

May 3, 2010

Co-Chairs

John S. Kiernan
Bradley S. Phillips

Secretary

Eleanor H. Smith

Treasurer

William L. Robinson

Counsel

Hamilton P. "Phil" Fox, III

Executive Director

Barbara R. Arnwine

VIA FACSIMILE

Chairman Delbert Scott

Financial and Governmental Organizations Elections Committee

201 W Capitol Ave., Rm. 416

Jefferson City, MO 65101

Regional Vice-Chairs

Midwest Region

Jack Block
Teresa J. Kimker

Northeastern Region

Gregory P. Hansel
Neil V. McKittrick

Mid-Atlantic Region

John McKeever
Bettina B. Plevan

Southeastern Region

Valerie Shea
Michael W. Tyler

Western Region

Paul F. Eckstein
Amos Hartston
Gregory P. Landis

Chesapeake Region

Michael H. Chanin
James P. Joseph

Dear Chairman Scott:

The Lawyers' Committee for Civil Rights Under Law (Lawyers' Committee) wholeheartedly opposes House Joint Resolution 64 and House Bill 1966. As a civil rights organization established by President John F. Kennedy in 1963, our mission is to protect the civil rights of all Americans, particularly those historically disenfranchised. Both HJR 64 and HB 1966 will undermine the integrity of our electoral process by imposing unnecessary barriers to full participation in elections. The bill's requirements of proof of citizenship and photo identification as a prerequisite to voting may appear innocuous, but in reality, they will create an unprecedented regime of disenfranchisement that fall disproportionately on seniors, minority voters, low-income voters, students and young voters, and voters with disabilities.

HJR 64 and HB 1966 are undemocratic, unfair, and unconstitutional because they:

- Place an unconstitutional burden on the fundamental right of eligible citizens to participate equally in the democratic process;
- Unfairly remove eligible voters from the electoral system, primarily from traditionally disenfranchised communities; and
- Attempt to address a problem that does not exist.

Proponents of HJR 64 and HB 1966 claim that these draconian constraints are necessary to guard against voter fraud. However, there have been no reported allegations of voter impersonation at the polls. Instead, they unfairly disadvantage senior citizens, minority, low-income, rural, youth, and voters with disabilities. As

Senator Delbert Scott

May 3, 2010

Page 2 of 5

such, we cannot support legislation that fundamentally is at odds with this nation's core democratic principles, but instead seeks to erect barriers to the election process.

The State Has Failed to Assert a Compelling Interest for this Legislation

While the U.S. Supreme Court in *Crawford v. Marion County Bd. of Elections* did not strike down Indiana's voter identification law as unconstitutional, it did not hold that such laws were constitutional under all circumstances. The court did note that voter identification laws place a heavier burden on "elderly persons born out-of-state, who may have difficulty obtaining a birth certificate; persons who because of economic or other personal limitations may find it difficult either to secure a copy of their birth certificate or to assemble the other required documentation to obtain a state-issued identification; homeless persons; and persons with a religious objection to being photographed" 128 S.Ct. 1610, 1621 (2008). Similarly, in *Weinschenk v. State*, 203 S.W.3d 201, 204 (Mo. 2006), the Missouri Supreme Court agreed with the state that it does have a compelling interest in preventing voter fraud, but it held that similar requirements to that proposed in HB 1966 were not narrowly tailored to accomplish the purpose of preventing voter fraud. Unfortunately, proponents of voter ID legislation often play upon unfounded fears of widespread voter fraud, using this as a justification for the enactment of voter ID legislation to stop such voter impersonation fraud. In addition to the lack of statistical evidence to support the use of voter ID requirements to prevent voter fraud generally, there is also no substantive evidence to support the use of voter ID requirements to prevent impersonation voter fraud.

The lack of evidence for voter impersonation fraud is not surprising if the elaborate steps that must be taken in order to engage in such fraud are considered. In order to be successful, there would need to be shadow bands of ineligible voters roving from polling place to polling place to affect election results. Such bands would also be subject to the maximum penalty of five years in prison and a \$10,000 fine in Missouri. Moreover, the prospects of affecting election outcomes are quite low.

