



**Testimony for the House Ways and Means Committee  
February 21, 2013**

**HB 325 – Election Law – Qualification of Voters – Proof of Identity**

**OPPOSE**

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The American Civil Liberties Union of Maryland opposes any legislation that would create onerous and illegal voter ID requirements at the polling place. HB 325 is a wholly unnecessary measure that will depress voter turnout in poor and minority communities, and deserves to be rejected.

**Photo identification requirements on election day are a solution in search of a problem.** Although at first glance this bill may seem harmless, it is in fact a radical departure from American history and will disfranchise more eligible voters than any tactic since the poll tax.

There are numerous problems with elections in the United States. Voter intimidation, vote suppression, misinformation, inaccurate registration lists, and voting technology that either does not work perfectly or is mistrusted by voters. Voter impersonation is not one of the significant problems.

For over 200 years, America has conducted elections without requiring voters to prove their identity on election day. Indeed, the only time in our history in which there was a requirement for voters to possess paperwork was when some states required production of a poll tax receipt in order to vote. So why are bills requiring voter photo IDs being introduced in the states? The proponents contend the intent is to prevent vote fraud. And when the evidence fails to support that argument, the proponents contend that IDs are necessary because voters do not trust the election system.

**Demanding a particular government-issued document in order to exercise the fundamental right to vote is contrary to Supreme Court precedent.** In *Dunn v. Blumstein*, 405 U.S. 330 (1972), the Supreme Court invalidated a state law that required residency for a year before voting. The state had justified it as a way of proving each voter was a bona fide resident. The Court said the state had many ways of establishing a voter's qualifications, and criminal penalties for fraud, so it could not insist on a type of proof that was not necessary. Several state courts have also recently rejected the implementation of voter ID laws for various reasons. In Pennsylvania, a state judge halted enforcement of the state's voter ID law, citing that he was not convinced that that voter ID requirement would not lead to voter disenfranchisement. *Applewhite v. Pennsylvania* (Oct. 2, 2012). In South Carolina, a U.S. District court panel blocked the South Carolina voter ID law from taking effect before the 2012 election. *South Carolina v. Holder* (Oct. 10, 2012). In Texas, a U.S. District Court blocked Texas' voter ID

law on the basis that it discriminates against minorities and conflicts with the federal Voting Rights Act.<sup>1</sup> *Texas v. Holder* (Aug. 30, 2012).

Under most ID proposals, if your mother is the poll official and your third grade teacher is next in line, that won't help you if you don't have your ID on you. We send people to prison or execute them based on sworn testimony. A person's oath, backed by criminal penalties, is more than enough to deter this type of fraud without turning away legitimate voters.

**Voter ID requirements claim to be aimed at in-person voter impersonation. That is a crime that is virtually non-existent because it both high risk and inefficient.** On February 7, 2013, this committee held a hearing on a similar voter ID bill. At that hearing, Maryland Board of Election's Linda Lamone testified that she was unaware of a single instance of voter fraud in Maryland.

Furthermore, studies and other state's testimonies bear out that fraud is minimal and is not likely to impact election results. The Secretary of State of Georgia has testified that in her decade of experience, not a single claim of voter impersonation had been brought to her or to the state election board, and that the procedures in place would have revealed such practices if they had occurred.

Campaigns are competitive processes, and candidates do not risk felonies for a few votes. If an election is close, they devote their efforts to turnout, not identifying who won't turnout and then getting someone to impersonate the non-voter. In order to impersonate a voter, the campaign has to know that the voter has not voted earlier in the day or by absentee, will not vote later in the day, will not be known to the poll workers and others at the polling place, and that the impersonator will not be known at the polling place. Impersonators could only visit a handful of precincts on election day. To steal 100 votes would take all this knowledge and maybe a dozen impersonators, all of whom are willing to risk multiple felony convictions and who have engaged in a conspiracy with someone in the campaign. In small jurisdictions, with a few hundred voters, the risk of exposure is extremely high. In larger races, even a statistical dead heat can have a margin of victory in the thousands of votes, a number far too high to achieve by this type of fraud.

When asked for examples of voter impersonation, proponents point to historical examples, such as in the late 1940s when votes were cast in a rural Georgia county in alphabetical order. Of course, that was stuffing the ballot box, something an ID law would not have prevented. But proponents also overlook that (a) the fraud did not go undetected and (b) it was done in the time of carbon copy precinct lists and lists that were not regularly maintained removing deceased or ineligible voters.

**Voter ID requirements have a disproportionate impact on those who can least afford it.** Proponents also argue that one illegal vote is one too many. The

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<sup>1</sup> It was estimated that Texas' voter ID law at issue could have prevented 1.5 million Texas voters from casting their ballot in the 2012 election, the majority of whom are Hispanic or Black.

reverse should also be true—rejecting legal voters should not be acceptable. Numerous studies have documented that certain segments of our society—the elderly, people with disabilities, the poor and people of color—are less likely to have government issued IDs. These otherwise-eligible voters would be rejected simply for lack of ID.

Research has shown that 11% of US citizens – or more than 21 million Americans – do not have government-issued photo identification, as many as 25% of African American citizens of voting age do not have a government-issued photo ID, compared to only 8% of their white counterparts, and 18% of Americans over the age of 65 (or 6 million senior citizens) do not have a government-issued photo ID.<sup>2</sup> In 2008, it was widely reported that Indiana’s voter ID law disfranchised 12 nuns who were trying to vote in the primary election. The nuns were all over 80 years old, all had a history of voting in past elections, and none of them drove. Their limited mobility made it difficult for them to get an ID.<sup>3</sup>

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In Georgia, the League of Women Voters and the AARP estimated that 152,644 individuals over the age of 60 who voted in the 2004 election do not have a driver’s license and are unlikely to have other photo identification. And who is more likely to not have their ID with them at all times—your college age son who needs it to buy beer or your elderly parents? Once turned away, few people return to the polls a second time.

Also in Georgia, Census data shows that 17% of African-Americans households do not have access to an automobile, and therefore less likely to have a drivers license, compared with 4% of white households. Photo ID requirements will result in tens of thousands of voters being denied the right to vote every election day. People with disabilities similarly are far less likely to have photo IDs.

**Eligible voters will be turned away.** One voter who was turned away for lack of his registration card was South Carolina Governor Mark Sanford. On election day in 2006, he left his card in the capital in Columbia when he tried to vote at his precinct on the coast. He was turned away by conscientious election workers in the time-honored tradition for politicians of having the media present. Unlike many, he was able to take several hours and retrieve his card and cast his vote.

This committee and the Maryland General Assembly have demonstrated a commitment to expanding the franchise and encouraging more voter engagement. This bill is out of keeping with that spirit and commitment. The committee has rightly rejected it in the past.

For the foregoing reasons, the ACLU of Maryland urges an unfavorable report on HB 325.

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<sup>2</sup> See Study: 500,000 Americans Could Face Significant Challenges to Obtain Photo ID to Vote, Brennan Center for Justice, July 18, 2012, at <http://www.brennancenter.org/press-release/study-500000-americans-could-face-significant-challenges-obtain-photo-id-vote>.

<sup>3</sup> Nuns with dated ID turned away at Ind. polls, May 6, 2008, at [http://www.nbcnews.com/id/24490932/ns/politics-decision\\_08/t/nuns-dated-id-turned-away-ind-polls/#.URMbfiVSZ18](http://www.nbcnews.com/id/24490932/ns/politics-decision_08/t/nuns-dated-id-turned-away-ind-polls/#.URMbfiVSZ18).