

**Before the Senate Judiciary Subcommittee  
on the Constitution, Civil Rights, and Human Rights**

**Prepared Statement of**

**Gregory T. Moore,  
Campaign Director**

**of**

**Fair Elections Ohio,**

**A state political action committee and  
nonprofit organization supporting voting rights in Ohio**

**Monday, May 7, 2012 9:30 a.m.**

**Carl B. Stokes United States Federal Courthouse**

**801 West Superior Avenue**

**Cleveland, Ohio 44113**

**Subcommittee Field Hearing:**

**“New State Voting Laws III:  
Protecting the Right to Vote in America’s Heartland”**

Chairman Durbin, Senator Brown, Congresswoman Fudge, I want to thank you for the opportunity to testify at this important hearing. My name is Greg Moore, and I serve as the Campaign Director of Fair Elections Ohio. Fair Elections Ohio (FEO) is an incorporated political action committee that is coordinating and funding the HB 194 referendum on behalf of the petitioning committee (composed of five members with geographic, racial and gender diversity from throughout Ohio). FEO is co-chaired by Former Secretary of State Jennifer Brunner as well as Cleveland's own, the honorable Rev. Otis Moss, Jr. and Bishop Timothy Clark of Columbus, Ohio.

In conjunction with a number of allies across the state, FEO was successful in preparing and circulating the petitions statewide that resulted in over 500,000 citizens signing to support this effort. As a result the legislation has halted from taking effect on September 29, 2011.

By way of background I have served in a number of capacities over the past 25 years fighting to preserve, protect, defend and expand the rights of voters in this state and across the country. As a native Clevelander, I am proud to be part of this forum which seeks to highlight an issue that I have dedicated many years of my life, going back to the late 1980's. In 2005 I founded an organization called the Ohio Voter Fund, a statewide voting rights organization that grew out of my deep concern for the election debacle that many of us witnessed in 2004. I have also served for over 10 years as the Executive Director of the NAACP National Voter Fund and Chief of Staff to the Honorable Congressman John Conyers, Jr. the Dean of the Congressional Black Caucus and Ranking Member of the House Judiciary Committee.

It was while serving on Capitol Hill where I first met the Honorable Congresswoman Marcia Fudge who at the time was also Chief of Staff of our beloved friend and champion the late Congresswoman Stephanie Tubbs Jones. Congresswoman Fudge, like her predecessor, has been a national champion on the issue of voter suppression and voting rights and we applaud her on the leadership she has shown in support of this effort to repeal HB 194 from the very beginning.

I would also be remiss if I did not mention the dedication of the Honorable Senator Sherrod Brown who has also demonstrated leadership on the issue of voting rights going back to his days as the former Secretary of State of Ohio when we first met during a voter registration drive I was leading at Ohio University in the early 1980's. Thanks to all of you and Senator Durbin for making this issue a priority both here and in the nation's capitol.

I'm here to add my voice to the scores of voting rights, civil rights, civic and labor allies across the state and across the nation who have been working since June of 2011 to stop the passage and implementation of HB 194. Since being formed in July of 2012, Fair Elections Ohio has taken on what seemed like near impossible challenges to overturn this law. Yet we have been able to have

a string of accomplishments for nearly a year toward achieving our primary mission to repeal HB 194 and ensure that the voting rights of the half a million citizens who signed our petition last year are protected.

Since its founding FAIR ELECTIONS OHIO has:

- **Successfully qualified** to circulate petitions despite initial rejection and delays by Attorney General and SOS office;
- **Successfully submitted 318,000 signatures to halt the implementation of HB 194** on September 29, 2011 in only a six and a half week period rather than the 90 days due to those delays;
- **Successfully Prevented the implementation of HB 194** during the 2011 Special elections which aided **allies in labor** and the **We Are Ohio Coalition** in defeating Issue # 2
- **Submitted additional 218,000** signatures in a second wave of collection for total of **503,000** signatures submitted
- **Raised \$345,000 for the Fair Elections Ohio** Signature Collection Effort
- **Raised over \$1.4 million in contributions and in-kind support**
- In December, 2011 we qualified for placement on the November, 2012 Ballot
- **Built a strong and diverse statewide coalition** of labor, clergy, civil rights, voting rights and civic organizations committed to short and long term protection of voting rights in Ohio
- Finally, after several months of defending HB 194 as a necessary “election reform bill,” the very sponsors and supporters have all but admitted that the passage of HB 194 was a major legislative error and have moved themselves to repeal the effort within the legislature.

