

# VOTING RIGHTS 2012:

RESTORING PROGRESS



VOTING RIGHTS INSTITUTE



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**WILL CROSSLEY**

*Counsel and Director*

## ACKNOWLEDGMENTS

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## FOREWORD

On December 1, 2011, we released a major report, “A Reversal in Progress: Restricting Voting Rights for Electoral Gain,” which documented a concerted attempt to make voting more difficult. We wrote that this attack on voting “turns the future of our democracy in the wrong direction.” In 2011, at least 40 states introduced legislation restricting the right to vote. Too often, legislatures passed bills that rolled back opportunities for early voting, restricted voter registration, and enacted harsh identification requirements that—by their proponents’ own admission—address no systemic problems. As a party, we committed to fighting these regressive efforts and working relentlessly to protect the voting rights of all Americans.

Today, I am heartened that, through the hard work of Democrats and voting rights advocates, the momentum clearly has shifted, the progress we’ve gained on voting rights is being preserved, and our democracy is moving forward. Five Democratic governors vetoed photo ID mandates; Members of Congress forcefully spoke out, investigated new voting restrictions, and introduced legislation that would improve our electoral system; and we organized state legislators, citizen activists, and ballot initiatives to prevent more bad bills from becoming law. From victories in the Supreme Court and other federal and state courts to unprecedented organizing success on the ground, the American tradition of protecting and expanding the right to vote has reemerged.

Even with these enormous successes, challenges remain. And we continue to need your help. For generations, Americans have struggled to open access to the polling place; it is our responsibility to protect and exercise those hard-won rights. Please start today by reading the attached update, “Voting Rights 2012: Restoring Progress.”






**DEBBIE WASSERMAN SCHULTZ**

*Chair of the Democratic National Committee*

October 18, 2012

## VOTING RESTRICTIONS TO CHALLENGE

**BLOCKED  
FOR 2012**

- |  |                                     |
|--|-------------------------------------|
|  <b>FLORIDA</b>   | <input checked="" type="checkbox"/> |
| <ul style="list-style-type: none"><li>• Voter Registration Restrictions</li></ul>  |                                     |
|  <b>IOWA</b>  | <input checked="" type="checkbox"/> |
| <ul style="list-style-type: none"><li>• Voter Purges</li></ul>   |                                     |
|  <b>MISSOURI</b>  | <input checked="" type="checkbox"/> |
| <ul style="list-style-type: none"><li>• Photo ID Constitutional Amendment</li></ul>  |                                     |
|  <b>NEW HAMPSHIRE</b>   | <input checked="" type="checkbox"/> |
| <ul style="list-style-type: none"><li>• Registration Restrictions</li></ul>  |                                     |
|  <b>OHIO</b>  | <input checked="" type="checkbox"/> |
| <ul style="list-style-type: none"><li>• Unequal Early Voting Restrictions</li><li>• Discarding Ballots Miscast Due to Pollworker Error</li></ul> | <input checked="" type="checkbox"/> |
|  <b>PENNSYLVANIA</b>  | <input checked="" type="checkbox"/> |
| <ul style="list-style-type: none"><li>• Photo ID Law</li></ul>   |                                     |
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| <ul style="list-style-type: none"><li>• Photo ID Law</li></ul>   |                                     |



Now, it is our responsibility to make good on this success and exercise our hard-won rights.

**VOTE IN THIS ELECTION.**

For more information, go to [vote.barackobama.com](http://vote.barackobama.com).

# VOTING RIGHTS 2012: RESTORING PROGRESS

Despite Republicans' coordinated efforts to promote laws making voting more difficult, to date, a substantial majority of those laws have been struck down. In this update to our 2011 report, we outline significant victories in court that have prevented new voting restrictions from taking effect and detail our historic voter protection organizing efforts on the ground.

This success began last year: in 2011, each time Republican legislators sent a photo ID bill to a Democratic governor, it was turned back with a veto. None of those vetoes—in Minnesota, Missouri, Montana, New Hampshire, and North Carolina—were overturned.<sup>1</sup> In Maine and Ohio, Democrats led successful petition drives to suspend retrogressive laws and preserve access to the franchise.

