December 12, 2016

Re: House Bills 6066, 6067, and 6068

Dear Senator:

The NAACP Legal Defense & Educational Fund, Inc. ("LDF")\(^1\) strongly urges you to oppose House Bills (“HB”) 6066, 6067, and 6068. This package of bills, which includes a strict voter identification (“ID”) requirement, would potentially disfranchise thousands of eligible voters and disproportionately burden qualified Black and Latino voters in Michigan. There is no evidence of widespread in-person voter fraud in the state that would necessitate removing the procedural safeguard that currently allows voters without ID to cast a regular ballot.

HB 6066 would amend the Michigan Election Law to change the procedure for a voter who is unable to produce photo ID when voting in-person at a polling place, thereby removing an important safety net for registered voters who lack a photo ID. Under current Michigan law, if a voter is unable to produce a photo ID, but is on the voter registration list, he or she may sign an affidavit to that effect and vote as usual, unless challenged.

\(^1\) Since its founding in 1940, LDF has been involved in nearly all of the precedent-setting litigation related to securing voting rights for people of color across the country. See, e.g., Shelby County, Alabama v. Holder, 133 S. Ct. 2612 (2013) (LDF defending Sections 4(b) and 5 of the Voting Rights Act (VRA)); Veasey v. Abbott, 830 F.3d 216, 264-65 (5th Cir. 2016) (en banc) (LDF successfully challenging Texas’s photo ID law, which the Fifth Circuit affirmed has a racially discriminatory effect on Black and Latino voters in violation of Section 2 of the VRA); Texas v. Holder, 888 F. Supp. 2d 113, 141-44 (D.D.C. 2012) (LDF successfully representing defendant-intervenors in a lawsuit under Section 5 of the VRA blocking Texas’s photo ID law, vacated on other grounds, 133 S. Ct. 2886 (2013) (mem.)); South Carolina v. United States, 898 F. Supp. 2d 30 (D.D.C. 2012) (LDF successfully representing defendant-intervenors in a lawsuit under Section 5 of the VRA blocking the implementation of South Carolina’s photo ID law in advance of the 2012 elections and ameliorating the discriminatory effect of the law thereafter); Greater Birmingham Ministries v. Alabama, No. 2:15-cv-02193 (N.D. Ala. May 3, 2016), ECF No. 43 (lawsuit challenging Alabama’s discriminatory photo ID law, HB 19, under Section 2 of the VRA and United States Constitution).
Moreover, a person who does not produce ID and is not on the registration list may vote a provisional ballot, which is processed as a challenged ballot.

HB 6066 would eliminate the affidavit alternative for voters who appear on the registration list. Under the bill, all voters who are unable to produce appropriate ID would be required to vote via provisional ballot. That ballot would be counted only if the person travels to and presents one of the following at their clerk’s office within ten days after the election: (1) photo ID with current address; (2) a photo ID document to establish current residency and an affidavit that the person was the one who cast the provisional ballot on election day; or (3) a document establishing current residency and an affidavit attesting to inability to obtain a photo ID due to indigency or a religious objection to being photographed.

HB 6067 and HB 6068, which would take effect only if HB 6066 is also enacted, would change the requirements for obtaining a qualifying photo ID. HB 6067 would allow an individual to obtain a “free” certified copy of his or her live birth record, or an official statement that the record could not be found, if the individual travels to a Secretary of State branch office and submits an affidavit that the record is being obtained for the purpose of obtaining a state ID card and that the cost of the record is “prohibitive.” HB 6068 would allow an individual to obtain a state ID card by submitting an affidavit in lieu of a birth certificate or other non-photographic ID document, if the individual is unable to obtain those documents for qualifying reasons. A state ID obtained in this manner is a valid form of photo ID for voting purposes only. The bills would take effect February 1, 2018.