While many may quarrel over and challenge the motives of the Republican leadership in seeking to remove the issue from the November Ballot through their support of SB 295, the fact remains that it represents one of the few instances, if not the only instance in the US, where the legislature is in full retreat and seeking to repeal voter suppression legislation. Even if it is not a total repeal we must recognize this as a major victory in and of itself and a testament of the success of the Citizen’s Veto as an instrument for ensuring government accountability and ensuring that only effective and responsible public policy is enacted in the state of Ohio.

### **Impact of Fair Elections Ohio Efforts**

As you have heard from other witnesses, HB 194 makes it both harder to vote in Ohio and harder for votes to count. It also makes it harder for citizens to circulate referendum petitions. The fact that FEO has stopped the voter suppression provisions of HB 194 from becoming law has led to a number of important victories. As a result of our efforts, the November 2011 election was able to be conducted under the same election rules from 2008 and 2010. Issue # 2, the citizen’s

referendum on SB 5 which would have banned public employee collective bargaining, was soundly defeated. By successfully submitting over 318,000 petitions on September 29, 2011, we were able to stop the implementation of HB 194 within the 90 day window. The success of the petition drive is credited with helping labor and its allies across the state to defeat the issue at the ballot box.

The HB 194 referendum's stay of the law has also stopped its implementation during these critical 2012 elections and is now permitting an effort to change redistricting in Ohio to proceed under fair petition circulation rules.

In June of 2011 the House and Senate Republican controlled legislature constructed HB 194, which is now being viewed across the state and across the US by civil rights groups, voting rights experts and scholars as a voter suppression bill. We clearly understood the political motives of moving such an oppressive piece of legislation, but we could never reconcile or understand the moral or even the legal justification for such a move? There is no widespread evidence of fraud in recent election cycles in Ohio.

Limiting the opportunity for voters to vote early is not election reform. It is election suppression. Eliminating the responsibility of election poll workers to inform voters of their correct polling location is not election reform, its voter suppression. There were many reforms that former Secretary of State Jennifer Brunner and several members of the Ohio Legislature and the voting rights community fought hard to secure in the aftermath of the 2004 and 2006 elections. By all accounts, these bi-partisan reforms were necessary to ensure the integrity of the vote in Ohio and went a long way toward reducing long lines, reducing the number of provisional votes cast, and increasing access to the polling place for tens of thousands of voters across the state. HB 194 begins the process of rolling back many of those provisions and attempted to march Ohio back into an era of state sponsored disenfranchisement.

Many people in the civil rights and voting rights community saw HB 194 as a blatant effort to ensure that the voices of African American, Latino, working people in Labor, and students were diminished in the then upcoming vote in November 2011 to Repeal SB 5 and the upcoming 2012 presidential election. They believed that the Ohio Legislature, by taking these actions, was trying to return Ohio to the days of the 2004 election where voters across the state stood in long lines for long hours (many in the freezing rain) trying to exercise our constitutional right.

I was among those people standing in the rain working to assist voters encountering problems. None of us who experienced the horrors of that Election Day can ever forget how we felt. Our democratic system had failed us. We have not forgotten those days and neither have millions of voters from all races and all regions of the state who experienced that day.

If HB 194 was able to become law last year, Ohio voters would find themselves forced back into long lines in the name of “voter integrity” to prevent “voter fraud” when there has never been any substantial evidence that it is occurring widely in Ohio elections.

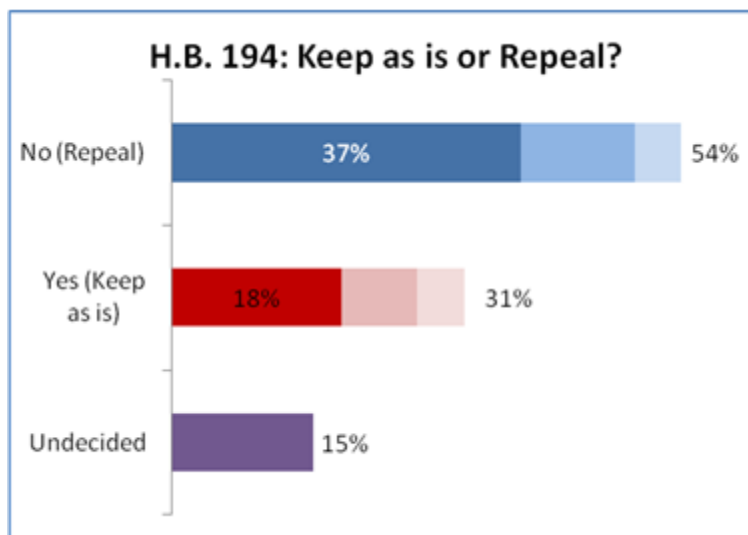
The opposition to the expansion of the right to vote is essentially what happened last June in the Ohio Legislature. To many in the civil rights community it was part of a pattern occurring across the US with an epidemic of similar legislation that was in essence an attempt to return to the days of “Jim Crow” democracy. Voting was again becoming more of a privilege and less of a right. The Ohio Senate and House were presented with clear and unambiguous testimony from non-partisan voting experts and academics who laid out clear cut evidence that many of the so called “reforms” in HB 194 would have a disparate impact on African Americans, students, the elderly and low income Ohioans. Those concerns were brushed aside and HB 194 was passed in both chambers along partisan lines.

