



**Testimony of Denise Lieberman, Senior Attorney & Missouri Voter Protection Advocate for Advancement Project<sup>1</sup>, in Opposition to SJR20 and SB594**

Jan. 19, 2016

Before the Senate Financial & Government Organizations and Elections Committee

The voter identification proposals, SJR20 and SB594, belie the promise that all eligible voters in Missouri have a right to cast a ballot and have their ballot counted – and send a message to thousands of Missourians that the state doesn't want their participation. SJR20 and SB594 do nothing to advance the integrity of elections, they weaken protections for voting in our constitution, and they relegate hundreds of thousands of eligible Missouri voters to second class citizens – particularly senior citizens, veterans, the poor, people with disabilities and people of color. This is unnecessary, expensive and irresponsible.

This is the 9th attempt to implement unnecessary and unduly restrictive ID requirements for voting since the Missouri Supreme Court ruled in 2006 that such requirements impose "a heavy and substantial burden on Missourians' free exercise of the right of suffrage" in violation of the Missouri Constitution.<sup>2</sup> In 2011, Gov. Nixon vetoed a bill nearly identical to SB594, finding that it would disenfranchise eligible voters without advancing the voting process.<sup>3</sup> With each passing year, the evidence grows stronger undermining asserted justifications for photo ID and revealing them for the politically expedient strategies they are. When the debate on photo ID began in this country a decade ago, we didn't know much about how these requirements would The evidence is now undisputed that voter impersonation is virtually non-existent. A report from the United States Government Accountability Office last year found that ID laws contributed to decreased voter turnout in Kansas and Tennessee – and that racial minorities were disproportionately impacted.<sup>4</sup> Even the most ardent proponents no longer assert that photo ID requirements are needed to combat voter fraud.<sup>5</sup> This past year, the 5<sup>th</sup> Circuit Court of Appeals affirmed a Texas federal district court ruling concluding that Texas' Photo ID law was illegal. Missouri's proposal is at least as strict as the Texas law. Conservative Judge Richard Posner has stated that he was wrong to uphold Indiana's Photo ID law back in 2007,

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<sup>1</sup> Advancement Project is a non-partisan civil rights organization with a Voter Protection Program in Missouri that works to eliminate legal and structural barriers to voting through legal and legislative advocacy, public education and litigation. Lieberman has 20 years experience as a constitutional and civil rights lawyer, is recognized as a national expert on voter ID laws, specializes in election law, and is an adjunct professor of political science and law at Washington University in St. Louis. She coordinates a coalition of nearly two dozen non-partisan organizations in Missouri opposed to these bills.

<sup>2</sup> *Weinschenk v. State*, 203 S.W.3d 201 (Mo. 2006)

<sup>3</sup> Letter to Secretary of State vetoing SB 3, June 17, 2011, <http://governor.mo.gov/newsroom/pdf/2011/sb3veto.pdf>

<sup>4</sup> United States Government Accountability Office, *Issues Related to State Voter Identification Laws*, (Sept. 2014), Revised Feb. 27, 2015, <http://www.gao.gov/assets/670/665966.pdf>

<sup>5</sup> Jake Seaton, "Widespread voter fraud not an issue in NC, data shows," *WNCN*, July 25, 2013, <http://www.wncn.com/story/22934120/widespread-voter-fraud-not-an-issue-in-nc-data-shows>. In North Carolina, Speaker of the House Thom Tillis admitted that prevention of fraud was no longer the primary purpose of the proposed voter ID legislation. <http://video.msnbc.msn.com/msnbc/51218553#51218553>

based on new understandings of how these laws disenfranchise voters.<sup>6</sup> As these Photo ID challenges now head to the U.S. Supreme Court, the evidence mounting against Photo ID could not be more convincing. Missouri taxpayers should not have to foot the bill for yet another photo ID court challenge in this state.

