

TESTIMONY OF COMMON CAUSE MICHIGAN, DEMOS, FAIR ELECTIONS LEGAL
NETWORK, LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, MICHIGAN
CENTER FOR ELECTION LAW AND ADMINISTRATION, AND PROJECT VOTE
IN OPPOSITION TO SB 754, SB 751, SB 803
SENATE COMMITTEE ON ELECTIONS
NOVEMBER 30, 2011

The undersigned voting and civil rights organizations appreciate the opportunity to submit the following testimony in opposition to Senate Bill 754, Senate Bill 751, and Senate Bill 803, bills to amend Michigan's election law. Michigan's system of elections is by no means perfect. Problems with voter registration, absentee ballots, confusion over voter identification requirements, deceptive voting practices, aggressive challenges, and voting machine breakdowns, among others, have led to the disenfranchisement of too many eligible voters. Instead of addressing these real problems with Michigan's election system, SB 754, SB 751, and SB 803 address phantom problems that will only serve to create further confusion and needlessly erect barriers to the ballot box. We urge this committee to reject these bills and work on bi-partisan reforms that will ensure all Michigan voters have true access to our most fundamental right, the right to vote.

Opposition to Senate Bill 754

Senate Bill 754 contains unnecessary requirements that will make it more difficult for Michiganders to participate in the electoral process. The bill's two provisions, identification requirements for in-person voter registration and the imposition of further restrictions on organizations conducting third party voter registration are a solution in search of a problem.

Restrictions on Voter Registration Drives

While this bill includes a photographic identification requirement for in-person voter registration, which will be discussed below, the primary purpose of SB 754 appears to be the imposition of new and onerous requirements on third party voter registration drives, drives which have proven indispensable over many years in reaching out to underserved communities and helping millions of low income and minority citizens register to vote. Particularly since the enactment of the National Voter Registration Act of 1993 (NVRA), such drives have been recognized in federal law as an essential method for increasing civic participation by making the political process more accessible to the voter. According to the Current Population Survey, in 2008 over nine million citizens self-reported registering through a voter registration drive.

One of the burdens on voter registration drives included in this bill--and in similar legislation that has been proposed recently in other states—is to impose time-consuming and unnecessary paperwork requirements on organizations conducting voter registration (p. 3, l. 3). These organizations might include religious

congregations, civic groups, fraternities and sororities, and the League of Women Voters, among others. It is certainly understandable that the state would want an organization to designate a contact person in case election officials should need to communicate with the group. However, this legislation mandates registering with the state on a designated form, providing the name and address of the organization, the names of all officers, the name and address of the organization's registered agent, further filings should any of this information change, and another form if the organization wishes to "withdraw" from conducting registration (p. 5, l. 7). Such complicated procedures serve no legitimate purpose, but rather sap the scarce resources of many under-resourced groups seeking to fulfill a noble civic purpose by helping voters to register.

The proposed training program for third party registration organizations (p. 3, l. 22) is also troubling, principally due to its vagueness. It requires training to be provided under a plan yet to be developed by the Secretary of State. How often, where, and under what circumstances the training will be offered are not specified. The vagueness of the provision could lead to arbitrary standards being imposed that could undermine the ability of third party registration groups to effectively engage eligible citizens. For example, under the terms of this bill the Secretary of State could develop a plan that requires every organization to send a representative to an in-person training given only on January 10 of each year and only in Lansing. Failure to attend the training would disqualify the organization from conducting a voter registration drive in the state. While training for registration agents is not in itself unreasonable, any mandatory program should make training widely and frequently available, and accessible online as well as in person. The object of the training should be to make voter registration drives more reliable and more useful to the public—not to make it harder for them to operate.

SB 754 further provides that the third party voter registration organization is a fiduciary to "the voter registration applicant"—presumably that means an applicant who hands a form to the organization, though the bill does not specify (p. 4, l. 23). The fiduciary's duty is not spelled out, except to say that the organization ensures that the form is delivered "promptly." This lack of specificity could lead to an organization being liable for civil damages if it fails to carry out the undefined duties.

Notably, no other entity conducting voter registration seems to owe a similar fiduciary duty under this legislation. Neither designated voter registration agencies (e.g., public assistance or disability services offices), nor any other government entity excluded from the definition of third party organizations in the bill (p. 5, ll. 18-26), owes the applicant a duty to deliver an application promptly, to process it on time, or even to process it at all. In fact, stories of mishandled or lost applications in the very busy 2004 and 2008 election cycles abound. A voter whose application, though timely submitted, was misfiled or lost in the last-minute crush at the Board of Elections simply had no recourse (except a provisional ballot which would not be counted) when she showed up on Election Day expecting to be on the roll. Surely

private parties, many of them volunteers, should labor under no more stringent standards than the public servants we employ to accept and process voter registration applications.

