 2212, 112<sup>th</sup> Congress), which would restore voting rights in federal elections to the millions of Americans who are living in the community, but continue to be denied their ability to fully participate in civic life because of a past criminal conviction. This legislation is generations overdue, and should be speedily enacted. We thank Senators Durbin and Whitehouse for being co-sponsors of this important bill.
4. Congress should encourage the Department of Justice to consider litigation under Section 2 of the Voting Rights Act against the State of Florida, to challenge provisions of House Bill 1355 that will disadvantage racial and language minorities anywhere in the State of Florida, and against any other states that adopt voting provisions that have similar effect.

The Department should consider the history of changes in voting technology, laws and policies that have failed to protect the right to vote for all Floridians. Many of these changes enacted since the embarrassing exposure of our inadequacies and ineptitudes in the administration of the 2000 election -- of which House Bill 1355 is but the latest chapter -- have had the disproportionate effect, and perhaps in some cases the purpose, of abridging the right to vote of Florida's racial and language minority community.

These voting changes include the following:

- the employment of failed voting technology,
- the states' response to the need for recounts in close or disputed elections by making it more difficult to conduct a recount and even banning recounts,

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<sup>25</sup> 531 U.S. 98 (2000).

- making it more difficult to register to vote through restrictions on third party voter registration organizations,
  - shortening the deadline for certification which makes it more difficult to conduct recounts and count provisional ballots,
  - efforts to use flawed purges of voting rolls based on flawed lists of “felons,”
  - lost and missing votes,
  - polling places opening late or being moved at the last minute.
5. Congress must continue to provide the Department of Justice and other federal entities with the resources and support they need in order to enforce the laws that guarantee Americans broad and nondiscriminatory access to the ballot and ensure that a citizen’s vote will be counted.

### **Conclusion**

In order for the United States to continue as one of the world’s leading democracies, it must ensure all eligible citizens are able to register and cast their ballots. Elected officials should be seeking ways to encourage more voters, not making it more difficult for voters to register and to cast their ballots. Measures that repress voting are a dangerous and misguided step backward in our ongoing quest for a more democratic society. We commend this Subcommittee’s attention to the impact of Florida’s new restrictive state voting laws.