In 2012, our work continued, gaining momentum with substantial and important legal victories. When Republicans attempted to subvert an Ohio referendum—and the will of 300,000 Ohioans who signed it—we sued the state and won in federal court.<sup>2</sup> Further court victories for voting rights came in states like Florida, Pennsylvania, and Wisconsin. All the while, we have been building an unprecedented network of volunteer attorneys and citizen activists to protect the vote from now until every eligible ballot is counted.

## THE SUPREME COURT

In the only voting rights case so far this election cycle to be ruled upon by the Supreme Court of the United States, the justices sided with voters and against Republican-sponsored efforts to restrict the vote. The restrictions would have prevented all **Ohio** voters except military and overseas voters from casting ballots in person during the last three days before Election Day.<sup>3</sup> Obama for America, the DNC, and the Ohio Democratic Party filed suit to ensure that when polling places open in Ohio, no eligible, qualified voter is turned away from the voting booth. A federal district court and the U.S. Court of Appeals for the Sixth Circuit held that the state's early voting restrictions for only certain voters violated the Equal Protection Clause of the Constitution.<sup>4</sup> Ohio's Secretary of State challenged those rulings all the way to the U.S. Supreme Court, insisting that the state had the authority to close early voting polling places to some, but not all, qualified voters.<sup>5</sup> The Supreme Court rightly turned his petition aside and refused to stay the Sixth Circuit's ruling. As a consequence, when Ohio early voting locations open during the 2012 election, they will be open to all voters on equal terms.<sup>6</sup>


“If you want every American to vote and you think it's wrong to change voting procedures just to reduce the turnout of younger, poorer, minority and disabled voters, you should support Barack Obama.”


– PRESIDENT BILL CLINTON

## OTHER COURT DECISIONS


In 2011, state legislatures made voter registration more difficult, rolled back opportunities for early voting, and enacted identification requirements to prevent eligible voters from casting ballots. In 2012, these new restrictions were met with close scrutiny in the federal and state courts, and—time and again—were struck down.

## Protecting Voter Registration

 In **Florida**, a federal court permanently enjoined the state's new restrictions on voter registration, finding that the new rules violated the First Amendment.<sup>7</sup> Under that law, high school teachers or groups like the League of Women Voters would have been subject to \$1,000 fines if they missed onerous new deadlines for returning completed registration forms.<sup>8</sup> Despite Republicans' best efforts, the law's restrictions are off the books, freeing community groups to register voters in Florida once again.


 In **New Hampshire**, a state judge blocked a new law that would have limited access to the ballot, especially for college students and military service members.<sup>9</sup> Earlier this year, the GOP pushed through a bill—over Governor John Lynch's veto—that revised the state's voter registration form to instruct applicants to register their cars in the state and obtain a state identification card. Under the court's ruling, this misleading instruction was blocked and eligible college students and transient military service members who live in New Hampshire will be able to freely register and exercise their fundamental right to vote.

## Stopping Voter Purges

 After multiple law suits were filed against the state, election officials in **Florida** finally relented and agreed to fully restore voting rights for thousands of eligible Floridians who were unfairly targeted for purging.<sup>10</sup> In May, Florida officials announced that they had identified more than 180,000 voters as “potential noncitizens,” and were taking steps to remove them from the rolls.<sup>11</sup> It was quickly revealed that the list was rife with errors and comprised of citizens who were disproportionately Democrats, independents, and Latinos. Now, voters like Bill Internicola—a Brooklyn-born World War II veteran wrongly identified as a noncitizen—are back on the voting rolls and will be able to cast a ballot in November.<sup>12</sup>

“Voting is a fundamental right—and when we make our voices heard, we can keep moving our nation forward, building a fairer, stronger, and more just America.”

– PRESIDENT BARACK OBAMA

 In **Iowa**, a state judge halted the implementation of emergency rules advanced by the Secretary of State.<sup>13</sup> The court found that the rules—which could have allowed the Secretary to use inaccurate information to cancel voter registrations—“created confusion and mistrust in the voter registration process” and “caused some qualified voters to feel deterred from even registering to vote.”<sup>14</sup> Now, qualified registered Iowans can be confident that the state will not remove them from the registration rolls this election.

