

# U.S. Department of Justice

## Civil Rights Division

Freedom of Information/Privacy Acts Branch - NALC 950 Pennsylvania Avenue, NW Washington, DC 20530

October 18, 2011

11-00546-F

John Althen, Esq. Judicial Watch 425 3<sup>rd</sup> Street, S.W., Suite 800 Washington, D.C. 20024

Dear Mr. Althen:

This is in further response to your June 23, 2011 Freedom of Information Act request received by the Civil Rights Division on September 12, 2011, seeking access to copies of "... communications between the Department of Justice and Estelle Rogers, Director of Advocacy for Project Vote... [between] January 20, 2009 to June 23, 2011."

Please note that this office is responsible for Civil Rights Division records only. To the extent that you believe there may be other Department of Justice components that would have had communications with the Director of Advocacy for Project Vote, you may wish to address a request directly to those components. Please note as well that on addressing a request to the Central Referral Unit of the Department of Justice, as Judicial Watch did in this particular matter, if you do not receive an additional acknowledgment from the component most likely to maintain records related to your request, such as the Civil Rights Division, then please do not hesitate to contact this office by calling 202-514-4210. Civil Rights Division FOI/PA Branch staff will be glad to assist you in locating the appropriate office for the subject matter of your request.

Enclosed please find 55 pages of Civil Rights Division documents responsive to your request and one page that originated with the Criminal Division. After consultation with the Criminal Division regarding the one page containing Criminal Division information, I have determined that all 56 pages may be provided to you in the entirety.

In searching for records responsive to your request, this office also located one document that originated with the Department of Justice's Associate Attorney General's office. In accordance with Department regulations, 28 C.F.R. § 16.1, et seq., I have referred this document

to the Office of Information Policy for review. You may expect an additional response regarding that document. Any further inquiries should be directed to:

Carmen L. Mallon, Chief of Staff Office of Information Policy United States Department of Justice Washington, DC 20530-0001 (202) 514-3642 (Telephone)

I hope the Civil Rights Division has been of some assistance to you in this matter.

Sincerely,

Nelson D. Hermilla, Chief

Freedom of Information/Privacy Acts Branch

Civil Rights Division

Enclosures

Nicole Kovite

To:

Herren, Chris (CRT)

Cc:

Estelle Rogers **NVRA Guldance** 

Subject: Date:

Thursday, June 03, 2010 10:51:38 AM

### Chris:

On behalf of Project Vote, I am writing to thank you and your team for the Questions and Answers on NVRA requirements recently issued by DOJ. We are currently in the process of reviewing the document, but we are quite pleased with what we have seen so far. We appreciate your efforts on this important issue.

Thank you, Nicole

Nicole Kovite Director, Public Agency Voter Registration Program Project Vote 737 1/2 8th Street SE Washington, DC 20003 Tel (202) 546-4173 Ext. 303 Fax (202) 543-3675 www.projectvote.org



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The information contained in this message from Project Vote and any attachments are confidential and Intended only for the named recipient(s). If you have received this message in error, you are prohibited from copying, distributing, or using this the information. Please contact the sender immediately by return e-mail and delete the original message.







June 18, 2010

Chris Herren
Chief
Voting Section
Civil Rights Division
United States Department of Justice
950 Pennsylvania Ave., NW
Room 7254 NWB
Washington, DC 20530

RE: DOJ'S NVRA Questions and Answers

Dear Mr. Herren:

We are writing, first and foremost, to express our appreciation to you and the Voting Section for your efforts in issuing Questions and Answers regarding the voter registration requirements of Sections 5, 6, 7, and 8 of the National Voter Registration Act (NVRA). As you are aware, our organizations work to offer technical assistance on NVRA voter registration requirements to states and advocate for full and sustained compliance with the NVRA. DOJ's guidance on NVRA compliance was sorely needed, and your final product provides answers to many of the NVRA questions that we hear from states on a regular basis. We are hopeful that state officials will use DOJ's guidance to reform voter registration practices in states that are currently operating out of compliance with the NVRA.

While the Questions and Answers document provides valuable information in its current form, we are writing to offer suggestions in the hope of clarifying several issues that remain outstanding. Based upon our continued work with state officials, we believe these additions would be most helpful to aid states in ensuring NVRA compliance. In addition to the specific suggestions set

forth below, we also want to note that there are additional important issues relating to the removal provisions of Section 8, which we plan to raise with you in the near future.

Questions 5 and 24. As a part of our recent advocacy, we have encountered several states that employ contractors to administer driver's license transactions or public assistance benefits (e.g., Indiana and New Mexico), thereby putting those contract employees under the purview of Sections 5 and 7. These states, as well as other states that utilize similar contracts for service, would benefit from guidance from DOJ as to the applicability of NVRA requirements to all individuals who provide driver's license or public assistance services, including the work of contractors. Such an amendment would require the addition of just one sentence to the answers to Questions 5 and 24. We recommend the insertion of the following: "When a state contracts with a private entity to administer services in an agency that is required to offer voter registration, the ultimate responsibility for ensuring provision of voter registration services remains with the state, and the requirements of voter registration under the NVRA remain the same."

Question 13. In the answer to this question, the document references the "Special Supplemental Food Program for Women, Infants, and Children". The proper name for this program is actually the Special Supplemental Nutrition Program for Women, Infants, and Children. In addition, the answer to question 13 references the "food-stamp program," which we believe should be correctly written as "Food Stamp Program," capitalized, with no hyphen.

Question 29. The issue of removal due to mental incapacity is one that tends to engender confusion and sometimes misuse on the part of election officials. The determination of mental incapacity is not usually the responsibility of state election officials. Rather, state laws generally provide for the issue of mental incapacity to be determined by the court, and a citizen is competent to vote unless a judge has ruled otherwise. In an effort to add clarity, we suggest the following insertion (after the first sentence of the answer): "In those States where removal may be based on mental incapacity or criminal conviction, election officials rely on court determinations to identify the individuals who are subject to removal."

Question 41. The answer to Question 41 addresses each state's responsibility for ensuring compliance with the NVRA, including the suggestion that states consider employing an NVRA coordinator whose duties could include reviewing monthly voter registration data for motor vehicle and agency offices, and monitoring voter registration activities. In our experience, tracking and monitoring of voter registration activity are not simply things states might consider doing, but rather are critical to effective enforcement of the NVRA, and are directly related to a state's NVRA performance as a whole. We therefore recommend that DOJ identify tracking and monitoring as a critical element of ensuring state compliance with the NVRA.