If enacted, these bills, particularly HB 6066, will disproportionately burden qualified Black and Latino voters in Michigan. Indeed, the effects of strict photo ID laws on racial and ethnic minorities are well-documented. In the last five months alone, several United States Courts of Appeal and District Courts have found that photo ID laws in North Carolina, Texas, and Wisconsin, respectively, violated either Section 2 of the VRA or the U.S. Constitution. The U.S. Court of Appeals for the Fourth Circuit, the en banc

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2 North Carolina State Conf. of the NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016); Veasey, 830 F.3d at 264-65; One Wisconsin Institute, Inc. v. Thomsen, No. 15-cv-324-jdp, 2016 WL
U.S. Court of Appeals for the Fifth Circuit, and the District Courts for the Western and Eastern Districts of Wisconsin each held that the photo ID laws at issue placed unreasonable burdens on certain classes of voters, including Black and Latino voters, in violation of federal law. In particular, the Fourth Circuit noted that North Carolina’s voter ID law “targeted African Americans with almost surgical precision” and found that the state’s justification for the statute hinged on race—specifically, its concern that Black voters “had too much access to the franchise.” Similarly, the District of North Dakota recently granted a preliminary injunction enjoining the state from enforcing its photo ID law unless it implemented a “fail-safe” provision to allow those without ID to cast a ballot, finding that the public interest in protecting the right to vote for Native Americans outweighed North Dakota’s purported interest in counting the votes of only eligible voters.

In part, these cases and others have relied upon studies demonstrating the disproportionate burden of photo ID laws on racial and ethnic minorities. In 2014, the Government Accountability Office issued a Congressional Report on voter ID laws. The report, which compiled a number of different studies from Texas, Indiana, Wisconsin, Pennsylvania, Georgia, North Carolina, and South Carolina, revealed that registered Black and Latino voters are less...

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3 And these cases are expensive to defend. Since 2011, North Carolina state lawmakers have spent $5 million of taxpayers’ dollars defending its election law changes, which were ultimately struck down. Alice Ollstein, North Carolina Spent Nearly $5 Million Defending Voter ID, and Lost, ThinkProgress (Aug. 9, 2016), https://thinkprogress.org/north-carolina-legal-spending-voter-id-f0aa75082518#.2a9rll7u3; Emery P. Dalesio, McCrory Legal bills mount in Voter ID case, Associated Press (Sept. 30, 2014), http://www.citizen-times.com/story/news/local/2014/09/30/mccrory-legal-bills-mountvoter-case/16488927/. That figure does not include the costs and expenses borne by civil rights groups and the Department of Justice in challenging those changes.

4 McCrory, 831 F.3d at 214, 226.


likely than registered white voters to possess photo ID. The report also included findings from a 2013 nationwide study that determined that 84% of white registered voters had a valid driver’s license, while only 63% of Black registered voters and 73% of Latino registered voters had valid driver’s licenses.

Other state and nationwide studies have corroborated these findings. A study of Indiana, Maryland, and Mississippi voters showed that Black voters were four times more likely to lack photo ID than white voters. Similarly, a study of California, New Mexico, and Washington voters found that minority voters were less likely than white voters to have various forms of ID, such as driver’s licenses, birth certificates, or bank statements. A 2012 survey of Black youth reported that the lack of required ID prevented them from voting at nearly four times the rate of white youth (17.3% compared with 4.7%). Latino youth reported the same at a rate just under double that of white youth (8.1%).

Further, empirical evidence demonstrates that the effects of photo ID laws are not limited only to those voters lacking photographic ID; they are also felt disproportionately by qualified Black voters as a whole. Nationwide, 70% of all Black voters were asked to show photo ID at the polls during the 2008 election, as opposed to only 51% of white voters. Due to the uneven

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7 Id. at 22-25.
8 Id. at 25.
12 Id.
enforcement of photo ID laws, these eligible Black voters were forced to cast provisional ballots at a rate four times higher than were white voters.\textsuperscript{14}

Although we are presently unaware of any definitive studies concerning racial disparities with respect to photo ID ownership in Michigan, it is likely that the national disparities referenced above are replicated in the state. In a 2007 dissent to an advisory opinion requested by the Michigan House of Representatives, State Supreme Court Justice Michael Cavanagh noted the burdens of the state’s \textit{current} photo ID law on racial and ethnic populations, as well as poor voters, elderly voters, and disabled voters.\textsuperscript{15} In response to that dissent, the Court’s majority found that the affidavit option largely reduced such burdens for voters without ID.\textsuperscript{16} Yet, the current bills would eliminate both the affidavit option and the ameliorative safety net it provides for vulnerable voters. Further, there is likely significant overlap in the state’s minority and poor voters who lack ID. Michigan has one of the highest poverty rates in the country\textsuperscript{17} and Michigan’s poor are disproportionately minority people. As of 2014, 36.4\% of Black people and 29.4\% of Latino people in Michigan were impoverished, compared to only 12.8\% percent of whites.\textsuperscript{18}