### **Research and Polling**

**In 2012**, Fair Elections Ohio successfully galvanized broad based public support for the repeal of HB 194 as evident in a statewide poll from **Lake Research Partners** demonstrating demographic support for repeal of HB 194 through Lake Research Partner’s Poll.<sup>1</sup>

The late January 2012 survey in Ohio reveals a solid majority of likely voters are poised to repeal H.B. 194. *Strong* support alone for repealing the law outnumbers the totality of the opposition and relatively few voters are undecided. Beyond the impressive level of intensity, support for repealing H.B. 194 is noticeably broad as well, with voters supporting repeal by double-digit margins, regardless of gender, age, race, education, and region.

A 54% majority would vote to repeal the law today compared to just 31% who would vote to retain it. Much of the electorate’s support for repeal is rooted in intensity, with 37% of voters strongly backing repeal. Only 18% of voters strongly support keeping the law on the books and 15% of voters undecided.



<sup>1</sup> Lake Research Partners, February, 2012 <http://www.fairelectionsohio.com/home/2012/2/21/fair-elections-ohio-releases-hb194-poll-results.html>

Support for repealing H.B. 194 spans the state, claiming majorities in Northeast (53%), Northwest (52%), Central (57%), and Southern (53%) Ohio. The same is true for women (55%) and men (52%); younger (51%) and older (56%) voters; college educated (56%) and non-college educated (52%) voters; and white (54%) and black (58%) voters alike. The law, which was introduced and passed by Republican members of the State Legislature, even fails to draw the support of Republican voters across the states, which are themselves divided on repeal: 44% “Yes” to 43% “No”.

### **The ALEC Connection**

Mr. Chairman I’d like to add for the record the concern we have regarding the role played by powerful out of state interest groups who have sought to impose voter suppression legislation in Ohio and other states across the US. We know that legislation based on the American Legislative Exchange Council (ALEC)’s voter ID model have been introduced in 34 states and passed in seven of those.<sup>2</sup> Ohio nearly joined the latter group, after the Ohio House voted to pass the ALEC-inspired HB 159 only eight days after its introduction.<sup>3</sup>

The connection between ALEC and Ohio’s pending voter laws are clear. ProgressOhio, The Center for Media and Democracy, Common Cause, and People for the American Way released a report earlier this year containing a side-by-side comparison of HB 159 and ALEC’s Voter ID ACT model legislation.<sup>4</sup> The analysis yielded approximately a dozen points of textual similarity.

The Cleveland Plain Dealer deemed HB 159 “the nation’s most restrictive voter identification law.”<sup>5</sup> While it has yet to pass in Ohio, the quest to make voting more difficult, particularly for historically underrepresented groups, continues, as evidenced by HB 194.

### **Legislative Repeal Of HB 194:**

This week brings us yet another milestone in the history of this struggle to repeal HB 194. The same Republican led General Assembly that rushed this bill through on a strictly partisan basis is now moving rapidly to “repeal” HB 194 to prevent repeal by the voters. Although the Senate version of the repeal bill, SB 295, has included specific provisions that clearly eliminate the last weekend of early voting again it does represent a major victory for our efforts to convince the legislature and the public at large that the passage of HB 194 and its many harmful provisions was gross error.