Question 42. The answer to Question 42 describes the states' responsibility to report voter registration information to the U.S. Election Assistance Commission (EAC) in response to the

EAC survey conducted every two years. The accuracy of state reports to the EAC is critical to Justice Department and private enforcement efforts, and to the EAC effort to deliver to Congress a biannual report that properly reflects the impact of the NVRA on the "administration of elections." Section 9(a)(3) of the NVRA. In order to promote full and accurate reporting, states need further elaboration on tracking voter registration by source. DOJ should add additional language to the answer to Question 42 to specify that each state's chief NVRA election official should ensure that complete and accurate data are provided in response to the EAC's survey, noting that DOJ will consider a state's failure to provide complete and accurate data to the EAC in deciding whether to open a compliance review or investigation. The chief election official should develop separately coded voter registration applications for use by motor vehicle offices, public assistance agencies, disability services agencies, Armed Forces recruitment offices, and other Section 7 agencies so as to track the source of voter registration applications. Codes should indicate the type of office or agency (e.g. public assistance separate from disability services, etc.) and should be included on the voter registration application portion of the form.

Again, thank you for your efforts in producing guidance to states so that they may better comply with the NVRA. We are encouraged that the Department of Justice has taken this important step in the vigorous enforcement of the voting rights of American citizens. Please feel free to contact us at any time if you wish to discuss our concerns further.

Sincerely,

Nicole Kovite Director, Public Agency Voter Registration Project Project Vote (202) 546-4173 x303

Lisa J. Danetz Senior Counsel, Democracy Program Dēmos (617) 232-5885 x11

Mark A. Posner Senior Counsel Lawyers' Committee for Civil Rights Under Law (202) 662-8389

Lloyd Leonard Senior Director for Advocacy League of Women Voters (202) 263-1302 James Dickson Vice President, Governmental Affairs 202-457-0046 (V/TTY) 800-840-8844 (Toll Free V/TTY)

Estelle Rogers Herren, Chris (CRT)

Cc: Subject: Nicole Kovite meeting next week

Date:

Wednesday, July 07, 2010 2:29:54 PM

Dear Chris,

Nicole and I would like to come in and meet with you and Julie to share some information and discuss several projects of mutual interest. Julie mentioned that July 14th at 4 (for an hour) would be acceptable to her. Is that a possibility for you? Please let us know. The 15th at 4:30 is also an option for her but might be difficult for Nicole's schedule. Looking forward to it, whenever it turns out to be. PS, I don't seem to have Julie's email on my new computer, so could you please copy her as well when you answer me? Thanks so much. Estelle

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Estelle H. Rogers, Esq. Director of Advocacy Project Vote 202-546-4173, ext. 310

Herren, Chris (CRT)

To:

Estelle Rogers

Cc:

Nicole Kovite; Fernandes, Julie (CRT); Herren, Chris (CRT)

Subject:

RE: meeting next week

Date:

Monday, July 12, 2010 8:22:58 AM

4pm on the 14<sup>th</sup> is ok by me.

From: Estelle Rogers [mailto:erogers@projectvote.org]

Sent: Wednesday, July 07, 2010 2:30 PM

To: Herren, Chris (CRT) Cc: Nicole Kovite

Subject: meeting next week

#### Dear Chris.

Nicole and I would like to come in and meet with you and Julie to share some information and discuss several projects of mutual interest. Julie mentioned that July 14th at 4 (for an hour) would be acceptable to her. Is that a possibility for you? Please let us know. The 15th at 4:30 is also an option for her but might be difficult for Nicole's schedule. Looking forward to it, whenever it turns out to be.

PS, I don't seem to have Julie's email on my new computer, so could you please copy her as well when you answer me? Thanks so much.

Estelle

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Estelle H. Rogers, Esq. Director of Advocacy **Project Vote** 202-546-4173, ext. 310

Estelle Rogers Herren, Chris (CRT)

To:

Nicole Kovite; Fernandes, Julie (CRT)

Subject: Date:

Re: meeting next week Monday, July 12, 2010 8:56:38 AM

That's great. See you then.

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Estelle

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Estelle H. Rogers, Esq. Director of Advocacy Project Vote 202-546-4173, ext. 310

Fernandes, Julie (CRT)

To:

Estelle Rogers; Herren, Chris (CRT)

Cct

Nicole Kovite

Subject: Date: RE: meeting next week

Monday, 3

Monday, July 12, 2010 9:24:59 AM

Unfortunately, that time is now gone for me. Could we go back to the  $15^{th}$  at 4:30pm or the  $16^{th}$  at 12:30 or 1pm?

From: Estelle Rogers [mailto:erogers@projectvote.org]

Sent: Monday, July 12, 2010 8:57 AM

To: Herren, Chrls (CRT)

Cc: Nicole Kovite; Fernandes, Julie (CRT)

Subject: Re: meeting next week

That's great. See you then,

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Estelle H. Rogers, Esq. Director of Advocacy Project Vote 202-546-4173, ext. 310

Estelle Rogers

To:

Fernandes, Julie (CRT)

Cc:

Herren, Chris (CRT); Nicole Kovite

Subject:

Re: meeting next week

Date:

Monday, July 12, 2010 9:27:41 AM

I can do the 15th but not the 16th. Nicole is not in yet, but I'll make sure she checks her calendar as soon as she arrives.

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Sent: Monday, July 12, 2010 8:57 AM

To: Herren, Chrls (CRT)

Cc: Nicole Kovite; Fernandes, Julie (CRT)

Subject: Re: meeting next week

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To: Herren, Chris (CRT)
Cc: Nicole Kovite

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Herren, Chrls (CRT)

To:

Fernandes, Julie (CRT); "Estelle Rogers"

Cc; Subject: "Nicole Kovite". RE: meeting next week

Date:

Monday, July 12, 2010 9:29:00 AM

Ok by me

From: Fernandes, Julie (CRT)

**Sent:** Monday, July 12, 2010 9:25 AM **To:** Estelle Rogers; Herren, Chris (CRT)

Cc: Nicole Kovite

Subject: RE: meeting next week

Unfortunately, that time is now gone for me. Could we go back to the  $15^{th}$  at 4:30pm or the  $16^{th}$  at 12:30 or 1pm?

From: Estelle Rogers [mailto:erogers@projectvote.org]

Sent: Monday, July 12, 2010 8:57 AM

To: Herren, Chris (CRT)

Cc: Nicole Kovite; Fernandes, Julie (CRT)

Subject: Re: meeting next week

That's great. See you then.

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Estelle H. Rogers, Esq. Director of Advocacy Project Vote 202-546-4173, ext. 310

Estelle Rogers

To: Cc: Fernandes, Julie (CRT)

Herren, Chris (CRT); Nicole Kovite

Subject:

Re: meeting next week

Date:

Monday, July 12, 2010 9:35:16 AM

Ok, the 15th at 4:30 is fine (assuming it is for Chris). Tell us where to go, and we'll be there.