**SJR20** would ask voters to amend the constitution to allow the strict voter ID requirements that are currently unconstitutional. In 2012, the Cole County Circuit Court invalidated the summary statement on a similar resolution, finding that titling it a “Voter Protection Act” was deceptive and misleading to voters.<sup>7</sup> The *St. Louis Post Dispatch* called that proposal “one falsehood built upon another.”<sup>8</sup> Even with somewhat different language, SJR20 is no better. Plain and simple, it proposes weakening Missourians’ fundamental right to vote as protected by the constitution in conflict with at least two other provisions of our constitution. We should be loathe to ask voters to strip a fundamental right from our constitution at all, but especially not without making that impact clear to voters. The Missouri Supreme Court has found that right to vote is “at the core of Missouri's constitution.”<sup>9</sup> It should be altered in only the most compelling of circumstances. None exist here.

Upon approval of a constitutional amendment, **SB594** would implement the restrictive voter ID provisions that the resolution would make constitutionally permissible. SB594 would severely limit the kind of ID allowed at the polls and would not allow voters to show a college ID, a driver’s license from another state, an expired driver's license, a voter identification card, a bank statement, utility bill, or other forms of currently acceptable identification that can effectively verify that voters are who they say they are on Election Day. Eligible, registered voters will be turned away, even if they can verify their identity.

### **It is unnecessary.**

SB594 is a solution in search of a problem. Missouri law already requires all voters to produce identification at the polls -- and it works. There has never been an instance of voter impersonation in Missouri – the *only* kind of election irregularity this bill could address – and study after study shows it is exceedingly rare.<sup>10</sup> Instead, SB594 would erect barriers to the ballot for thousands of eligible Missouri voters. Missouri law already provides stiff penalties for voter impersonation.

### **It is expensive.**

In the midst of a budget crisis, it is irresponsible to implement unnecessary legislation that will cost taxpayers millions of dollars to “fix” a problem that doesn't exist. Moreover, lawmakers have severely underestimated the actual costs the state must incur in order to meet its legally required constitutional obligations, including covering the costs of providing ID to voters who do not have it, the costs to identify and notify those voters, the costs to alert and educate voters about the new requirements and

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<sup>6</sup> John Schwartz, Judge in Landmark Case Disavows Support for Voter ID, *New York Times*, Oct. 15, 2013, [http://www.nytimes.com/2013/10/16/us/politics/judge-in-landmark-case-disavows-support-for-voter-id.html?\\_r=0](http://www.nytimes.com/2013/10/16/us/politics/judge-in-landmark-case-disavows-support-for-voter-id.html?_r=0)

<sup>7</sup> *Aziz v Mayer*, Findings of Fact and Conclusions of Law and Final Judgment, No. 11AC-CC00439 (Mar 27, 2012) available at: <http://www.colecountycourts.org/Rel%20119%20Docs/Voter%20Ballot.pdf>

<sup>8</sup> “Editorial: It's pitch perfect that Voter ID measure tossed as a fraud,” *St. Louis Post Dispatch*, April 2, 2012, [http://www.stltoday.com/news/opinion/columns/the-platform/editorial-it-s-pitch-perfect-that-voter-id-measure-tossed/article\\_44afed8c-d617-5f65-a205-e8e037a610c0.html#ixzz1qwZZOMzB](http://www.stltoday.com/news/opinion/columns/the-platform/editorial-it-s-pitch-perfect-that-voter-id-measure-tossed/article_44afed8c-d617-5f65-a205-e8e037a610c0.html#ixzz1qwZZOMzB)

<sup>9</sup> *Weinschenk v. State*, 203 S.W.3d 201 (Mo. 2006)

<sup>10</sup> See, Lorraine C. Minnie, *The Myth of Voter Fraud*, Cornell Univ. Press (2010), showing that allegations of widespread voter impersonation fraud at the polls are unsupported by empirical evidence.

the increased costs of poll worker training and processing of provisional ballots.<sup>11</sup> What essential services will be cut to pay for this?