*Today it no longer appears to be a question of whether HB 194 will be repealed, but rather, a question of how and when. Our efforts last year were designed to gather enough signatures to*

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<sup>2</sup><http://www.economist.com/node/21529061>

[http://www.campusprogress.org/articles/new\\_evidence\\_of\\_alec\\_connections\\_in\\_all\\_successful\\_voter\\_id\\_legislation/](http://www.campusprogress.org/articles/new_evidence_of_alec_connections_in_all_successful_voter_id_legislation/)

<sup>3</sup> <http://lsc.state.oh.us/coderev/hou129.nsf/House+Bill+Number/0159?OpenDocument>

<sup>4</sup> <http://site.pfaw.org/pdf/ALEC-in-Ohio.pdf> p.24-28

<sup>5</sup> [http://www.cleveland.com/open/index.ssf/2011/03/ohio\\_house\\_approves\\_legislation.html](http://www.cleveland.com/open/index.ssf/2011/03/ohio_house_approves_legislation.html)

qualify for this November's election ballot, and in that we succeeded. The 500,000+ voters who signed the petition represented a major cross section of the state that we were able to convince that the provisions of HB 194 would harm Ohio voters. In determining how to move forward, here are two major problems with being satisfied with the passage of SB 295:

- 1) The elimination of Weekend Voting, especially the weekend just before the election, and
- 2) The protection and preservation of the right of referendum and the Citizens Veto. It is important to Fair Elections Ohio and all of our allies that this right not be weakened in the rush to repeal HB 194 legislatively. We are exploring a number of legal and legislative strategies that will seek to repeal HB 194 without undermining that sacred right.

Tomorrow the Ohio House of Representatives will be taking up a measure, SB 295. Even as it is currently written, SB 295 repeals over 90% of the provisions that make up HB 194. Our allies in the House and Senate will be offering an amendment on behalf of Fair Elections Ohio and the 500,000 citizens who signed the petition to fully restore early voting the weekend before Election Day. If this amendment is accepted and the Senate concurs, we will be able to say that the citizen's veto has been successful. The voice of the people will have been heard and this mighty coalition has been able to completely repeal HB 194 after a long, 11 month battle.

If, on the other hand, we are not able to restore that final weekend of early voting, we may be forced to keep the issue on the ballot and let the people do what the legislature has refused to do. Let me be clear. Even if we were to win the repeal of HB 194 at the ballot box, it would still not restore the last weekend of voting. We therefore will continue our legislative campaign to restore these three days now while the legislature is still in session and while we can repeal this provision also in time for it to take effect in the 2012 elections. We will continue to mobilize churches, campuses, working men and women and communities across the state until all of our voting rights have been restored and the election laws are as they were before the passage of HB 194.

### **Replacement Legislation After Legislative Repeal of HB 194**

From the beginning, the debate on repeal has universally included "replace." With the ongoing advocacy of groups like Progress Ohio, We Are Ohio, The Unity Coalition, The AFL-CIO, the League of Women Voters, the NAACP, CO-OHIO and others we have been able to push back on the Republican leadership's attempt to build bi-partisan support for "replace" legislation. Even our most vocal opponents in the assembly are now conceding that replacement legislation may only be possible if kept to only the most non-controversial provisions.

We are not certain that *any of the* replacement language in SB 295 would withstand a court challenge, since it could be viewed as an attempt to take away the constitutionally guaranteed right to a referendum, which is reserved exclusive to the people of Ohio. We note the weeks of

delay in introducing new legislation beyond SB 295 may even be evidence of insufficient Republican support for replacement legislation.

In short, our efforts in working with one another in these politically difficult situations show significant accomplishment over the past 10 months, with an almost unbroken streak of success since we first began this campaign. The question remains how we leverage our success in working together to successfully and prudently make the next wave of strategic decisions in meeting our responsibility to Ohio voters for fair Ohio elections. We thank this Subcommittee for offering our state a forum for many of the groups who have worked on this issue for several months to submit written testimony. What we all must do now is keep our attention focused on accomplishing the ultimate objective: The full repeal of HB 194 and the return to the election laws as they existed before the passage of the law in June, 2011

It is important to note that no legislature in the last 100 years, since the 1912 Ohio Constitutional Convention adopted the right of statewide referendum on the powers of the Ohio General Assembly to enact laws, has repealed a law that has been certified for a statewide referendum vote. There remains the risk that litigation challenging the effectiveness of the repeal because of this fact, could nullify the efforts of the Ohio legislature to repeal HB 194 as a means to keep the question from the voters of Ohio.

In order for SB 295 to be considered a clean repeal, references to HB 224 would have to be removed through an amendment in either the house committee or on the Floor. If an amendment is not possible, a standalone bill being introduced is another vehicle we are exploring for advocates to support. We will be partnering with our allies in We Are Ohio and the AFL-CIO over the next several weeks to coordinate the campaign to restore the last weekend of early voting.