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From: Estelle Rogers [mailto:erogers@projectvote.org]

Sent: Monday, July 12, 2010 8:57 AM

To: Herren, Chris (CRT)

Cc: Nicole Kovite; Fernandes, Julie (CRT)

Subject: Re: meeting next week

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Estelle Rogers
Herren, Chris (CRT)

Subject:

Re: meeting next week

Date:

Monday, July 12, 2010 9:52:33 AM

Yes, we crossed in the mail.

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Estelle H. Rogers, Esq. Director of Advocacy Project Vote 202-546-4173, ext. 310

On Jul 12, 2010, at 9:36 AM, Herren, Chris (CRT) wrote:

Ok by me

From: Estelle Rogers [mailto:erogers@projectvote.org]

Sent: Monday, July 12, 2010 9:35 AM

To: Fernandes, Julie (CRT)

Cc: Herren, Chris (CRT); Nicole Kovite Subject: Re: meeting next week

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Sent: Monday, July 12, 2010 8:57 AM To: Herren, Chris (CRT)

Cc: Nicole Kovite; Fernandes, Julie (CRT)

Subject: Re: meeting next week

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Estelle H. Rogers, Esq. Director of Advocacy Project Vote 202-546-4173, ext. 310

Estelle Rogers

To:

Fernandes, Julie (CRT); Herren, Chris (CRT)

Co: Subject: Nicole Kovite
Thursday's meeting

Date:

Tuesday, July 13, 2010 10:32:04 AM

Hello, Chris and Julie. I just wanted to give you full names, in case you need them, and also to tell you that Nicole and I will be bringing our newest attorney, Niyati Shah, who will be working on a lot of the litigation we'll be telling you about. So it's Niyati Shah, Nicole Kovite, and Estelle Rogers. I'm assuming that they will know at Security where to take us so that we don't need a room number, but please let me know if I'm assuming wrong. We're really looking forward to sharing information with you. See you then. Estelle

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Estelle H. Rogers, Esq. Director of Advocacy Project Vote 202-546-4173, ext. 310

Estelle Rogers Herren, Chris (CRT)

Subject:

dates and times

Date:

Thursday, July 15, 2010 10:08:04 AM

I am going to be in Baltimore on the 28th until about noon, so 1:30 or after should be fine. The 27th and 29th are wide open for all of us. Thanks.

Estelle H. Rogers, Esq. Director of Advocacy Project Vote 202-546-4173, ext. 310

Herren, Chris (ERT)
"erogers@projectvote.org"

Subject:

Re: dates and times

Date:

Thursday, July 15, 2010 12:49;42 PM

#### Thanks

From: Estelle Rogers <erogers@projectvote.org>

To: Herren, Chrls (CRT)

Sent: Thu Jul 15 10:08:00 2010 Subject: dates and times

I am going to be in Baltimore on the 28th until about noon, so 1:30 or after should be fine. The 27th and 29th are wide open for all of us. Thanks.

Estelle H. Rogers, Esq. Director of Advocacy Project Vote 202-546-4173, ext. 310

Estelle Rogers
Herren, Chris (CRT).
Re: dates and times

Subject: Date:

Thursday, July 15, 2010 12:54:05 PM

Late breaking news--we now have another meeting at 10 am on the 27th, but noon or later is still fine.

Estelle H. Rogers, Esq. Director of Advocacy Project Vote 202-546-4173, ext. 310

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On Jul 15, 2010, at 12:49 PM, Herren, Chris (CRT) wrote:

Thanks

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To: Herren, Chris (CRT)

Sent: Thu Jul 15 10:08:00 2010 Subject: dates and times

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Herren, Chris (CRT)

Subject:

"erogers@projectvote.org"
Re: dates and times

Date:

Monday, July 19, 2010 5:08:48 PM

I will settle on a time with Julie and get back to you.

---- Original Message -----

From: Estelle Rogers <erogers@projectvote.org>

To: Herren, Chris (CRT) Sent: Mon Jul 19 17:04:30 2010

Sent: Mon Jul 19 17:04:30 201 Subject: Re: dates and times

Chris, have you been able to settle on a time for this meeting?

Estelle H. Rogers, Esq. Director of Advocacy Project Vote 202-546-4173, ext. 310

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On Jul 15, 2010, at 12:49 PM, Herren, Chris (CRT) wrote:

Thanks

From: Estelle Rogers <erogers@projectvote.org>

To: Herren, Chris (CRT) Sent: Thu Jul 15 10:08:00 2010

Subject: dates and times

I am going to be in Baltimore on the 28th until about noon, so 1:30 or after should be fine. The 27th and 29th are wide open for all of us. Thanks.

Estelle H. Rogers, Esq. Director of Advocacy Project Vote 202-546-4173, ext. 310

Estelle Rogers
Herren, Chris (CRT)
Re: dates and times

Subject: Date:

Monday, July 19, 2010 5:04:34 PM

Chris, have you been able to settle on a time for this meeting?

Estelle H. Rogers, Esq. Director of Advocacy Project Vote 202-546-4173, ext. 310

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Estelle H. Rogers, Esq. Director of Advocacy Project Vote 202-546-4173, ext. 310

Herren, Chris (CRT)

FW: pre-election stories

To:

Estelle Rogers

Cc:

Russ, John (CRT); Heffernan, Brian F (CRT)

Subject: Date:

Thursday, October 21, 2010 12:08:00 PM

Hi Estelle,

We are closely monitoring election-related news around the country. We are also receiving complaints from various sources. For all of these, we are reviewing and taking action as appropriate. If you have any issues that come up that you want us to be aware of, please feel free to shoot us an email (to Brian, Bert and I) -- that is the easiest way to keep track of the many things coming in the door.

Thanks, Chris

From: Estelle Rogers [mailto:erogers@projectvote.org]

Sent: Tuesday, October 19, 2010 4:19 PM

To: Russ, John (CRT)

Subject: pre-election stories

Dear Bert,

I got your email from my colleague Nicole Kovite, who attended the DOJ briefing last week for the voting rights groups. We have been collecting press pieces and other accounts of the increasing number of threatened voter suppression tactics. I don't want to inundate you with issues you already know about, so I thought I'd ask what form would be most useful for you. There is, for example, the Illinois story of Paul Kirk's "voter integrity" program, including the claim that they're training 1,000 lawyers in what is claimed to be a CLE-accredited program. (My inquiries of the IL CLE people have so far turned up no such thing, by the way.) Please let me know if you just want forwarded stories, if you'd like to have a conversation, or something else. Thanks so much for your attention to this important problem. Estelle Rogers

Estelle H. Rogers, Esq. Director of Advocacy Project Vote 202-546-4173, ext. 310

Estelle Rogers

To:

Herren, Chris (CRT)

Cc: Subject: Russ, John (CRT); Heffernan, Brlan F (CRT)

pject: Re: pre-election stories

Date:

Thursday, October 21, 2010 12:29:36 PM

Thanks! So as to minimize duplication, I'll be collecting info from a number of groups and passing it along to you all.

