



LAWYERS' COMMITTEE FOR  
CIVIL RIGHTS  
U N D E R L A W

*A nonprofit, nonpartisan legal organization formed at the request of President Kennedy in 1963*



Testimony of Eric Marshall, Manager of Legal Mobilization,  
Lawyers' Committee for Civil Rights Under Law

Before the Pennsylvania House State Government Committee on House Bill 934

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Chairman Metcalfe and Chairwoman Josephs, members of the Committee, thank you for allowing me to provide written testimony regarding House Bill 934.

My name is Eric Marshall and I am the Manager of Legal Mobilization for the Lawyers' Committee for Civil Rights Under Law. The Lawyers' Committee was founded over 45 years ago by President Kennedy to organize the *pro bono* resources of the private bar to protect civil rights. I am also the national campaign manager of Election Protection.

Led by the Lawyers' Committee, the Election Protection coalition is the nation's largest non-partisan voter protection coalition that has become an invaluable resource for traditionally disenfranchised voters. It organizes a comprehensive and proactive campaign to ensure that all eligible voters are able to cast a meaningful ballot. The work of our Election Protection Legal Committees (EPLCs) involves the entire voter engagement process, including meeting with election officials, supporting non-partisan grassroots organizations, and providing valuable voter education and voter protection materials and resources.

One of the cornerstones of the program is 1-866-OUR-VOTE, the nation's largest voter services hotline which, since its inception, has responded to over 500,000 calls from voters across the country, including over 240,000 during the 2008 election cycle. In 2008, Election Protection launched [www.866ourvote.org](http://www.866ourvote.org), a dynamic online clearing house providing state specific information on voting rules and laws, an interactive web chat to answer voter questions, and a real time chronicling of the problems and challenges that confront our election system. Nearly 300,000 unique users visited 866ourvote.org in the six weeks leading up to the election. Information from calls into the hotline and stories collected over the web are logged into [www.ourvotelive.org](http://www.ourvotelive.org), the coalition's web based database. The stories that make up over 100,000 reports in our database paint the most complete picture available of the American voting experience from the perspective of the voter. This leadership has provided us with a front row seat to the problems voters face across the country, and it is that experience that I will draw from in my testimony today.

The proposed requirements in House Bill 934—requiring voters to present government-issued photo identification at polling places and to submit two photographs when registering—are troubling. This disenfranchising proposal come at a time when legislatures across the country

should be developing new policies that modernize our election system and increase access to the franchise—especially for traditionally disenfranchised voters, not enacting barriers to the ballot.

### *Discriminatory Impact*

Legislation such as HB 934 only have one true impact, the disenfranchisement of eligible voters—especially the elderly, young voters, minorities, and low-income voters. Studies consistently estimate that approximately 10 percent of voting-age citizens in the country—or more than 20 million individuals—lack a government-issued photo ID.<sup>1</sup>

Research at the state level confirms that a significant portion of the population lacks government-issued 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.<sup>2</sup> The Georgia Secretary of State estimated that 198,000 registered Georgia voters lack a driver's license or alternate state photo ID.<sup>3</sup> The Secretary of State of Arizona estimated that 12 percent of the registered voters in that state—or 375,000 individuals—have no driver's license or state non-operator ID.<sup>4</sup> And the state of Missouri, in its unsuccessful defense of its photo ID law, found that between 169,000 and 240,000 registered Missouri voters lack a driver's license or alternate state photo ID.<sup>5</sup>

Photo ID laws disproportionately impact those who can least afford it. A 2006 nationwide survey concluded that voting-age citizens earning less than \$35,000 in annual income were more than twice as likely to lack a government-issued ID as those earning more than \$35,000.<sup>6</sup> While the provision in HB 934 allows for eligible Pennsylvanians to acquire a state ID card free of charge, if the voter signs an affidavit swearing she cannot afford one, the process of assembling the requisite documentation to obtain an ID card and undertaking the other necessary steps involves real burdens and costs, and in certain situations may be nearly impossible to accomplish in enough time. This creates a sometimes insurmountable burden on the economically disadvantaged and those living on the margins of society—the exact individuals that we should be encouraging to become fully engaged in our democratic process.

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<sup>1</sup> See Comm'n on Fed. Election Reform, *Building Confidence in U.S. Elections* 73 n.22 (2005); 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>; Carter-Ford Commission on Election Reform, *To Assure Pride and Confidence in the Electoral Process: Task Force Reports to Accompany the Report of the National Commission on Election Reform, No. VI: Verification of Identity* (Aug. 2001), available at [http://www.tcf.org/Publications/ElectionReform/99\\_full\\_report.pdf](http://www.tcf.org/Publications/ElectionReform/99_full_report.pdf).