The bill also imposes a one-day deadline for an organization to submit any voter registration application it collects within one week of the close of registration (p. 5, l. 1). Many states have tighter than usual deadlines as the registration period nears its end, but one business day is unusually tight (and, according to our research, unique). This deadline would eliminate any meaningful opportunity for an organization to run even the most rudimentary quality control checks on the applications—which would in turn make the job of election administrators that much harder in their most taxing period in the registration cycle. Third party organizations would be submitting applications they had no opportunity even to spot check, and, as a result, errors and omissions that are routinely remedied by the organization, after consulting with the applicant, would now become the responsibility of the election officials to evaluate.

Photographic Identification Requirement for Registration

Finally, in addition to its damaging provisions restricting the ability of third party voter registration drives to operate effectively, SB 754 would impose a photographic identification requirement on anyone who applies in person to register to vote at any government agency (p. 1, l. p. 2, l. 10). We believe this provision violates the NVRA's central purpose: to increase voter registration and therefore participation in federal elections by providing increased venues for voter registration and by streamlining the voter registration process itself. The requirement in SB 754 that a photo ID must be provided in conjunction with registration at a designated voter registration agency subverts this intent by putting additional hurdles in the way of, rather than removing barriers from, electoral participation.

The NVRA mandates that those states, like Michigan, that are subject to it must provide voter registration through three different specified methods. The three methods include registration as part of a driver's license application, mail registration using the form prescribed by the Election Assistance Commission, and registration at a state-designated voter registration agency. 42 USC § 1973gg-2. The latter two methods specifically rely on use of the federal voter registration form or its state-designed equivalent.

The NVRA (and the later-passed Help America Vote Act) are specific about the content of the federal form. *See* 42 USC § 1973gg-7(b), § 15483(b)(4)(A). Among other things, the NVRA states that the federal form

may require *only* such identifying information... as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process. [42 USC § 1973gg-7(b)(1)(emphasis added)]

The form also contains each eligibility requirement and an attestation that the applicant meets each requirement, and requires that the applicant sign under penalty of perjury. Congress determined that these elements were sufficient to determine the eligibility of the applicant.

The language of the statute is clear. In fact, in considering the NVRA, Congress expressly rejected a proposed amendment that would have allowed states to require the submission of documentary evidence of an applicant's eligibility beyond the federal form itself. The only court decision on the subject reiterated that the NVRA prohibits further state requirements in association with the federal form. *Charles H. Wesley Educ. Foundation, Inc. v. Cox*, 408 F.3d 1349 (11th Cir. 2005). Clearly, the imposition of a photo ID requirement on voter registration using the federal mail-in form is inconsistent with federal voter registration law and policy and should be rejected.

In addition, Congress has granted the Election Assistance Commission the authority to determine what documentation is required for voter registration using the federal form created by the NVRA, and the EAC has rejected such a requirement.

For all of the foregoing reasons, the Committee should defeat SB 754 and turn its attention instead to election reforms that encourage voter registration and voting rather than making it harder for citizens to participate in our civic life.

Opposition to Senate Bill 751

We are strongly opposed to the passage of Senate Bill 751, which would needlessly create unprecedented confusion over the registration and absentee voting process in Michigan. Young voters, college students, and mobile citizens such as those serving in the military and their families would particularly bear the brunt of the impact of this bill.

The bill allows for a voter to be removed entirely from the registration list if the Department of State "believes" they have moved out of the state, the voter does not respond within 30 days to a postcard seeking verification of their residency and then does not vote in the next 2 general elections. We believe this would violate Section 8 of the National Voter Registration Act, which prohibits states from removing voters from a voter file unless they fail to vote in two consecutive *federal* elections after failing to respond to mailings specified in the law.

There are many reasons why a voter may temporarily leave the state and get a new drivers license, and these do not necessarily affect their eligibility to vote in Michigan. They could be attending college, caring for an ailing family member, living on a military base with an active duty family member. Yet if their notification postcard gets lost in the mail, or they fail to respond within 30 days, they could be

turned away from the polls or have their absentee ballot discarded the next time they attempt to vote.