**It will prevent eligible voters from casting a ballot.**

According to the fiscal note for nearly identical companion legislation filed in the House, there are an estimated 253,496 individuals who are registered to vote in Missouri but do not have state-issued photo identification on file with the Department of Revenue.<sup>12</sup> It estimates that another 125,795 individuals have an expired ID on file with the Department of Revenue that would be insufficient to vote under this bill.<sup>13</sup> These 379,291 ELIGIBLE VOTERS would not be allowed to cast a regular ballot, even if they are able to identify themselves at the polls. Even under the Secretary of State's more conservative estimates, the votes of 220,000 Missouri voters are threatened by this proposal.<sup>14</sup> Studies show that some 20 million people nationwide – including hundreds of thousands of current voters here in Missouri – lack or can't get the ID required by this bill due to the costs, time and challenges of obtaining the underlying documents necessary to procure a state ID.<sup>15</sup> That's why the Missouri Supreme Court in 2006 concluded that a similar requirement violated the right to vote.<sup>16</sup>

The legislation especially burdens the poor, the elderly, voters of color and voters with disabilities, who are up to twice as likely to lack a non-expired photo ID. These are the Missourians who will be disenfranchised by these measures. Do not relegate them to second-class citizenship. You have responsibility to protect the rights of all citizens, not just those with state ID.

It can be difficult, costly and sometimes impossible to obtain the underlying documents proving residency, identity and citizenship - such as a certified birth certificate - that are necessary to get an ID required by SB594.<sup>17</sup> In some instances, voters must also present a social security card, proof of residence, court documents or marriage and divorce records if names have changed. Consider those born at home to midwives who were never issued birth certificates, who had common-law marriages without court records, or whose records have errors. Consider victims of the tornados in Joplin, Missouri, who have lost their records. Many states require a photo ID before they'll issue a copy of your birth certificate, creating a catch-22 for those who need the birth certificate to get the photo ID. In some states, obtaining a copy of your birth certificate may cost up to \$30.<sup>18</sup>

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<sup>11</sup> See, Brennan Center for Justice, "The Cost of Voter ID Laws: What the Courts Say," Feb. 17, 2011, [http://www.brennancenter.org/content/resource/the\\_cost\\_of\\_voter\\_id\\_laws\\_what\\_the\\_courts\\_say/](http://www.brennancenter.org/content/resource/the_cost_of_voter_id_laws_what_the_courts_say/)

<sup>12</sup> See Fiscal Note for nearly identical companion bill, HB1631, Jan. 8, 2016, available at: <http://www.moga.mo.gov/OverSight/Over20161//fispdf/4554-01N.ORG.pdf>

<sup>13</sup> Id.

<sup>14</sup> "Kander Announces Approximately 220,000 Registered Voters Could Be Disenfranchised by Restrictive Legislation Requiring Specific Photo ID," Jan. 27, 2014, available at: <http://www.sos.mo.gov/news.asp?id=1335>

<sup>15</sup> The Brennan Center for Justice at New York University School of Law found as many as 11% of US citizens – 21 million individuals – do not have government-issued photo identification. African Americans are more than twice as likely to lack adequate ID - 25% of African-American voting-age citizens – more than 5.5 million people – have no current government-issued photo ID. At least 15% of voting-age citizens earning less than \$35,000 per year do not have a non-expired government-issued photo ID. And 18% of American citizens age 65 and above – or more than 6 million seniors – do not have non-expired government-issued photo ID. See: Brennan Center for Justice at NYU School of Law, *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification*, <http://www.federalectionreform.com/pdf/Citizens%20Without%20Proof.pdf>

<sup>16</sup> *Weinschenk v. State*, 203 S.W.3d 201 (Mo. 2006).

<sup>17</sup> See *Weinschenk v. State*, 203 S.W.3d 201 (Mo. 2006).

<sup>18</sup> New State Voting Laws: Barriers to the Ballot?: Hearing Before the Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights and Human Rights, 112th Cong. 2, at 19 (2011) (statement of Judith Browne-Dianis, Co-Director, Advancement Project), available at

These hurdles are real. That's why the Missouri Supreme Court concluded that this kind of Photo ID requirement was tantamount to a "poll tax" and agreed that for "qualified voters, including the poor, elderly and disabled, these hurdles to obtaining the proper photo ID are not insignificant," finding "these concerns real rather than speculative."<sup>19</sup> No Missourian should be deprived of the right to vote because a government bureaucracy cannot or will not provide a copy of their birth certificate.

**SB594's so-called "savings" clauses do not ensure eligible voters can cast a ballot.**

While SB594 allows those who show up at the polls without ID to cast provisional ballots, those ballots will not be counted unless the voter returns with the requisite ID. This is of no solice to those without ID, whose ballots will not be counted.