What transpires through this legislative campaign will have a major impact on how we will proceed in our ongoing campaign to repeal HB 194. Assuming we can achieve a legislative remedy, the central question for the Fair Election's Ohio leadership at that point would be:

*If we can accomplish our goal of completely, legislatively restoring pre-HB 194 voting laws with the passage of SB 295 (repealing HB 194) and the restoring provisions of law that remove the last weekend of voting legislatively can we achieve our ultimate objective without a full scale campaign?*

The final decision would be need to include an analysis of any legal challenge to the SB 295 legislative repeal of HB 194 to prevent the law from taking effect due to the possibility that the success of such a legal challenge could also usher in the provisions of HB 194 after the November elections with no referendum to stop its implementation.

FEO anticipates that the Republican Secretary of State who also chairs the state ballot board that crafts statewide ballot language, may decline to place the issue on the ballot if HB 194 is



repealed (even if all prior law is not restored), or he may be challenged in court not to do so. FEO must be positioned to litigate this issue if necessary.

FEO believes that no legislative attempt can thwart the constitutionally reserved power of referendum. The state constitution is the voice of the people of Ohio. It is only through that document that the legislature is granted any power to act. At no point does the legislature have the power to diminish rights the people have reserved to themselves, such as referendum. This must be protected, even if litigation is required.

We urge the rejection of SB 295 by the Ohio General Assembly without the changes we have recommended. Overall we urge a return to a more balanced, bi-partisan and forward looking approach to election reform that will expand the right to vote and not disenfranchise voters who simply want to ensure that their voices are heard and that their votes are equally counted.

Before I close Mr. Chairman I think it's important that we acknowledge some of the work that has been done over these past 11 months by members of the Fair Election Ohio Coalition and its partners. One of the keys to the success of Fair Elections Ohio's petition campaign last year was the extraordinary volunteer work that was undertaken by many of our allied partners. These partners are too numerous to name. But I would like to highlight a few. Without their mostly volunteer help in mobilizing voters across the state, we would not be sitting here today as a successful coalition making the best case for a measure that has been qualified for the ballot this November 6<sup>th</sup>.

Obviously our allies in organized labor were very helpful in their support having already been energized by the historic "We Are Ohio" campaign that successfully overturned the anti-collective bargaining bill SB 5. But also in the voting rights and civil rights community there was the *Ohio Unity Coalition*, a statewide network of many leading organizations from the civil rights, labor, social, fraternal and faith based organizations. Groups like the *NAACP State Conference*, the *A. Phillip Randolph Institute*, and the *Coalition of Black Trade Unionists*. Local, as well as faith based organizations like the *Columbus Civic Betterment Committee* and the *AME Church*.

In the case of the Unity Coalition it offered testimony in opposition to HB194 when it was first introduced co-sponsored tele-town hall meeting with Ohio Legislative Black Caucus, printed and distributed petition booklets for use in minority communities across the state, developed a toolkit for Faith Leaders and established a toll free hotline for voters to access information about the Repeal HB 194 campaign. Even today they have charted a bus from Columbus for voters to participate in this hearing and are taking a leading role in the campaign for the restoration of the last three days of weekend voting in partnership with FEO, *We Are Ohio* and the *AFL-CIO*

Throughout the state the faith based community has played a decisive role in mobilizing churches, synagogues, and other community based organizations. Groups like *Pastors in Mission* in Cleveland, the *Cleveland Voter Coalition*, *AMOS*, *ESOP*, and the *Southern Christian Leadership Conference*, and the Bishops of the *Church of God in Christ (COGIC)* all played a

decisive role. In the case of COGIC these sometimes small but very dedicated churches made signature collection a key component of their community service and help spread the word in small towns and rural areas throughout the state. The major highlight of these efforts in the faith community was the coordination of “*Signature Sundays*” in local churches who signed up parishioners before and after services on numerous appeals from their leading clergy. FEO Co-Chairs Rev. Otis Moss, Jr. and Bishop Timothy Clarke have provided the moral and spiritual leadership throughout this entire effort.

There was significant support from more partisan organizations like *Organizing for America*, the *Ohio Legislative Black Caucus* and *America Votes-Ohio*. But there was also very significant statewide institutional support from non-partisan networks like *Ohio Voice*, the *NAACP State Conference and Youth Councils*, the *Ohio Voter Fund*, the *Ohio Organizing Collaborative*, the *League of Women Votes*, *Stand Up Ohio*, *Common Cause*, the *National Urban League* and many others whose local partner organizations mobilized their members to sign petitions, participate in legislative hearings, rallies and community forums to raise awareness of HB 194 and its potential devastating impact on their communities.