Estelle Rogers

Sent from my iPhone

On Oct 21, 2010, at 12:08 PM, "Herren, Chris (CRT)" < <a href="mailto:Chris.Herren@usdoj.gov">Chris.Herren@usdoj.gov</a>> wrote:

Hi Estelle,

We are closely monitoring election-related news around the country. We are also receiving complaints from various sources. For all of these, we are reviewing and taking action as appropriate. If you have any issues that come up that you want us to be aware of, please feel free to shoot us an email (to Brian, Bert and I) -- that is the easiest way to keep track of the many things coming in the door.

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IL CLE people have so far turned up no such thing, by the way.) Please let me know if you just want forwarded stories, if you'd like to have a conversation, or something else. Thanks so much for your attention to this important problem.

Estelle Rogers

Estelle H. Rogers, Esq. Director of Advocacy Project Vote 202-546-4173, ext. 310

Estelle Rogers

To:

Herren, Chris (CRT)

Cc: Subject: Russ, John (CRT); Heffernan, Brian F (CRT)

Subject:

memo on pre-election stories

Date:

Monday, October 25, 2010 4:53:50 PM

Attachments:

VOTER SUPPRESSION ESCALATES.docx

ATT414766.htm

Hello, Chris, Bert and Brian. I am attaching Project Vote's memo (designed for the media but I hope useful to you too) on recent incidents of voter suppression with some historical context. Please feel free to get in touch if you have questions, but I'm confident that you have heard about all of these. Estelle



#### **MEDIA MEMO**

**To:** Reporters

From: Michael Slater, Executive Director

**Date:** October 25, 2010

## **VOTER SUPPRESSION ESCALATES AS ELECTION GETS UNDERWAY**

As the hotly contested November election nears, it should be no surprise that voter intimidation and suppression schemes are ramping up too. Even beyond the usual partisan pre-election hysteria, this year the Tea Party has made "voter fraud" a rallying cry. Never mind that it's been proven time and again that voter fraud is largely a myth; it excites the right-wing base.

To combat alleged "voter fraud," party activists in a number of states have mounted well-publicized campaigns to compile challenge lists from returned mail ("voter caging") and to deploy their members to watch the polls. But what they're really doing is threatening and intimidating a targeted group of voters, and it's usually in minority precincts.

# A zealous group of Republican, Tea Party, and right wing activists are on the attack.

- In Harris County, **Texas**, early voting has begun, and, as the Houston Chronicle reports, there are <u>complaints that a Tea Party group has been hovering over voters</u>, interfering with election workers, and disrupting lines of voters waiting to vote in minority neighborhoods. The Justice Department is investigating and interviewing witnesses.
- In **Illinois**, Senate candidate Mark Kirk has proudly claimed that he has mounted the state's largest "voter integrity program in 15 years"—aimed at four largely African-American precincts, as the National Journal reports. Coincidentally (or maybe not), the Republican National Lawyers Association, a group closely affiliated with the Republican National Committee, is conducting trainings for lawyers in Illinois to assist on Election Day and "ensure that the elections are open, fair and honest." Additionally, MSNBC's Keith Olbermann has linked a key figure in Kirk's "voter integrity squad" to voter intimidation that occurred in black communities while President Bush was in office.
- A voter suppression plan in Wisconsin (a combined effort of the state Republican Party, Americans for Prosperity, and Tea Party organizations) is targeting, among others, 16,000 Milwaukee County voters. As the <u>Wisconsin-Milwaukee Journal Sentinel reports</u>, the organization One Wisconsin Now says it has obtained an audio recording of a tea party leader "outlining plans to work



#### **MEDIA MEMO**

with the state Republican Party and another group, Americans for Prosperity, and use postcards to verify voters' addresses as well as provide volunteer poll workers to challenge voters on Election Day." A leader of a <u>Tea Party group</u> emailed "All Group Leaders" with instructions—including directions for photographing the homes of people targeted for voter suppression activities. The voter caging mailing allegedly targeted the 16<sup>th</sup> Assembly District, the district with the third-highest African-American voting population in the state.

- A coalition of right-wing groups in Minnesota has been unsuccessful in its
  efforts to require photo ID at the polls, so they've redirected their energies to
  creating "voter surveillance teams." As Minnesota Public Radio reports, their
  planned activities include videotaping and tracking buses that bring voters to
  the polls (to ensure—they say—that buses are not taking their passengers to
  multiple polling places). Their materials also castigate Secretary of State Mark
  Ritchie and Attorney General Lori Swanson for failing to investigate and
  prosecute voter fraud.
- One of the most publicized and explicit campaigns to suppress the minority vote
  has been in Nevada, where "Latinos for Reform," a group headed by a
  conservative Republican activist, is urging Hispanic voters to stay home on
  Election Day in order to "demand some attention." President Obama called the
  tactic a "cynical political ploy," and the ads have been denounced by the Latino
  Coalition. The Hispanic television network Univision has announced it will not
  broadcast the ad.

And **everywhere**, the conservative website "Pajamas Media" is trying to "develop a network of citizen journalists/poll watchers" to monitor as many polling places as possible and report back, preferably with video or still photographs, on cases of voter fraud or intimidation. They're looking for cases of electioneering too close to the polls, "forced assistance," registration fraud, multiple voting, and "dead voters."

## Caging and suppression tactics have occurred nationwide in recent elections.

• The GOP has practiced voter caging and intimidation under the auspices of "ballot security" since the civil rights era. In a 2004 report to the Center for Voting Rights and Protection entitled "Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression—Or Both?", scholars from Rice University discussed the history of what they call "ballot security programs gone bad" which, in the name of protecting against vote fraud, are intended to have a chilling effect on voting in "almost exclusively target heavily black, Latino, or Indian voting precincts."



