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Testimony submitted to the United States Senate April 2012—Voter Suppression Activities in the United States

Senator Dick Durbin, Chair
Senator Lindsey Graham, Ranking Member
U.S. Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Durbin and Graham:

We commend the Senate Judiciary Subcommittee for looking into the issue of voting changes in the United States and their impact on low income voters, especially in Ohio. The Northeast Ohio Coalition for the Homeless urges Congress to direct the Department of Justice to enforce the Voting Rights Act and the 2001 Help America Vote Act in states such as Ohio that we believe are engaged in activities that will make it difficult for lower income people to vote. We know that our national organization, the National Coalition for the Homeless, has written to Attorney General Eric Holder and publicly expressed concerns that the changes in the voting laws are advertised as "reform," but will actually suppress voter turnout by people experiencing homelessness. In Ohio, NEOCH has sued the State of Ohio over the changes in voting beginning in 2006 to protect access to the ballot box by homeless voters without identification and to assure that the provisional ballots are counted in a uniform manner in the State of Ohio. These changes have taken place over the last six years with little evidence that there is fraud in the American system of voting. We find that the cure for this "perceived fraud" is often worse than the disease. We are potentially disenfranchising millions of voters to stop a handful of documented cases where a voter tried to vote multiple times.

The right to vote is the foundation of democracy in this country, and any legislation that constructs artificial barriers and prevents legitimate voters from casting a ballot needs to be met with the full scrutiny of Congress and the Department of Justice. The law in Ohio was changed in 2006 without input from the minority party, and required identification for in-person voting. The law did not allow a member of the US armed forces to use his military identification. It made it difficult for students, the elderly, and immigrants to vote. Many groups, including unions that represent immigrants, the League of Women Voters, and anti-poverty groups sued the state over these identification changes. The State largely had to settle with all of the groups and was required to repeatedly issue directives to the 88 counties clarifying and correcting the law. This

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To organize and empower homeless and at risk men, women and children to break the cycle of homelessness through public education, advocacy, and the creation of nurturing environments
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made it very difficult for the average older poll worker to understand the law and the county boards of elections had to repeatedly issue directives, even up until the eve of elections.

My own mother worked as a poll worker in Westerville, Ohio, for over 35 years until the 2006 election, when she just could not take the changing election rules anymore. All the identification changes and new rules put in place in 2006 fundamentally transformed the job of the poll worker from helping people to vote to working to find ways to prevent people from voting according to my mother. The 2004 Presidential vote was especially difficult in Ohio with long lines, polls being forced to stay open late, and large scale confusion on Election Day. Instead of correcting these problems in Ohio, we have actually made it more and more difficult to vote in person on election day over the years.

The main problem with all of these identification laws is that there is a fundamental misunderstanding between proving who you are at a polling place and proving where you live. Very low income citizens move their primary residence a great deal, and since the housing crisis swept the United States, this has only exacerbated the displacement of low income residents. It is easy to prove that you are the person you say you are at the polling place with your signature affirming your identity coupled with a student identification, passport, employment identification card, or military identification. However, all these forms of identification are unacceptable if you are trying to prove your residency. Homeless people have an especially difficult time proving their residency since most of the acceptable forms of identification are tied to where you live.

Changes that have passed in state legislatures or are awaiting a vote will have the effect of suppressing the vote, especially for homeless people, minority populations, the elderly, naturalized citizens, students, and those trying to rebuild their lives after release from incarceration. The other issue that is never addressed is the expense of obtaining identification and length of time that it takes to obtain a birth certificate from some communities. The ability to obtain a birth certificate can take many months and there can be a significant financial barrier that will then prevent a citizen of the United States from legitimately casting a ballot. We have a staff person at our office, born at his parents' home in Cleveland, and the hospital where he received his first check up has long since closed. He was told that he would need to go to court and hire an attorney to get a certificate of live birth since the City of Cleveland cannot find his birth certificate. Since the attacks on September 11, states have clamped down on issuing birth certificates and some make it nearly impossible to get a copy of one's own birth certificate.

We now have 11 states that have a photo identification requirement at the polling place with an additional 19 that are requiring some form of identification in order to vote. These measures may in fact disenfranchise many American citizens who would otherwise be able to vote. A survey by the Brennan Center for Justice at the New York University School of Law (*Citizens Without Proof: A Survey of Americans Possession of Documentary Proof of Citizenship and Photo Identification*, 2006) found that 11% of American citizens who are of voting age (21 million people) do not have up-to-date photo identification, with that percentage being significantly higher among those with low incomes (15%) and African-Americans (25%). Furthermore, this was a phone survey, so the nation's entire homeless population was, in all likelihood, not remotely accounted for in the results. Cleveland, Ohio has an organized identification program to assist those experiencing homelessness with obtaining birth certificates and state identification. The social service providers in Cleveland find that 45% of those utilizing the shelters do not have a state issued identification as a result of theft or loss in the move from housing to shelter.