## Restoring Early Voting

 In addition to the Ohio early voting case, a panel of federal judges refused to approve **Florida's** attempt to cut early voting hours in the state's five counties covered by Section 5 of the Voting Rights Act.<sup>15</sup> After that decision, the state agreed to allow the five counties to return to offering 96 hours of early voting, ensuring that those counties will enjoy the same amount of early voting hours that were available in 2008.<sup>16</sup>

## Ensuring All Eligible Voters Have Their Votes Counted



In **Wisconsin**, two state courts have issued permanent injunctions against a strict new photo ID requirement, both ruling that the law violates the fundamental right to vote guaranteed by the state constitution.<sup>17</sup> The state's supreme court refused to expedite an appeal, ensuring that voters will not be hindered by this partisan restraint on Election Day.<sup>18</sup>



In **Pennsylvania**, a Commonwealth Court judge blocked the state's restrictive photo ID requirement from going into effect for the November election.<sup>28</sup> In August, the judge had declined to enjoin the law, but the Supreme Court of Pennsylvania – finding that the population affected by the photo ID requirement “includes members of some of the most vulnerable segments of our society (the elderly, disabled members of our community, and the financially disadvantaged)” – ordered the trial court to reconsider the case.<sup>29</sup> In a decision issued on October 2, the judge found that the state failed to establish procedures that would have cured known deficiencies in access to new photo IDs, and that implementation of the law would result in the disenfranchisement of eligible Pennsylvania voters.<sup>30</sup> As a result of the decision, registered voters who lack the types of photo IDs specified in the legislation nonetheless have the right to cast a regular ballot on Election Day.<sup>31</sup>



In **Ohio**, federal courts ruled that the state cannot discard a voter's ballot which is otherwise legitimate, merely because a poll worker erroneously directed the voter to cast it in the wrong precinct.<sup>21</sup> In the 2008 and 2010 elections, approximately 24,000 votes in Ohio were not counted because, even though the voter went to the right polling place, he or she was instructed to vote the wrong precinct ballot.<sup>22</sup> A three-judge panel of the U.S. Court of Appeals for the Sixth Circuit ruled that this practice violates the Equal Protection and Due Process clauses of the U.S. Constitution.<sup>23</sup>



A panel of federal judges held that the new photo ID law in **Texas** violates the Voting Rights Act, in part because the law would impose “strict, unforgiving burdens” on poor and minority voters.<sup>24</sup> As the court stated, “a law that forces poorer citizens to choose between their wages and their franchise unquestionably denies or abridges their right to vote.”<sup>25</sup> This restriction—under which voters could cast ballots with a gun license, but not student or veteran IDs—will not be in effect on Election Day.<sup>26</sup>



A federal court has blocked the photo ID law in **South Carolina**. The court ruled that not enough time remains before Election Day to implement this new law in a way that will satisfy the Voting Rights Act.<sup>27</sup> As a result of the ruling, the law will not be in place for the 2012 election.



In **Missouri**, a state judge struck down a proposed photo ID constitutional amendment because its ballot summary was misleading.<sup>19</sup> The judge objected to the title of the proposed amendment—which was labeled “The Voter Protection Act” even though it would have restricted voting—and its summary, which suggested the amendment would create early voting while in fact it would “restrict the time period during which advance voting may occur.” The Republican-controlled legislature passed this proposed amendment only after Democratic Governor Jay Nixon vetoed a similar photo ID bill last year.<sup>20</sup> As a result of the judge's ruling, the restrictive and misleading amendment will not appear on the ballot in November.

In 2012, victories in court have reaffirmed the American commitment to the fundamental right to vote, and have begun to restore progress in our electoral policy. Our democracy is stronger when more Americans can add their voices; litigation in the past year has made this more likely.

“Your vote is precious, almost sacred. It is the most powerful, nonviolent tool we have to create a more perfect union.”