<sup>2</sup> 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](http://depts.washington.edu/uwiser/documents/Indiana_voter.pdf)

<sup>3</sup> See Sonji Jacobs & Megan Clarke, *No ID? Votes Cast Can Become Castoffs*, *Atl. J. Const.*, Nov. 2, 2007, at 1A.

<sup>4</sup> 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>.

<sup>5</sup> *Weinschenk v. Missouri*, 203 S.W.3d at 206.

<sup>6</sup> 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>

Additionally, numerous studies have shown that minorities disproportionately lack government-issued photo identification. The same 2006 nationwide study of voting-age citizens cited above found 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.<sup>7</sup> Information from individual states confirms the racial imbalance. A 2005 study of voting-age citizens in Wisconsin determined that 55% of African-American males and 46 percent of Hispanic males—as compared with 16 percent of white males—lack a driver’s license (and the corresponding figures for females are 49 percent of African-Americans, 59 percent of Latinas, and 17 percent of whites).<sup>8</sup> An examination of registered voters in Georgia similarly found that African-Americans and Latinos were roughly twice as likely as whites to lack a driver’s license or other state-issued photo ID.<sup>9</sup>

As is the case with the disproportionate outcomes based on income, the racial imbalance is consistent with underlying patterns concerning access to a motor vehicle. Whereas only seven percent of white households nationwide have no automobile, 24 percent of black households and 17 percent of Hispanic households lack an available automobile.<sup>10</sup>

Photo ID requirements also disproportionately affect both younger and older voters. With respect to older voters, 18 percent of citizens nationwide who are above the age of 65 lack a current, government-issued photo ID.<sup>11</sup> A study in Wisconsin likewise determined that roughly 23 percent of voting-age citizens over 65 lacked a driver’s license or other state-issued photo ID.<sup>12</sup> In Georgia, similarly, 25 percent of registered voters over 65 own no driver’s license or Georgia ID card.<sup>13</sup> Again, the disproportionate effects reflect disparities in access to motor vehicles: While 10 percent of all households had no access to a vehicle, 17.5 percent of over-65 households lacked access to a vehicle.<sup>14</sup>

With respect to younger voters, an examination of Federal Highway Administration data concerning citizens aged 18 to 23 found that the share of persons without a driver’s license ranged from 32.5 percent for 18-year-olds to 18 percent for 23-year-olds.<sup>15</sup> When age and race

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<sup>7</sup> *Id.*

<sup>8</sup> John Pawasarat, University of Wisconsin-Milwaukee Employment & Training Institute, *The Driver License Status of the Voting Age Population in Wisconsin 4-5* (2005), available at <http://www.uwm.edu/Dept/ETI/barriers/DriversLicense.pdf>.

<sup>9</sup> M. V. Hood III & Charles S. Bullock, III, *Worth a Thousand Words? An Analysis of Georgia’s Voter Identification Statute 15* (2007).

<sup>10</sup> U.S. Census Bureau, *Tenure by Vehicles Available by Age of Householder* (2000), available at [http://factfinder.census.gov/servlet/DTable?\\_bm=y&-geo\\_id=D&-ds\\_name=D&-\\_lang=en&-mt\\_name=DEC\\_2000\\_SF3\\_U\\_H045](http://factfinder.census.gov/servlet/DTable?_bm=y&-geo_id=D&-ds_name=D&-_lang=en&-mt_name=DEC_2000_SF3_U_H045).

<sup>11</sup> 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>.

<sup>12</sup> John Pawasarat, University of Wisconsin-Milwaukee Employment & Training Institute, *The Driver License Status of the Voting Age Population in Wisconsin 4-5* (2005), available at <http://www.uwm.edu/Dept/ETI/barriers/DriversLicense.pdf>.

<sup>13</sup> *Common Cause/Georgia v. Billups*, 406 F. Supp. 2d 1326 (N.D. Ga. 2005)

<sup>14</sup> U.S. Census Bureau, *Tenure by Vehicles Available by Age of Householder* (2000), available at [http://factfinder.census.gov/servlet/DTable?\\_bm=y&-geo\\_id=D&-ds\\_name=D&-\\_lang=en&-mt\\_name=DEC\\_2000\\_SF3\\_U\\_H045](http://factfinder.census.gov/servlet/DTable?_bm=y&-geo_id=D&-ds_name=D&-_lang=en&-mt_name=DEC_2000_SF3_U_H045).