We believe that these identification laws are the 2012 version of the “poll tax” which kept African Americans and other minorities from voting before the passage of the Voting Rights Act. In theory, making photographic identification free, as some of these laws also do, should make it easy for citizens to acquire one and be able to vote. However, it is not that simple. Although most of these state laws have alternatives to using identification on election day, such as provisional ballots or signing an affidavit, many of them still put a de facto price on voting for those who simply do not have the means to easily obtain a birth certificate, find out their Social Security number, or to make a trip to the DMV for a state-issued ID, such as the impoverished, disabled, and homeless. The key problem here, as outlined by Professor Justin Levitt of Loyola Law School (*Voter ID Debate Ramping Up Again for 2012*, NPR May 24, 2011), is that “it takes ID to get ID.”

Even if finances are not an issue, which they certainly are for individuals and families experiencing homelessness, it can still be “quite difficult to round up the documentation necessary to get documentation. It ends up a little bit of a bureaucratic cycle,” possibly causing voter apathy. Provisional ballots in many states are viewed as “second class voting” because most provisional ballots are not counted and there is such a wide disparity among the states and even among counties in the same state in rejection rate for provisional ballots. As part of the NEOCH lawsuit against the State of Ohio, we found wide disparity in the counting of provisional ballots in Ohio, with some counties accepting a majority of the provisional ballots while others accepted only 20% of the provisional ballots. If they are operating under one standard for counting provisional ballots in Ohio, why is there such great disparity in interpreting Ohio law? We found that the Hamilton County Board of Elections rejected our settlement with the State of Ohio over the proper procedure for counting provisional ballots and set their own rules, disregarding the directive from the previous Secretary of State for the 2010 election.

NEOCH is a non-profit charitable organization operating in the City of Cleveland with a mission of amplifying the voice of homeless people. We administer a number of programs that serve homeless people including a public education program, a street newspaper, and a legal assistance program. We see 23,000 homeless people in Cleveland and nearly one-third of the population needs help with obtaining identification. We have worked to assist people to vote since our founding in 1988. We filed suit in 2006 to protect homeless people who want to vote in person to assure that their ballot counts.

NEOCH has great concern over the integrity of the election and possible inequality issues based on the state a voter resides and their attempts to suppress the turnout. We have a concern that a voter in New York State has easy access to voting because they do not have to show identification. However, a voter born in New York state trying to vote in Ohio, as a resident of a Cleveland shelter, may not be able to vote because they cannot receive their birth certificate from their birth state. We know that it can take up to six months to get through the bureaucracy of some states and can cost up to \$60. There are a number of other changes in state voting laws that will move the United States away from the principle that every citizen has a right to participate in democracy no matter their housing status. The Help America Vote Act was intended to provide a uniform standard for voting to avoid another problem similar to the poorly administered election of 2000. We have created a patchwork of legislation that does not assist people to vote, but instead builds huge barriers to voting. Other changes that have become law will have a serious negative impact on those experiencing homelessness:

- Florida this year restricted third party registration procedures - which will restrict the ability of homeless shelters and case workers to assist their clients in registering to vote - and forced a five year waiting period before a felon can even apply to have his or her voting rights restored.
- Georgia was challenged in court for not enforcing the 1993 National Voter Registration Act commonly called "motor voter law" thus potentially disenfranchising thousands of low income voters. In addition, Georgia is requiring proof of citizenship in order to register to vote, and in some cases is rejecting state identification as proof of citizenship.
- Maine ended same-day voting and registration, which made it much easier for people who became homeless just before an election to register and vote in that election.

The Ohio legislature tried to further alienate some voters in 2011, in preparation for the 2012 Presidential election by increasing the size of precincts, which could increase the lines on Election Day (a huge problem in the 2004 Presidential election in Ohio). Also, poll workers would have not been required to tell voters that they are at the wrong precinct, giving the potential for voter suppression through misinformation. The Ohio legislature increased the number of technical reasons for not counting provisional ballots, which homeless people are often forced to use because of their residency problems. Finally, laws have reduced the number of early voting days and have outlawed counties from reaching out to voters that have been mailed early voting forms, further reducing assistance for disabled or homeless voters.

No matter if you are homeless or housed it is not easy to get identification in the post-September 11th world. Those who wander from shelter to family member's houses then to the sofas of friends have an even more difficult time. The birth certificate is the basis for all forms of identification. There is no national standard for the issuing of a birth certificate, and a few states make it nearly impossible for a homeless person to get a legitimate copy of their own birth certificate. In our collaboration with service providers in Cleveland, we can demonstrate nightmare scenarios in which homeless people wait six, eight or ten months to receive a birth certificate. The assistance with obtaining a birth certificate is expensive and for many takes a great deal of time to finally receive a legitimate form of identification. There is no standard in the fee for a birth certificate or standard for the time required for another state to respond. A son or daughter born on a military base or a U.S. citizen born in Puerto Rico has a nearly impossible task just to get identification. For some it is easier to travel to their place of birth in order to retrieve a birth certificate, but that is certainly prohibitive for homeless people. This delay makes it difficult to find housing, a job, receiving assistance, and since 2006 has made it difficult to cast a ballot in-person in Ohio on election day.