– CONGRESSMAN JOHN LEWIS

## ON THE GROUND

Our legal efforts are only one part of our voter protection campaign. We cannot rely on the courts alone—protecting the right to vote has always been about organizing Americans to stand up for voting rights for themselves, their communities, and their fellow citizens.

That is why in 2012, the Democratic Party and Obama for America have dedicated unprecedented resources to protecting the vote on the ground, including placing voter protection teams in the states since the beginning of the year. But much work remains. In the last weeks of the campaign, our efforts to protect the franchise must increase.

### Right now:

- We are bringing more Americans into our strong network of volunteers and training them on state laws, voting rights, and election procedures;
- We are recruiting thousands of attorneys to volunteer on Election Day to prevent voter intimidation at the polling place and to ensure that all eligible voters can cast their ballots with confidence; and
- We are ensuring that Americans know their voting rights, and can obtain any necessary documentation to access the franchise this presidential election.

We have already dedicated unprecedented resources to voter protection, and these investments are beginning to pay off. But we can only maintain this momentum if we stand shoulder to shoulder—as generations have before—and refuse to waver in our commitment to voting rights.

We need your help. Everyone can play an important part in our voter protection effort to help ensure that every eligible American can vote—and that President Obama is reelected along with strong Democratic majorities in Congress and the states.

### Take action today to help us build on these successes:

- Visit [vote.barackobama.com](http://vote.barackobama.com) for a one-stop shop for the facts on voting, reminders for key dates and deadlines, and alerts on voting rights in your state. It's available in English and Spanish ([vote.barackobama.com/es](http://vote.barackobama.com/es)) for all 50 states.
- To volunteer for the Victory Counsel, the volunteer legal team that will be on the front lines of the fight to protect voting rights, go to [www.victorycounsel.org](http://www.victorycounsel.org).
- To commit to vote in this presidential election, go to: [www.barackobama.com/commit](http://www.barackobama.com/commit).
- Have any questions? Contact the Voting Rights Institute:

 via email at [votingrightsinstitute@dnc.org](mailto:votingrightsinstitute@dnc.org)

 on Twitter [@voterprotection](https://twitter.com/voterprotection)

“We believe the right to vote and to have your vote counted is an essential American freedom, and we oppose laws that place unnecessary restrictions on those seeking to exercise that freedom.”

- 2012 DEMOCRATIC PARTY PLATFORM

<sup>1</sup> The Democratic National Committee, *A Reversal in Progress: Restricting Voting Rights for Electoral Gain*, 7, available at [http://assets.democrats.org/pdfs/vri/Reversal\\_in\\_Progress.pdf](http://assets.democrats.org/pdfs/vri/Reversal_in_Progress.pdf).

<sup>2</sup> *Obama for America v. Husted*, Opinion and Order Granting Preliminary Injunction, available at <http://moritzlaw.osu.edu/electionlaw/litigation/documents/OFA-Opinion.pdf>.

<sup>3</sup> *Obama for America v. Husted*, Opinion (6th Cir. 2012) available at [http://moritzlaw.osu.edu/electionlaw/litigation/documents/Opinion\\_006.pdf](http://moritzlaw.osu.edu/electionlaw/litigation/documents/Opinion_006.pdf).

<sup>4</sup> *Id.*

<sup>5</sup> *Obama for America v. Husted*, Emergency Application for Stay Pending Certiorari, United States Supreme Court (October 9, 2012), available at <http://moritzlaw.osu.edu/electionlaw/litigation/documents/ApplicationforStay.pdf>.

<sup>6</sup> See *Obama for America v. Husted*, Opinion (6th Cir. 2012).

<sup>7</sup> *League of Women Voters of Florida v. Detzner*, Indicative Ruling on the Motion for a Permanent Injunction, available at [http://www.brennancenter.org/page/-/Democracy/VRE/FL\\_injunction\\_082912.pdf](http://www.brennancenter.org/page/-/Democracy/VRE/FL_injunction_082912.pdf).

<sup>8</sup> Fla. Stat. § 97.0575.

<sup>9</sup> John Quinn, *Court Rules Out-of-State Students Have Right to Vote in New Hampshire*, UNION LEADER (September 24, 2012), available at <http://www.unionleader.com/article/20120924/NEWS06/120929792>.