#### **MEDIA MEMO**

- Some contemporary RNC officials have admitted, privately and publicly, that
  caging and similar so-called "ballot security campaigns" are intended to suppress
  the African-American vote. During a 2004 Detroit election campaign, for
  example, Michigan State representative John Pappageorge told a meeting of
  Oakland County Republican Party members that "if we do not suppress the
  Detroit vote, we're going to have a tough time in this election." (Detroit's
  population is 83 percent African-American and overwhelmingly supports
  democratic candidates.)
- In 2004, the Ohio Republican Party mailed approximately 232,000 non-forwardable letters to all newly registered voters; those returned as undeliverable were used to challenge about 35,437 voters in predominantly minority metropolitan areas. Caging operations conducted by state Republican organizations in 2004 also targeted minorities in Florida, Pennsylvania, Wisconsin, Florida, Michigan, Colorado, North Carolina, South Carolina, Georgia and Kentucky.
- In 2006, inquiries into the firings of nine U.S. Attorneys (the "Attorneygate" scandal) exposed the politicization of the Bush Administration Justice Department, in which law enforcement's traditional role of protecting citizen rights was perverted to serve a partisan agenda, including voter suppression.
- In 2008 in Montana, the Republican Party filed challenges against 6,000 voters on the basis of residence in counties that were historically Democratic strongholds.
- In Michigan, <u>statements</u> from the Macomb County Republican Party chair that the party intended to challenge any voter who attempted to vote from a foreclosed address triggered a lawsuit by the Obama campaign and three individuals. The suit settled with an agreement not to use foreclosure lists as the basis of challenges.
- In Wisconsin in 2008, the GOP issued a call to policemen, security personnel, and firefighters" who would potentially be willing to volunteer ... at inner city (more intimidating) polling places," according to the Washington Post.
- In 2008 in Ohio, Greene County Sheriff Gene Fischer announced that he was investigating hundreds of people who registered and voted during Ohio's sameday registration window. Despite rulings from four different federal and state courts upholding the lawfulness of the five-day window, the County announced they were attempting to "determine whether there was any voter fraud or not," according to an <u>Associated Press</u> story. Fischer claimed to have been "flooded" with phone calls about alleged voter fraud; yet no actual grounds for an investigation were given.



### **MEDIA MEMO**

 Also in Ohio, Hamilton County Prosecutor Joe Deters, the local chairman of the McCain campaign, initiated a grand jury investigation and issued subpoenas for unredacted personal information on 40% of the 671 new voters who cast ballots during Ohio's five-day window of same-day registration and voting. Both the election board and the secretary of state's office said they were unaware of any evidence of voter fraud.

For more information go to <a href="http://www.projectvote.org/voter-caging.html">http://www.projectvote.org/voter-caging.html</a>

Herren. Chris (CRT)

To:

Estelle Rogers

Cc:

Russ, John (CRT); Heffernan, Brian F (CRT)

Subject:

RE: memo on pre-election storles

Date:

Monday, October 25, 2010 4:58:00 PM

### Thanks very much

From: Estelle Rogers [mailto:erogers@projectvote.org]

Sent: Monday, October 25, 2010 4:54 PM

To: Herren, Chris (CRT)

Cc: Russ, John (CRT); Heffernan, Brian F (CRT)

Subject: memo on pre-election stories

Hello, Chris, Bert and Brian. I am attaching Project Vote's memo (designed for the media but I hope useful to you too) on recent incidents of voter suppression with some historical context. Please feel free to get in touch if you have questions, but I'm confident that you have heard about all of these.

Estelle

Estelle Rogers

Subject:

Herren. Chris (CRT).
Re: Intimidation activities in Wake County, NC, early voting

Date:

Wednesday, October 27, 2010 3:35:54 PM

Any time--I just wish they weren't so ubiquitous this year!

Estelle H. Rogers, Esq. Director of Advocacy Project Vote 202-546-4173, ext. 310

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On Oct 27, 2010, at 3:06 PM, Herren, Chris (CRT) wrote:

Thanks much

From: Estelle Rogers [mailto:erogers@projectvote.org]

Sent: Wednesday, October 27, 2010 3:06 PM

To: Herren, Chris (CRT); Heffernan, Brian F (CRT); Russ, John (CRT) Subject: Intimidation activities in Wake County, NC, early voting

In case you haven't seen this: <a href="http://tpmmuckraker.talkingpointsmemo.com/2010/10/voters\_complain\_about\_gop\_poll\_watchers\_in\_nc\_coun.php">http://tpmmuckraker.talkingpointsmemo.com/2010/10/voters\_complain\_about\_gop\_poll\_watchers\_in\_nc\_coun.php</a>

Estelle H. Rogers, Esq. Director of Advocacy Project Vote 202-546-4173, ext. 310

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Estelle Rogers

To:

Herren, Chris (CRT); Heffernan, Brian F (CRT); Russ, John (CRT)

Subject:

Intimidation activities in Wake County, NC, early voting

Date:

Wednesday, October 27, 2010 3:05:46 PM

In case you haven't seen this:

http://tpmmuckraker.talkingpointsmemo.com/2010/10/voters\_complain\_about\_gop\_poll\_watchers\_in\_nc\_coun.php

Estelle H. Rogers, Esq. Director of Advocacy Project Vote 202-546-4173, ext. 310

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Herren, Chris (CRT)

To:

Estelle Rogers

Subject: Date: RE: Intimidation activities in Wake County, NC, early voting

Wednesday, October 27, 2010 3:06:00 PM

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From: Estelle Rogers [mallto:erogers@projectvote.org]

Sent: Wednesday, October 27, 2010 3:06 PM

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Estelle Rogers

To:

Herren, Chris (CRT); Heffernan, Brian F (CRT); Russ, John (CRT); Pilger, Richard (CRM);

nancy.simmons@usdot.com

Cct

Gerry Hebert; Tova Wang; Lisa Bornstein

Subject:

Fwd: NH SOS puts out voter fraud alert Thursday, October 28, 2010 1:26:47 PM

Here we have another New Hampshire scam--not jamming the phones, but maybe worse. Voters are getting calls telling them to vote online. Although the message indicates that the state AG is pursuing it, we would appreciate it if you would look into it to make sure they are doing so. Thanks so much for all you are doing. Estelle

Voter Suppression Alert

( <a href="http://www.bluehampshire.com/diary/11289/voter-suppression-alert">http://www.bluehampshire.com/diary/11289/voter-suppression-alert</a> )from Blue Hampshire (

http://www.google.com/reader/view/feed/http%3A%2F%2Ffeeds2.feedburner.com%

2FBlueHampshireRssFeed ) by Kathy Sullivan 2

The Attorney General and the Secretary of State are posting a voter suppression alert. According to the alert, voters are receiving phone calls encouraging them to go to an internet web site to vote on line. Of course, New Hampshire does not have

internet voting.

As stated in the alert, this type of activity constitutes a felony, thanks to an amendment passed by the Democratic majority legislature. Until 2008, RSA 659: 40 was limited to bribing or intimidating a voter. In 2008, the law was expanded to include both bribery and suppression, including trying to deter another person from voting or registering to vote, or providing false information with respect to the date, time, place or manner of the election. Sad that we need these laws, but past election activity by you know who's prompted the legislation. A historical footnote - RSA 659:40-a, the anti-phone jamming statute, was enacted in 2003, but it was not until 2006 that it was made a felony.