So long as these residents continue to reside in Michigan for most of the year and do not register in another jurisdiction, they should be legally able to vote without any additional barriers. This bill would make it more difficult for them to vote, at a time when Michigan should be doing everything it can to retain our residents and our talent.

The bill also says if a voter doesn't vote for 6 consecutive years, and then choose to vote absentee, their ballot is automatically challenged. The law for challenged ballots in Michigan generally allows for a voter's eligibility to be challenged if someone has "good cause" to believe they are ineligible to vote. How is someone's decision not to vote for 6 years alone sufficient "good cause" to believe they are not qualified to do so on the 7th or 8th year? We should be doing everything we can to encourage lapsed voters to re-engage in civic life, not erecting further barriers to their participation.

And as you know, with every election there is a great deal of confusion at the polling place when voters are challenged at the polls. But even then, when a voter's eligibility is challenged when they attempt to vote in person, they have clear notice that their ballot is challenged and must be given adequate and accurate information about how to overcome the challenge. There is little in the current proposal to ensure absentee voters would have similar notice and opportunity to respond and overcome the challenge.

Yet the "automatic challenge" for absentee ballots applies also to voters who may be temporarily in another state with every intention of continuing to reside in Michigan, as well as those who choose not to vote for 6 years. It is a provision that yields little in the way of security but promises to create a great deal of confusion and, even worse, the rejection of votes from citizens who should be otherwise eligible to participate in our democracy.

Finally, Senate Bill 751 also extends this automatic challenge to voters who appear in person to hand in their absentee ballot and do not present a photo identification. Even if they sign an affidavit attesting to their identity, under this provision their ballot is still automatically challenged. In addition to the needless confusion and burden this places on otherwise eligible voters, it may also violate the Equal Protection Clause of the U.S. Constitution, since absentee voters who choose to hand in their ballot in person would have to meet this additional burden, but those mailing their ballot would not.

For these and other reasons, we are strongly opposed to Senate Bill 751. At a time when Michigan lawmakers should be working to support its citizens and ease their access to the electoral process, this reform would do nothing more than needlessly confuse and complicate the voting process.

Opposition to Senate Bill 803

We are opposed to Senate Bill 803, which would deny the right to vote to any citizen and qualified voter who refuses to check a box that affirms and explains their residency status. This new requirement would achieve little in promoting safe and fair elections. It needlessly duplicates an existing provision, since voters are already required to declare their citizenship when they register to vote. In fact, there is a line stating that the applicant certifies, "I am a citizen of the United States" right next to the signature box. It unnecessarily confuses the process and creates an illegal literacy requirement for voting, particularly for citizens who speak English as a second language. Further, if a citizen so much as hesitates before checking the box, it could open them to wrongful harassment and discrimination, in addition to inviting longer lines, questions, and confusion.

This reform will invite all of these complications and more, while having absolutely zero impact on increasing the security of elections.

Common Cause is a nonpartisan, grassroots organization dedicated to restoring the core values of American democracy, reinventing an open, honest and accountable government that serves the public interest, and empowering ordinary people to make their voices heard in the political process. Common Cause is a champion for campaign finance reform, election reform, ethics in government, government accountability, and the media.

Dēmos is a nonprofit, nonpartisan public policy research and advocacy organization that works to strengthen democracy in the United States by reducing barriers to voter participation and encouraging civic engagement.

Fair Elections Legal Network (FELN) is a national, nonpartisan advocacy organization whose overall mission is to remove barriers to registration and voting for traditionally underrepresented constituencies and protect their ability to exercise their right to vote.

Lawyers' Committee for Civil Rights Under Law was established in 1963 as a nonpartisan, nonprofit organization at the request of President John F. Kennedy. Our mission is to involve the private bar in providing legal services to address racial discrimination and to secure, through the rule of law, equal justice under law. For over 48 years, the Lawyers' Committee has advanced racial equality by increasing educational opportunities, fair employment and business opportunities, community development, open housing, environmental health and justice, criminal justice and meaningful participation in the electoral process.

Michigan Center for Election Law and Administration (a 501(c)3 organization devoted to projects that support transparency and integrity in elections in Michigan. The Center most recently hosted Michigan's first ever "Citizens' Redistricting Competition," providing an opportunity for Michigan citizens to access software and draw their own redistricting maps for the state.)

Project Vote is a national nonpartisan, nonprofit organization that promotes voting in historically underrepresented communities. Project Vote takes a leadership role in nationwide voting rights and election administration issues, working through research, litigation, and advocacy to ensure that our constituencies can register, vote, and cast ballots that count.