Regrettably, there is a well-established link between poverty and inability to access the polls.\textsuperscript{19} For example, during the 2016 election, nearly half of the 18,000 votes cast by affidavit in Michigan were from the state’s most populous county, Wayne County, which is about 40\% African American

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\item \textsuperscript{14} \textit{See} Stewart, \textit{supra} n.13, at 31.
\item \textsuperscript{15} \textit{In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71}, 740 N.W.2d 444, 469, 479 Mich. 1, 64 (Mich. 2007) (Cavanagh, J., dissenting).
\item \textsuperscript{16} \textit{Id. at 457-58, 467-68}.
\end{itemize}
(as compared to 14% statewide).\textsuperscript{20} This is likely due in large part to the high level of poverty in the county, which currently stands at 25\%.\textsuperscript{21} As several courts have acknowledged, poor voters are much more likely to rely on public transportation, less likely to possess a driver’s license, and face greater obstacles to obtaining and maintaining valid and current photo ID.\textsuperscript{22} These issues will not be ameliorated by HB 6067, which will require travel to Secretary of State branch offices for voters to obtain the certified copy of their live birth record. This may prove burdensome for voters who live in rural areas, lack private transportation, or cannot access the branch offices during business hours.\textsuperscript{23} Given this context, the bills, if enacted, will likely impose an undue burden on the right to vote.\textsuperscript{24}

While the purported rationale for the bills is to prevent fraud, there has been no investigation into claims of voter fraud in the state. In fact, Michigan’s Secretary of State has repeatedly expressed “full confidence” in the integrity of Michigan’s elections system, noting the state’s “checks and balances of state officials, local clerks, and precinct workers.”\textsuperscript{25} This is consistent with the evidence nationwide that voter impersonation fraud is

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\textsuperscript{22} Veasey, 830 F.3d at 251 (citing the district court’s findings regarding the obstacles faced by poor voters in obtaining the ID required to vote); Brakebill, 2016 WL 7118548 at *5 (finding that Native Americans face substantial and disproportionate burdens in obtaining the photo ID required under the law, in part because obtaining ID requires money and travel).
\textsuperscript{23} For example, only seven branch offices in the entire state of Michigan offer Saturday hours. Michigan, Secretary of State, \textit{Branch Office Locator}, https://services2.sos.state.mi.us/serviceLocator/.
\textsuperscript{24} Sari Horwitz, \textit{Getting a photo ID to vote is easy. Unless you’re poor, Black, Latino or elderly}, The Washington Post (May 23, 2016), https://www.washingtonpost.com/politics/courts_law/getting-a-photo-id-so-you-can-vote-is-easy-unless-youre-poor-black-latino-or-elderly/2016/05/23/8d5474ec-20f0-11e6-8690-f14ca9de2972_story.html.
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virtually nonexistent. In *Frank*, the court usefully focused the question of how to evaluate the state’s interest in deterring voter fraud, which should be instructive in considering the Michigan bills. It stated:

> the state’s interests in requiring photo ID are preventing voter-impersonation fraud and promoting voter confidence. These interests have been found sufficient to require most voters to present photo ID . . . However, no court has found that these interests are sufficient to prevent a person who cannot obtain ID with reasonable effort, or who cannot obtain ID at all, from voting.  

In balancing the low to non-existent risk of in-person voter fraud against the measurable and identifiable record of actual disfranchisement of qualified voters—especially so soon after a close presidential election—we strongly recommend that you err on the side of permitting qualified voters access to the polls, without unreasonable burden or cost.

For these reasons, we strenuously urge you vote against HB 6066, 6067, and 6068. If you have any questions, please contact Coty Montag, LDF’s Deputy Director of Litigation, at (202) 682-1300 or cmontag@naacpldf.org.

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Though the Michigan bills do not require ID for mail-in absentee ballots, and permit anyone 60 years or older or persons “unable to vote without assistance at the polls” to vote absentee, elderly and disabled members of communities of color, in particular, and for various historical and other reasons—namely a long-fought fight against denying them access to the ballot—desire to cast a ballot in person.

27 *Frank*, 2016 WL 3948068, at *33 (emphasis added).
Sincerely,

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