<sup>10</sup> *Arcia v. Detzner*, Stipulation of the Parties, available at [http://b3cdn.net/advancement/dc5b7211a4b10c40a7\\_nkm6bh3d0.pdf](http://b3cdn.net/advancement/dc5b7211a4b10c40a7_nkm6bh3d0.pdf).

<sup>11</sup> Steve Bousquet, *State to Release Larger Potential Non-Citizen Voter List*, THE MIAMI HERALD (July 10, 2012), available at <http://www.miamiherald.com/2012/07/10/2890164/state-to-release-larger-potential.html>.

<sup>12</sup> Amy Sherman, *South Florida Democrats Say Gov. Rick Scott Leading "Misguided" Effort to Purge Voters from State Rolls*, THE MIAMI HERALD (May 29, 2012), available at <http://www.miamiherald.com/2012/05/29/2822073/south-florida-democrat-say-gov.html>.

<sup>13</sup> *ACLU v. Schultz*, Ruling and Order on Petitioner's Motion for Temporary Injunctive Relief, available at <http://www.kcci.com/blob/view/-/16610704/data/1/-/12lbvm8/-/Ruling-on-new-voting-rules.pdf>.

<sup>14</sup> *Id.*

<sup>15</sup> *Florida v. United States*, Opinion for the Court, available at <http://moritzlaw.osu.edu/electionlaw/litigation/documents/PerCuriamOpinion.pdf>.

<sup>16</sup> *Id.*, Motion to Amend the Complaint, available at <http://moritzlaw.osu.edu/electionlaw/litigation/documents/MotiontoAmendtheComplaintandSupportingMemorandum.pdf>.

<sup>17</sup> Patrick Marley, *Second Judge Rejects State Voter ID Law*, MILWAUKEE JOURNAL SENTINEL (July 17, 2012), available at <http://www.jsonline.com/news/statepolitics/second-judge-rejects-state-voter-id-law-ea65kqh-162799866.html>.

<sup>18</sup> Patrick Marley, *Supreme Court Refuses to Take Up Voter ID Cases*, MILWAUKEE JOURNAL SENTINEL (Apr. 16, 2012), available at <http://www.jsonline.com/news/statepolitics/supreme-court-refuses-to-take-up-voter-id-cases-1b51335-147608115.html>.

<sup>19</sup> Jason Hancock, *Court Strikes Down Proposed Missouri Voter ID Amendment*, THE KANSAS CITY STAR (Mar. 29, 2012), available at <http://www.kansascity.com/2012/03/29/3523436/court-strikes-down-proposed-missouri.html>.

<sup>20</sup> *Id.*

<sup>21</sup> *Service Employees International Union Local 1 v. Husted*, Opinion, available at <http://moritzlaw.osu.edu/electionlaw/litigation/documents/6thOpinion.pdf>.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Texas v. Holder*, Opinion Denying Texas' Request for a Declaratory Judgment, available at <http://moritzlaw.osu.edu/electionlaw/litigation/documents/OpinionDenyingStatesRequestforaDeclaratoryJudgment.pdf>.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *South Carolina v. United States*, Memorandum Opinion, available at <https://www.documentcloud.org/documents/460408-https-ecf-dcd-uscourts-gov-cgi-bin-show-temp-pl.html>.

<sup>28</sup> *Applewhite v. Pennsylvania*, Supplemental Determination on Application for Preliminary Injunction (Oct. 2, 2012), available at <http://electionlawblog.org/wp-content/uploads/pa-id-remand.pdf>.

<sup>29</sup> *Applewhite v. Pennsylvania*, Per Curiam Order Vacating Judgment and Remanding Case to Commonwealth Court, available at <http://www.pacourts.us/OpPosting/Supreme/out/J-114-2012pco.pdf>.

<sup>30</sup> *Applewhite v. Pennsylvania*, Supplemental Determination on Application for Preliminary Injunction (Oct. 2, 2012) at 3-5.

<sup>31</sup> *Id.* at 14-15.



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