Our government should not penalize people for being poor or having to flee a domestic violence situation with denial of the opportunity to vote. Donna fled her husband in the middle of the night in August with her children and the clothing on her back. She could not safely leave her house with her identification, and because she was born in California would not have time to retrieve a new birth certificate from her birth state before the election. She is certainly made to feel punished by the State for seeking safety, and Donna needs supported in her struggles, not segregated into a separate class of provisional voter if she wants to vote in person. James is a veteran of the first Iraq War, and comes from a military family. He was born at an American base in Germany to a decorated veteran of the U.S. Army. James became homeless after struggling with a health issue for years, and had all of his identification stolen in the shelters. He has petitioned both the Defense Department and the State Department for his birth certificate and each say the other is responsible. He cannot get a job without ID, and therefore has no

ability to vote in person on election day. He will have to file a provisional ballot and hope that he is counted in Ohio and one third of the states.

Overall, these changes in legislation put unnecessary roadblocks between those experiencing homelessness and those casting a ballot. From previous election experience, we see these new voting laws will result in long lines in minority and low income neighborhoods, confusion by the voting public, thousands of voters forced to vote a provisional ballot where in some counties are rarely counted, and limiting the number of days a person is able to cast a ballot. The research done by staff from the National Coalition for the Homeless indicates that a surprisingly large number of Americans, at least 21 million, stand to effectively lose their vote if this legislation spreads nationwide. The Congress could propose that we eliminate the cost of acquiring a birth certificate and state identification for those experiencing homelessness in the United States to overcome this issue.

The current Ohio Secretary of State has complained that some counties in Ohio are providing advertisements sent to every voter's residence urging early voting by mail and paying for postage to send in a ballot by mail. The Ohio Secretary of State claims that this puts rural county at a disadvantage because they do not have the money to pay for these same mailings. There was an attempt by the state legislature to shut this down with the argument that this is unfair to the rural counties who cannot afford these additional expenses. If we value democracy in America, then we should do everything we can to encourage voting and make it as easy as possible. This may mean paying for the postage across the United States or providing free rides to the elderly to get to polling sites in rural communities, but to punish communities that are willing to pay for these expenses by outlawing voter education activities is another form of voter suppression. In addition, the large counties need a large percentage of people to vote by mail in order to reduce the lines at the single board of elections office in which we are allowed to vote early in our state. We had lines out the door during the 2008 Presidential election even though we had an efficient and highly trained staff at the Cuyahoga County Board of Elections. There were lines on the weekend, in the late afternoon, and early in the morning. These lines grew the closer we got to the election, with enthusiasm growing and attention on the historic election grew. We needed more time for early voting locations and a bigger campaign to encourage voting by mail. Limiting early voting in Ohio will only result in longer lines in Cleveland, Columbus, Youngstown, Dayton and Toledo.

We have seen that some communities such as Akron/Summit County are proposing a sharp decrease in the number of precincts because they cannot afford staff all these polling sites anymore. These budget constraints at the local level will make it harder to vote in person on Election Day. Shortening the time for early voting or limiting the County from reaching out to voters to encourage vote by mail will result in frustrations, long lines and more disenfranchised voters. We have not previously had to deal with the severe budget constraints at the state and local level that could produce one of the most chaotic Presidential elections in history.

The proposal enacted in 2011 by the Ohio state legislature will be up for a vote in November, but many of the activities are clear voter suppression activities and have nothing to do with helping voters participate in democracy. For example, the law passed by the Ohio legislature stated that the employees working at a polling site had no obligation to tell voters that they were at the wrong precinct. If you vote at the wrong precinct in Ohio, your vote does not count. Imagine enacting a law that said a public employee has no obligation to help a voter to cast an official legitimate ballot in Ohio. This can only be described as an attempt to suppress the vote

in certain parts of the state, and it does not take a huge imagination to see the potential for abuse by one party instructing their poll workers to withhold information from voters so that all those votes will not count if this law had not been challenged.

Moreover, these voting changes make it difficult for homeless people who are forced to move frequently to participate in the selection of elected officials who may in the future take the lead in solving the housing crisis in America. We urge the Subcommittee, Congress and the Department of Justice to fully scrutinize such legislation for the potential to disenfranchise thousands of homeless people. We urge Congress to instruct the Justice Department to enforce existing national voting laws in order to broaden participation in democracy, and push back against state efforts to limit access to the ballot box. The United States has a solid foundation of universal access to representative democracy. We have a history of 236 years of expanding eligibility to the vote, and we should not be moving back to the days of "Poll tax" and Jim Crow laws that disenfranchised large segments of the population. We need to be inspired by the struggles and sacrifices made in order to vote in the Middle East as part of the Arab Spring, by realizing the goal of helping every American to cast a ballot and strike down laws that erect barriers to participating in the foundation of democracy.

We appreciate your consideration of this testimony, and the work that you have already done to protect the civil rights of all Americans.

Sincerely,

A handwritten signature in dark ink, appearing to read "Brian Davis", with a large, looping flourish at the end.

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