Although SB594 exempts certain categories of voters from the ID requirement, it requires these voters to cast provisional ballots, which won't be counted unless the signature on the voter's provisional ballot affidavit matches their voter registration. For the most impacted voters – seniors, people with disabilities – it will not, and the votes of these valid voters will not count. More than two-thirds of provisional ballots cast in Missouri are not counted, many for reasons unrelated to a voter's underlying eligibility. Eligible registered voters who can verify their identity should not be made to cast provisional ballots that may not count.

Voters like Emmanuel Aziz, lead plaintiff challenging the photo ID ballot title in 2011, stands to be relegated to second-class citizenship by SB594: Mr. Aziz, 47, has a Missouri driver's license and a passport, but both have expired as his physical condition has deteriorated due to multiple sclerosis. He is confined to a wheelchair and no longer employed. In addition to having no practical need to renew his driver's license or state ID, he would face nearly insurmountable obstacles to doing so. The skilled nursing facility where he lives does not have ready access to public transportation. The challenges of obtaining a new state identification would impose a significant hardship on him, in terms of getting to the many offices necessary to get a certified copy of his birth certificate, court documents of his name change and a new identification. Moreover, as a result of his disability, he can no longer sign his name; consequently, if required to vote by provisional ballot, his ballot would be rejected due to a non-matching signature.<sup>20</sup>

Similarly, long-time registered voters like my own mother Joy Lieberman, 84, a former elected official from University City, MO, would face difficulty even if exempted from the ID requirement due to the proposed law's exemptions for senior citizens, because she would be forced to cast a provisional ballot that would not count unless her signature matches that on her original voter registration. Unfortunately, a severe hand tremor now prevents her from duplicating her signature, and any provisional ballot she casts would likely not be counted. "I am NOT a provisional citizen," she wrote in a letter to the Governor urging him to veto similar legislation in 2011. "I and the 230,000 other registered Missouri

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<http://www.advancementproject.org/sites/default/files/publications/Advancement%20Project%20Barriers%20to%20the%20Ballot%20Testimony%209-8-2011.pdf>.

<sup>19</sup> *Weinschenk v. State*, 203 S.W.3d 201 (Mo. 2006). The Missouri Supreme Court explained: "[I]n addition to the monetary costs imposed on persons seeking to obtain the proper photo ID, the process to do so imposes additional practical costs, including navigating state and/or federal bureaucracies, and travel to and from the Department of Revenue and other government agencies. One of these practical costs is the time it takes to receive the appropriate documentation. In Missouri, the waiting period for a birth certificate alone is six to eight weeks. In Louisiana, the birthplace of many Katrina refugees who have taken shelter in Missouri, the processing period is eight to ten weeks. Should citizens need additional documents, the bureaucratic hurdles and waiting periods would increase."

<sup>20</sup> *Aziz v. Mayer*, Petition at para. 2, avail at: <http://www.advancementproject.org/sites/default/files/Petition%20-%20FINAL.pdf>

voters who will be disenfranchised are NOT provisional/marginal people. We are proud Americans, proud Missourians who deserve to vote. Driving is a privilege—voting is a RIGHT!”<sup>21</sup>

Please refuse this needless political ploy playing on phantom fears of voter fraud to justify disenfranchising the most vulnerable among us. The bills promote no legitimate government interest. Indeed, as one federal judge remarked, Photo ID laws like the one proposed here “undermine the public’s confidence in the electoral process as much as they promote it.”<sup>22</sup>

The Missouri Constitution “establish[es] with unmistakable clarity that the right to vote is fundamental to Missouri citizens.”<sup>23</sup> The bills before you today strip this for potentially hundreds of thousands of Missourians. Elections cannot be fair if eligible voters are not allowed to vote.

Accordingly, I urge you to vote NO on SJR20 and SB594.

Respectfully Submitted,



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<sup>21</sup> Aziz v. Mayer, Petition at para. 6, avail at: <http://www.advancementproject.org/sites/default/files/Petition%20-%20FINAL.pdf>

<sup>22</sup> *Frank v Walker*, 17 F. Supp. 3d 837 (E.D. Wis. 2014)

<sup>23</sup> *Weinschenk v. State*, 203 S.W.3d 201 (Mo. 2006)