<sup>15</sup> Spencer Overton, *Voter Identification*, 105 Mich. L. Rev. 631, 659 (2007).

are considered together, the disparities predictably become more pronounced: in Wisconsin, an astounding 78 percent of African-American males (as compared with 36 percent of white 17 males) aged 18-24 lack a driver's license, and 66 percent of African-American females (as compared with 25 percent of white females) aged 18-24 lack a driver's license.<sup>16</sup>

The previous studies and statistics help to illustrate the negative impact of photo ID, but the story of a group of nuns in Indiana really crystallize the negative impact of these laws. On May 6, 2008, as Indianans headed to the polls for the first time since the Supreme Court decided *Crawford*, Election Protection was on the ground assisting voters who had questions or problems at the polls. We were also running the 1-866-OUR-VOTE hotline to provide immediate assistance to citizens who needed help during the day. Early that morning, Election Protection volunteer and Lawyers' Committee board member, John Borkowski, a partner at the law firm of Hogan and Hartson, LLP, walked into a polling place on the campus of St. Mary's College in his hometown of South Bend. Students from the college were being turned away because they only had a student ID from the private college and not a government issued photo identification with an expiration date. The students were devastated. While talking to Sister Julie McGuire, one of the poll workers, John discovered that it was not just the students that were the victims of this misguided policy, but many of the nuns who lived in the convent that housed the polling place. John talked to a number of retired nuns, between 70-90 years old who either did not have ID or only had an expired license. These nuns no longer drove and had no need for current, government issued photo identification. They lived in the convent, among a community of their sisters. John discovered many of the sisters who were ineligible did not attempt to come to the polls. And that is the true scope of this tragedy. Most of the citizen voices made silent because they do not have this type of ID, as many as 21 million eligible voters across the country, will not show up because they know they will be turned away.

That night, John summed it up best, referring to the voter ID law he said it "definitely had the effect of preventing many people who were highly motivated to participate in this primary election from exercising their right to vote. It seems very ironic to me that a law intended to prevent voter fraud prevented members of a single community, essentially a family, who have lived together for years, from accepting the votes of their own sisters."

### *Cost*

Not only will HB 934 potentially disenfranchise hundreds of thousands of Pennsylvanians, but it will add millions of dollars to a budget deficit already approaching \$5 billion. States have found that implementing these laws increase their spending on elections by as much as 50 percent.<sup>17</sup> Missouri estimates that a new voter ID would cost the state over \$20 million to implement over the next three years. The Institute for Southern Studies estimated it could cost North Carolina

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<sup>16</sup> John Pawasarat, University of Wisconsin-Milwaukee Employment & Training Institute, *The Driver License Status of the Voting Age Population in Wisconsin 4-5* (2005), available at <http://www.uwm.edu/Dept/ETI/barriers/DriversLicense.pdf>.

<sup>17</sup> Agraharkar, V., Weiser, W., and Skaggs, A. (2011) *The Costs of Voter ID Laws: What the Courts Say*. Brennan Center for Justice at NYU School of Law. Available at [http://brennan.3cdn.net/2f0860fb73fd559359\\_zzm6bhnld.pdf](http://brennan.3cdn.net/2f0860fb73fd559359_zzm6bhnld.pdf).

\$14 million or more over three years to educate its 6 million voters about that state's proposed voter ID law.<sup>18</sup>

The obligation to offer free identification is an ongoing one. Pennsylvania will need to offer free ID to new voters without acceptable identification each year. Election officials will have to add additional poll worker training for each new election. The Commonwealth will need to engage in ongoing, massive voter education campaign to ensure voters know they must obtain and bring their required identification to the polls on election day. With the passage of Georgia's ID law, the Secretary of State of Georgia had to send letters out to citizens suspected of not having the identification instructing them how to obtain ID, advertise in print and on-air media, and mail out information packets and reminders.

### *Efficacy*

The provisions of HB 934 requiring government-issued photo identification are a solution in search of a problem. A recent analysis by the *York Daily Record* found that instances of apparent voter fraud in York County, as one example, had simple explanations, such as a son accidentally signing the voter book in the space for his recently deceased father.<sup>19</sup>

Proponents of government-issued photo identification requirements have failed to produce any evidence of a massive conspiracy to impersonate eligible voters at the polling place—the only type of election misconduct that voter ID actually guards against. There are no shadow bands of ineligible voters roving from polling place to polling place to affect election results.

The prospects of affecting election outcomes are quite low. 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, that 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

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<sup>18</sup> Chris Kromm, "Voter ID Laws Carry Hefty Price Tag for Cash Strapped States," Institute for Southern Studies, January 27, 2011.

<sup>19</sup> Adkins, S. (2010) In York County, some departed souls appear to be voting – but there's an explanation. *York Daily Record*. October 30, 2010.

- Risk detection by a hard working poll worker who may know the registered voter personally.

Instead of preventing non-existent cases of in-person voter fraud, photo ID laws prevent eligible voters from being able to exercise their right to vote.

In 2008 this nation witnessed an historic election with record-breaking turnout across the country. It is important that state legislators look at modernizing our election system and implement new reforms that expand the franchise for voters from all walks of life.

Unfortunately, HB 934 does just the opposite. Those most affected by HB 934 will be the elderly, racial minorities, and the working poor. I urge this committee to reject this bill and instead look at common-sense reforms so that all eligible voters will be able to exercise their right to vote. Thank you.