At the national level a major coalition of allied groups called We Are One, was convened by the Leadership Conference on Civil and Human Rights. This coalition of labor, civil rights, women’s rights, students and other advocacy leaders placed a special emphasis on Ohio that began as a commemoration of the 43<sup>rd</sup> anniversary of the Martin Luther King, Jr. assassination on April 4, 2011. They continued to urge support from their allied partners to activate their networks in Ohio in support of the legislative battles against the passage of SB 5 and HB 194, the petition drive and ultimately the referendum process. They also helped to garner resources in support of the effort.

Voter registration, education and GOTV programs were also a key component to our efforts. While there were ongoing debates and legislative maneuvering in Columbus underway to dilute voting rights and workers rights, our coalition partners were mobilizing voters in response to these assaults. In fact the voter suppression efforts being waged had the opposite effect. People all across the state in all 88 counties flooded mobile drive and sign stations; “Souls to the polls” programs were launched again in conjunction with leading clergy and laypersons.

This was the area where the last weekends of Early Voting, currently prohibited by provisions in HB 194 and HB 224 had been the most successful. Thousands of people of faith from across the state boarded buses and church vans after services on that last Sunday in 2008 and 2010 and voted in record numbers. Thus by cutting off this period of voting we stand the risk of disenfranchising tens of thousands if not hundreds of thousands of people of faith.

Finally, communications and social networking played a key role. Internet issue awareness campaigns launched by *Progress Ohio* helped spread this info out to its over 300,000 on line members. Likewise the Black Press, still a powerful source of information in the African American Community, kept this issue front in center through publications like *the Call and Post*, the *Akron Reporter*, and local community papers like *Ohio Community News*.

Even radio personalities played a key role, whether local DJs who invited us on to educate their listeners, or Tom Joyner of the Tom Joyner Morning Show who provided his listeners with regular updates on the signature drive and critical information about the effects of HB 194 and how they could sign the petition and become more involved.

In short the campaign to stop the enactment of HB 194 was nothing short of a modern day voting rights movement that brought young and old, Black and White, urban and rural voters together. Perhaps most importantly based on our polling and having surpassed our qualifying threshold in over 60 of 88 counties; this campaign against HB 194 brought together Republicans, Democrats and independents who signed together, rallied together, and have continued to stand together all across this state to say a resounding “NO” to any efforts to curtail or suppress their right to vote.

Mr. Chairman, I believe that this is why Republican members of the legislature have come to regret the actions they took in 2011 to enact HB 194 and SB 5 for that matter. They were both unnecessary and unwarranted overreaches of legislative power. It is why we sought to use the most important instrument *we the people* of the state of Ohio have at our disposal,-- the right of referendum, the citizens veto, or as I like to call it the “people’s veto.” As I wrote in an op-ed last year “This is a right that is not exercised often. It is reserved for times when the people of the state must rise up and utilize this procedure as the only recourse to a state government that has abused its power and acted against the best interest of the people of this state.”

I hope and pray that if nothing else comes out of this hearing it would be this: that the United States Senate’s Judiciary Committee had the wise judgment to travel to the state of Ohio and get a firsthand account of what happened here in 2011 and what is happening in 2012. Our successful campaigns built from the grassroots up can and should be a model for other states to follow who are battling the imposition of these voter suppression laws.

Tomorrow the Ohio General Assembly has an opportunity to correct a major error in their judgment. We make our final appeal to them today at this hearing: to listen to the voices of the half million citizens who signed the petition, and vote to repeal ALL of HB 194, including the restoration of the last three days of weekend voting. Their only rationale for not doing so is that it puts too much work on the Election Day workers. Mr. Chairman, I would submit that shutting down voting stations because too many people are voting would be the equivalent of shutting down shopping at department stores the last three days before Christmas because too many people are doing last minute shopping. It makes no sense.

The people have spoken, and their message is clear: they want the full repeal of HB 194, not a partial repeal. They want a full repeal not next month, not next year, but they want a full repeal NOW! Repeal it now or we will repeal it for you on November 6<sup>th</sup> at the ballot box!

Thank you again for the opportunity to speak on behalf of Fair Elections Ohio and the hundreds of thousands of citizens across the state who appreciate your placing a spotlight on our voting rights struggle in this critical stage.