



**Testimony for the House Ways & Means Committee
February 6, 2020**

HB 197 – Election Law – Qualification of Voters – Proof of Identity

UNFAVORABLE

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The ACLU of Maryland opposes HB 197, which creates onerous and illegal voter ID requirements for persons seeking to exercise the right to vote. This bill is unnecessary and will depress voter turnout in poor communities and communities of color.

Photo ID requirements are a solution in search of a problem

There are numerous legitimate problems with elections in the United States. Voter intimidation, vote suppression, misinformation, inaccurate registration lists, and voting technology that either does not work consistently or is mistrusted by voters are among them. However, voter impersonation is not.

For more than 200 years, America has conducted elections without requiring voters to present ID on Election Day. 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. Unfortunately, we are seeing a modern-day resurgence in this practice, which chills the exercise of voters' constitutional rights. Proponents contend the intent is to prevent vote fraud. When the evidence fails to support that argument, they contend that IDs are necessary because voters do not trust the election system. Neither of these arguments are borne out by the evidence.

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 enforce a residency requirement. Several state courts have also rejected the implementation of voter ID laws. A Pennsylvania state court halted enforcement of the state's voter ID law because the voter ID requirement may have led to voter disenfranchisement. *Applewhite v. Pennsylvania*, 2012 WL 4497211 (Pa. Cmwlth. 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. U.S.*, 898



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F.Supp.2d 30 (Dist Ct D.C. Oct. 10, 2012). In Texas, a U.S. District Court blocked Texas' voter ID law because it discriminated against minorities and conflicted with the federal Voting Rights Act.¹ *Texas v. Holder*, 888 F.Supp.2d 113 (Dist Ct D.C. Aug. 30, 2012).

Voter ID requirements claim to be aimed at in-person voter impersonation. That crime is near non-existent because it is both high risk and inefficient

On February 7, 2013, during a hearing on a voter identification bill, Linda Lamone from the Maryland Board of Elections testified that she was unaware of a single instance of voter fraud in Maryland.² Since that time there have been reports of voters voting in both Virginia and Maryland. More recently, several high-profile individuals affiliated with President Donald Trump have been outed as being registered voters in multiple states. This includes former White House senior strategist Steve Bannon, former press secretary Sean Spicer, and the President's own son-in-law and adviser Jared Kushner.

While it is likely that the majority of these cases are due to clerical error and not double voting,³ importantly these were not cases of voter impersonation where an ID would have made a difference – the voters used their own name. So even if all the people cited had voted in multiple states, and even if Maryland had a voter ID law, that law would not have stopped potential double voting.

Furthermore, studies and other states' testimonies bear out that fraud is minimal and is not likely to impact election results. The Secretary of State of Georgia 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 soliciting an impersonator. In order to

¹ 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.

² http://articles.baltimoresun.com/2014-08-28/news/bs-md-election-referrals-20140828_1_elections-board-state-board-nikki-baines-charlson

³ See e.g. http://articles.baltimoresun.com/2014-09-02/news/bs-ed-voter-fraud-20140902_1_voter-rolls-clerical-error-double-voting



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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.

Voter ID requirements disproportionately affect the poor

Proponents also argue that one illegal vote is one too many. The reverse should also be true — rejecting legal voters is unacceptable. 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—more than 21 million Americans—lack government-issued IDs, 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.⁴ 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.⁵

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. Once turned away, few people return to the polls a second time. Also in Georgia, census data showed that 17% of African-American households do not have access to an automobile, and therefore are less likely to have a driver’s license, compared with 4% of white households. Photo ID requirements will result in tens of

⁴ See Study: 500,000 Americans Could Face Significant Challenges to Obtain Photo ID to Vote, Brennan Center for Justice, July 18, 2012.

⁵ 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/#.URMbfIVSZl8.



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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, SC when he tried to vote at his precinct on the coast. He was unceremoniously turned away by conscientious election workers, captured on video in the time-honored tradition of politicians heading to the polls with the media in tow. Unlike many, he had the luxury of several hours (and presumably several aides) to retrieve his ID card in another city 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 these propositions in the past.

For the foregoing reasons, the ACLU of Maryland urges an unfavorable report on HB 197.