Senator Delbert Scott
May 3, 2010
Page 3 of 5

Such a scheme would require coordinating an army of individual impersonators in order to generate enough votes to sway an election, and each impersonator ostensibly would have to:

- Take steps to ensure an accurate forging of the voter's signature;
- Travel to the appropriate polling precinct site for the particular voter;
- Make sure the voter has not voted absentee or requested an absentee ballot;
- Have accurate knowledge that the voter has not been removed from the rolls or moved and re-registered at a different location;
- Wait in line, which can often be in excess of three hours, at the polling place to cast a ballot in that voter's name;
- Know that the registered voter has not already voted that day and does not plan to before the polls close; and
- Risk detection by a hard working poll worker who may know the registered voter personally.

Voters Lack Government-issued Photo ID

Information from other states that have adopted photo ID requirements further confirms that a substantial number of registered voters own no government-issued photo ID. A recent survey found that roughly 13 percent of registered Indiana voters lack an Indiana driver's license or an alternate Indiana-issued photo ID.¹ The Georgia Secretary of State estimated that 198,000 registered Georgia voters lack a driver's license or alternate state photo ID.² The Secretary of State of Arizona estimated that 12 percent of the registered voters in that state—or 375,000

¹ Matt A. Barreto, et al., Washington Institute for the Study of Ethnicity and Race, Working Paper, *The Disproportionate Impact of Indiana Voter ID Requirements On The Electorate available at* http://depts.washington.edu/uwiser/documents/Indiana_voter.pdf

² See Sonji Jacobs & Megan Clarke, *No ID? Votes Cast Can Become Castoffs*, Atl. J. Const., Nov. 2, 2007, at 1A.

Senator Delbert Scott
May 3, 2010
Page 4 of 5

individuals—have no driver's license or state non-operator ID³. Furthermore, between 169,000 and 240,000 registered Missouri voters lack a driver's license or alternate state photo ID⁴.

Significantly, photo ID laws adversely impact minorities who disproportionately lack photo identification. A 2006 study by the Brennan Center for Justice reported that African Americans are more than three times as likely as Caucasians to lack a government-issued photo ID, with one in four African-Americans owning no such ID.⁵

Conclusion

HJR 64 and HB 1966 fail to recognize the circumstances around which it would be implemented. They ignore the fact that photo identification requirements prevent eligible voters from participating in the democratic process and, unconstitutionally burden eligible citizens' exercise of the right to vote.

Rather than making the voting process more accessible, legislation such as HJR 64 and HB 1966 actually burdens the democratic process. It sets a bad precedent to legislate based upon unfounded fears, rather than principled ideas, which include liberty, justice, and freedom to exercise one's fundamental rights.

³ Report of R. Anthony Sissons at 8, *Gonzalez v. State of Arizona*, No. CV06-1268-PHXROS (D. Ariz.), available at <http://moritzlaw.osu.edu/13electionlaw/litigation/documents/exhibits1924mtnforpreliminjunctionarizona.pdf>.

⁴ *Weinschenk v. Missouri*, 203 S.W.3d at 206.

⁵ Brennan Center for Justice, *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification* (Nov. 2006) available at <http://www.vote.caltech.edu/VoterID/CitizensWithoutProof.pdf>

Senator Delbert Scott
May 3, 2010
Page 5 of 5

Voter ID proposals, such as HJR 64 and HB 1966 unnecessarily erect barriers to the ballot and are likely to be enforced in discriminatory ways against poor, elderly, disabled and minority voters to intimidate, misinform, stigmatize, and ultimately suppress the vote. The right to vote is fundamental and the Missouri General Assembly should focus on ways to open the franchise to all eligible citizens – not close it.

Sincerely,

Tanya Clay House

Marcia F. Johnson-Blanco

Public Policy Director Acting Co-Director,
Voting Rights Project

cc: Sen. Jane Cunningham
Sen. Matt Bartle
Sen. James Crowell
Sen. Jim Lembke
Sen. David Pearce
Sen. Luann Ridgeway
Sen. Jolie Justus
Sen. Joe Keaveny
Sen. Robin Wright-Jones