The AG's office is taking this very seriously, and an investigation into this is ongoing. If you receive a call like this, please listen to the whole call, document what you are being told, the caller id of the number calling you, and the website address you are

given, and then call the AG voter hotline at 271-3650 or 1-866-868-3703.

Link to voter suppression alert:

http://www.sos.nh.gov/internet... ( http://www.sos.nh.gov/internet%20voting-fraudulent.pdf )

Estelle H. Rogers, Esq. Director of Advocacy Project Vote 202-546-4173, ext. 310

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Pilger, Richard (CRM)

Sent:

Thursday, October 28, 2010 2:13 PM

To:

Estelle Rogers; Herren, Chris (CRT); Heffernan, Brian F (CRT); Russ, John (CRT);

nancv.simmons@usdoi.com

Cc:

Gerry Hebert; Tova Wang; Lisa Bornstein

Subject:

RE: NH SOS puts out voter fraud alert

Estelle, thank you for this information.

From: Estelle Rogers [mailto:erogers@projectvote.org]

Sent: Thursday, October 28, 2010 1:27 PM

To: Chris (CRT) Herren; Brian F (CRT) Heffernan; John (CRT) Russ; Pilger, Richard; nancy.simmons@usdoj.com

Cc: Gerry Hebert; Tova Wang; Lisa Bornstein Subject: Fwd: NH SOS puts out voter fraud alert

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( http://www.bluehampshire.com/diary/11289/voter-suppression-alert )from Blue Hampshire ( http://www.google.com/reader/view/feed/http%3A%2F%2Ffeeds2.feedburner.com%2FBlueHampshireRssFeed ) by Kathy Sullivan 2

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http://www.sos.nh.gov/internet... (http://www.sos.nh.gov/internet%20voting-fraudulent.pdf)

Estelle H. Rogers, Esq. Director of Advocacy Project Vote 202-546-4173, ext. 310

From: To: Grugin, Catrina (CRT) Herren, Chris (CRT)

Subject:

Phone message

Date:

Monday, December 06, 2010 1:44:15 PM

# Chris,

Ms. Estelle Rogers from Project Vote called today at 1:43pm. She has requested that you return her call at 202-546-4173 (ext., 310).

Catrina R. Grugin U.S. Department of Justice Civil Rights Division Voting Section

"Experience is something you get too late to do anything about the mistakes you made while getting it."

~Author Unknown~

Herren, Chris (CRT) Estelle Regers

To

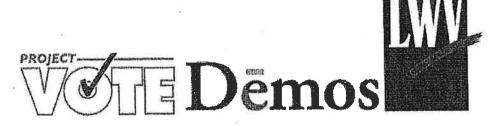
Date:

Wednesday, March 30, 2011 5:14:00 PM

Estelle – FYI, we have made updates to some of our NVRA webpages.

http://www.justice.gov/crt/about/vot/nvra/nvra\_faq.php

http://www.justice.gov/crt/about/vot/litigation/recent\_nvra.php#rhodeisland







June 18, 2010

Chris Herren
Chief
Voting Section
Civil Rights Division
United States Department of Justice
950 Pennsylvania Ave., NW
Room 7254 NWB
Washington, DC 20530

RE; DOJ'S NVRA Questions and Answers

Dear Mr. Herren:

We are writing, first and foremost, to express our appreciation to you and the Voting Section for your efforts in issuing Questions and Answers regarding the voter registration requirements of Sections 5, 6, 7, and 8 of the National Voter Registration Act (NVRA). As you are aware, our organizations work to offer technical assistance on NVRA voter registration requirements to states and advocate for full and sustained compliance with the NVRA. DOJ's guidance on NVRA compliance was sorely needed, and your final product provides answers to many of the NVRA questions that we hear from states on a regular basis. We are hopeful that state officials will use DOJ's guidance to reform voter registration practices in states that are currently operating out of compliance with the NVRA.

While the Questions and Answers document provides valuable information in its current form, we are writing to offer suggestions in the hope of clarifying several issues that remain outstanding. Based upon our continued work with state officials, we believe these additions would be most helpful to aid states in ensuring NVRA compliance. In addition to the specific suggestions set

forth below, we also want to note that there are additional important issues relating to the removal provisions of Section 8, which we plan to raise with you in the near future.

Questions 5 and 24. As a part of our recent advocacy, we have encountered several states that employ contractors to administer driver's license transactions or public assistance benefits (e.g., Indiana and New Mexico), thereby putting those contract employees under the purview of Sections 5 and 7. These states, as well as other states that utilize similar contracts for service, would benefit from guidance from DOJ as to the applicability of NVRA requirements to all individuals who provide driver's license or public assistance services, including the work of contractors. Such an amendment would require the addition of just one sentence to the answers to Questions 5 and 24. We recommend the insertion of the following: "When a state contracts with a private entity to administer services in an agency that is required to offer voter registration, the ultimate responsibility for ensuring provision of voter registration services remains with the state, and the requirements of voter registration under the NVRA remain the same."

Question 13. In the answer to this question, the document references the "Special Supplemental Food Program for Women, Infants, and Children". The proper name for this program is actually the Special Supplemental Nutrition Program for Women, Infants, and Children. In addition, the answer to question 13 references the "food-stamp program," which we believe should be correctly written as "Food Stamp Program," capitalized, with no hyphen.

Question 29. The issue of removal due to mental incapacity is one that tends to engender confusion and sometimes misuse on the part of election officials. The determination of mental incapacity is not usually the responsibility of state election officials. Rather, state laws generally provide for the issue of mental incapacity to be determined by the court, and a citizen is competent to vote unless a judge has ruled otherwise. In an effort to add clarity, we suggest the following insertion (after the first sentence of the answer): "In those States where removal may be based on mental incapacity or criminal conviction, election officials rely on court determinations to identify the individuals who are subject to removal."

Question 41. The answer to Question 41 addresses each state's responsibility for ensuring compliance with the NVRA, including the suggestion that states consider employing an NVRA coordinator whose duties could include reviewing monthly voter registration data for motor vehicle and agency offices, and monitoring voter registration activities. In our experience, tracking and monitoring of voter registration activity are not simply things states might consider doing, but rather are critical to effective enforcement of the NVRA, and are directly related to a state's NVRA performance as a whole. We therefore recommend that DOJ identify tracking and monitoring as a critical element of ensuring state compliance with the NVRA.

Question 42. The answer to Question 42 describes the states' responsibility to report voter registration information to the U.S. Election Assistance Commission (EAC) in response to the

EAC survey conducted every two years. The accuracy of state reports to the EAC is critical to Justice Department and private enforcement efforts, and to the EAC effort to deliver to Congress a biannual report that properly reflects the impact of the NVRA on the "administration of elections." Section 9(a)(3) of the NVRA. In order to promote full and accurate reporting, states need further elaboration on tracking voter registration by source. DOJ should add additional language to the answer to Question 42 to specify that each state's chief NVRA election official should ensure that complete and accurate data are provided in response to the EAC's survey, noting that DOJ will consider a state's failure to provide complete and accurate data to the EAC in deciding whether to open a compliance review or investigation. The chief election official should develop separately coded voter registration applications for use by motor vehicle offices, public assistance agencies, disability services agencies, Armed Forces recruitment offices, and other Section 7 agencies so as to track the source of voter registration applications. Codes should indicate the type of office or agency (e.g. public assistance separate from disability services, etc.) and should be included on the voter registration application portion of the form.

Again, thank you for your efforts in producing guidance to states so that they may better comply with the NVRA. We are encouraged that the Department of Justice has taken this important step in the vigorous enforcement of the voting rights of American citizens. Please feel free to contact us at any time if you wish to discuss our concerns further.

Sincerely,

Nicole Kovite
Director, Public Agency Voter Registration Project
Project Vote
(202) 546-4173 x303

Lisa J. Danetz Senior Counsel, Democracy Program Dēmos (617) 232-5885 x11

Mark A. Posner Senior Counsel Lawyers' Committee for Civil Rights Under Law (202) 662-8389

Lloyd Leonard Senior Director for Advocacy League of Women Voters (202) 263-1302 James Dickson Vice President, Governmental Affairs 202-457-0046 (V/TTY) 800-840-8844 (Toll Free V/TTY) From: To: Estelle Rogers
Herren, Chris (CRT)

Subject:

Re:

Date:

Wednesday, March 30, 2011 5:18:05 PM

Thanks, Chris. We'll look these sites over.

Estelle H. Rogers, Esq. Director of Advocacy Project Vote 202-546-4173, ext. 310

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On Mar 30, 2011, at 5:14 PM, Herren, Chris (CRT) wrote:

Estelle - FYi, we have made updates to some of our NVRA webpages.

http://www.iustice.gov/crt/about/vot/nvra/nvra fac.php

http://www.justice.gov/crt/about/vot/litigation/recent\_nvra.php#rhodeisland

From: To: Estelle Rogers Herren, Chris (CRT)

Subject: Date: Re:

Wednesday, April 13, 2011 4:53:32 PM

I will be on vacation and not regularly responding to email from April 15 until May 2. I will get back to you as soon as I can after that.

On Mar 30, 2011, at 5:14 PM, "Herren, Chris (CRT)" <Chris.Herren@usdoj.gov> wrote:

Estelle – FYI, we have made updates to some of our NVRA webpages.

<a href="http://www.justice.gov/crt/about/vot/nvra/nvra\_faq.php">http://www.justice.gov/crt/about/vot/nvra/nvra\_faq.php</a>

<a href="http://www.justice.gov/crt/about/vot/litigation/recent\_nvra.php#rhodeisland">http://www.justice.gov/crt/about/vot/litigation/recent\_nvra.php#rhodeisland</a>

Laughlin McDonald

To:

Herren, Chris (CRT)

Cc:

Howard Simon; Randall Marshall; Estelle Rogers

Subject:

Section 5 Comment Letter: Submission No. 2011-2187, State of Florida

Date:

Monday, June 20, 2011 2:53:16 PM

Attachments:

ACLU, Section 5 comment letter.pdf

Dear Mr. Herren: Attached is a Section 5 comment letter from the ACLU and Project Vote requesting that preclearance under Section 5 of the Voting Rights Act be denied to Florida's Submission Number 2011-2187 involving numerous changes to the state's election laws. I am also sending you a hard copy by regular mail. Sincerely, Laughlin McDonald

Laughlin McDonald | Director | Southern Regional ACLU 230 Peachtree Street NW | Suite 1440 | Atlanta, GA 30303 (404) 523-2721 (voice) | (404) 653-0331 (fax) | <mailto://imcdonald@aclu.org>

This message may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply E-mail that this message has been inadvertently transmitted to you and delete this E-mail from your system.

LAUGHLIN MCDONALD DIRECTOR VOTING RIGHTS PROJECT



June 20, 2011

T. Christian Herren
Chief, Voting Section
Civil Rights Division
Room 7254 - NWB
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 30530

Re: Section 5 Comment Letter Submission Number: 2011-2187 Chapter 2011-40, Laws of Florida (CS/CS/HB 1355)

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
SOUTHERN
REGIONAL OFFICE
230 PEACHTREE STREET, NW
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ATLANTA, GA 30303-1513
T/404.523.2721
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WWW.YOTINGRIGHTS.ORG

Dear Mr. Herren:

This is to request the Department of Justice to deny preclearance to Chapter 2011-40, Laws of Florida (CS/CS/HB 1355). Many of the provisions of HB 1355 will cause retrogression in minority voting strength in violation of Section 5 of the Voting Rights Act. There is also evidence that the provisions were adopted with a discriminatory purpose.

The provisions of HB 1355 that we believe violate Section 5 are:

- 1. Reducing the number of days for early voting from 14 days to eight days from the 10th to the 3rd day before the election. Fla. Stat. § 101.657(1)(d) (HB 1355, Sec. 39);
- 2. 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 up to \$1,000 for failing to comply with other provisions. Fla. Stat. § 97.0575(3)(a) (HB 1355, Sec. 4);
- 3. 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, except for active military voters and their family members. Fla. Stat. § 101.045(2)(d) (HB 1355, Sec. 26);
- 4. Reducing the shelf-life of citizen initiative petition signatures proposing constitutional amendments from four years to two years. Fla. Stat. § 100.371(3) (HB 1355, Sec. 23).

There was no legitimate purpose for this legislation relating to the improvement of election administration. In fact, Jerry Holland, the Duval County Supervisor of Elections, has been reported as saying: "The State Association of Election Supervisors did not support this bill; we actively opposed it." And notably, every member of the Florida Conference of Black State Legislators voted against HB 1355 because it was unnecessary and would have an adverse impact on racial and language minorities.

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Florida is now implementing HB 1355. On May 19, 2011, Secretary of State Kurt Browning issued Directive 2011-01 providing that: "I hereby issue this directive for the purpose of ensuring that specific new changes are uniformly interpreted and implemented and that the elections are conducted in a fair and impartial manner." Also on May 19, 2011, the Florida Division of Elections sent a memo to Supervisors of Elections summarizing the provisions of HB 1355. And on May 20, 2011, the Florida Division of Elections issued Emergency Rules Regulating Third-Party Voter Registration Organizations. The rules contain, among other things, registration forms and a form for Complaint against Third-Party Voter Registration Organization.

Collier County is one of the five counties in Florida covered by Section 5. Despite the fact that HB 1355 has not been precleared, the Collier County Supervisor of Elections has posted on its website a link to the Third-Party Voter Registration rules promulgated by the Florida Division of Elections. Hillsborough County is also covered by Section 5, and its Supervisor of Elections has posted on its website links to HB 1355 as well as the May 19, 2011 memo from the Florida Division of Elections summarizing the provisions of the bill.

### Reducing the Opportunities for Early Voting

The changes in HB 1355 will significantly reduce the opportunities for early voting and have an adverse racial impact. Since Florida initiated early voting, African Americans constitute a higher percentage of early voters in Florida than is their proportion of the voting age population. While African Americans are more likely to use early voting, whites are more likely to cast absentee ballots. For example, in the 2008 general election, 2.1 million Floridians voted early. African Americans cast 22% of the early votes, though they comprised only about 13% of the electorate. Nearly 54% of the African American who voted cast ballots before Election Day at early-

voting sites. In contrast, only 27% of white voters used the early-voting sites.

In the five Florida counties covered by Section 5 (Collier, Hardee, Hendry, Hillsborough, and Monroe) African Americans were 12.15% of the voting age population, but were 18.86% of the early voters in the 2008 general election. During the first week of early voting, African Americans were an even larger percentage of early voters - 20.08% - in the covered counties. See Florida Division of Elections Early Voting Report; Florida Voter Registration File; U.S. Census Bureau. Reducing the days for early voting will have an obvious disparate impact upon African Americans.

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Aside from reducing the number of days for early voting from 14 to eight, early voting on the Sunday before Election Day was also eliminated. The larger, more urban counties, which include those with the largest African American populations, chose to make early voting available on the Sunday before the election, and according to Justin Levitt, a professor at Loyola School of Law, "voters responded." That analysis was backed up by the research of Michael McDonald, a professor of government and politics at George Mason University, which showed on the final Sunday before the 2008 presidential election, black voters accounted for 32% of the daily early-voting turnout in Florida.

The fact that reducing early voting would have an adverse racial impact was a reason given by Florida Republican Senator Mike Bennett for passage of HB 1335. Senator Bennett was reported in <u>PolitiFact</u> as saying:

Do you read the stories about the people in Africa? The people in the desert, who literally walk two and three hundred miles so they can have the opportunity to do what we do, and we want to make it more convenient" How much more convenient do you want to make it? Do we want to go to their house? Take the polling booth with us? This is a hard-fought privilege. This is something people die for. You want to make it convenient? The guy who dies to give you that right, it was not convenient. Why would we make it any easier? I want 'em to fight for it. I want 'em to know what it's like. I want them to go down there, and have to walk across town to go over and vote.

In contrast, Florida Democratic Representative Perry Thurston was quoted in the press as saying, "When we should be encouraging participation, we're suppressing it."

We do not believe Florida can carry its burden of proof that the reduction in early voting does not have a discriminatory purpose and will not have a discriminatory effect within the meaning of Section 5.

# Burdens on Third Party Voter Registration Organizations

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The proposed changes will impose significant and undue burdens on third-party voter registration organizations that seek to register racial and language minorities. Based on nationwide statistics, in 2008, more than one-third of voters who registered through third-party drives were racial minorities. And according to the League of Women Voters, black and Hispanic voters register with third-party groups at twice the rate of other voters. See "Voting laws Sunday punch," The Herald-Tribune, June 15, 2011. Minority voters in Florida, as in the rest of the country, have benefitted from community-based registration drives.

HB 1355 imposes onerous paperwork requirements on organizations planning to conduct a drive, as well as a 48-hour deadline for turning in applications (in contrast to the 10-day deadline provided in federal law for a public assistance agency to submit applications it collects from its clients). This law also imposes a penalty of \$50 per application for missing the deadline, and up to \$1000 per application for other infractions. The law requires agents working with third-party voter registration organizations to sign a sworn statement that "I understand the penalties for false registration may include a term of imprisonment up to 5 years and a fine up to 5,000," which will surely deter many from affiliating with such organizations. In addition, an organization conducting a voter registration drive would have to account for every application given to it, whether it was used or not. Finally, the partisan Secretary of State would have authority over all of these provisions, including the ability to seek an injunction to shut down a voter registration drive upon "reasonable belief" the organization failed to track every application. All of these requirements would have a disproportionate impact upon minority voters, whose reliance on voter registration drives is disproportionate to their share of the voting-eligible population.

Not surprisingly, it has been reported that as a result of the new restrictions on third-party voter registration groups, the League of Women Voters "has halted registration in Florida." "Voting laws Sunday punch," The Herald-Tribune, June 15, 2011. Several other groups are reconsidering their plans to conduct voter registration in Florida in 2012. The adverse impact of the new restrictions on minorities is apparent.

# Restrictions on Casting a Regular Ballot

The new rules will prevent many 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 - as has been the policy in Florida for decades. According to a 2008 Pew Research Center survey on Social and Demographic Trends, 68% of African Americans will end up moving during their lifetimes, compared to 61% of whites. And in the preceding five years, 43% of African Americans and 48% of Latinos had moved, compared to just 27% of whites. Since African Americans and Latinos tend to be more mobile than whites, the restrictions on making an address change at the polls on the day of an election and voting a regular ballot will have an adverse racial impact.

The evidence also shows that statewide, 74.27% of provisional ballots were counted, but only 55.64% were counted in the five covered counties. See Florida Division of Elections. Requiring voters who move to a different county to cast a provisional ballot on election day will have an obvious adverse impact upon racial and language minorities.

#### Restrictions on Citizen Initiative Petitions

The new rules will make it more difficult to present citizen initiative petitions by reducing the shelf-life of petition signatures proposing constitutional amendments from four years to two years. Since African Americans have a depressed socio-economic status compared to whites, reducing the period of validity for signed petitions to two years will make it more difficult, more expensive, and likely prohibitive for African Americans to conduct citizen initiatives.

According to the 2009 American Community Survey, the median household income for whites in Florida was \$47,378, and the per capita income was \$27,239. For Blacks or African Americans, the median

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household income was \$32,560, and the per capita income was \$15,107. These numbers underscore the disparate impact the new law will have on racial minorities and the added difficulties they will face in conducting citizen initiatives.

For the above reasons, we do not believe Florida can carry its burden of proof that its submission does not have a discriminatory purpose or effect, and accordingly respectfully request the Department of Justice to deny preclearance to Chapter 2011-40, Laws of Florida (CS/CS/HB 1355).

AMERICAN CIVIL LIBERTIES UNION FOUNDATION

Sincerely,

Laughlin McDonald
ACLU Voting Rights Project

Howard Simon Randall Marshal. Florida ACLU

Estelle H. Rogers Project Vote