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March 16, 2011

The Honorable Daryl D. Metcalfe  
43 East Wing  
PO Box 202012  
Harrisburg, PA 17120-2012

The Honorable Babette Josephs  
300 Main Capitol Building  
PO Box 202182  
Philadelphia, PA 17120-2182

Dear Chairman Metcalfe and Chairwoman Josephs,

Thank you for the opportunity to submit written testimony on House Bill 934 and House Bill 647. Founded in 1920, the American Civil Liberties Union is one of the nation's oldest civil rights organizations. ACLU activity in Pennsylvania dates back to the 1930s. I am submitting this testimony on behalf of the 17,000 members of the ACLU of Pennsylvania.

Because both HB 934 and HB 647 present significant barriers to voting, the ACLU of Pennsylvania opposes both bills.

HB 934 requires voters to present government-issued photo identification at polling places. The identification cannot be expired and must include an expiration date. Only ID issued by the commonwealth or by the federal government is acceptable under HB 934. The legislation allows the issuance of non-driving identification cards by the Department of Transportation at no direct cost to the applicant. It also allows voters who do not have identification to cast a provisional ballot but then requires the voter to appear at their county bureau of elections within six calendar days of the election to sign an affidavit affirming that they are the person who cast the provisional ballot.

HB 647 drastically alters the voter registration process by requiring citizens to submit two photographs upon registering to vote. One photograph will be kept on file at the county bureau of elections, and the second photograph will be applied to the person's voter registration card, which then must be presented when voting.

There is nothing more fundamental to our democracy than the right to vote. Without it, Americans' ability to participate in their government is significantly curtailed. As you know, there have been significant struggles throughout our nation's history to protect and expand the franchise. We have come a long way as a country since our founding.

The right to vote now includes citizens who do not own property, women, and racial and ethnic minorities.

There have certainly been challenges and attempts to roll back the right to vote as it has expanded. Although the federal constitution opened voting to African-Americans after the Civil War, numerous states implemented laws to block blacks and other low-income citizens from voting, including poll taxes and literacy tests. Finally, in 1965, the federal government intervened with the passage of the Voting Rights Act, which has been renewed numerous times.

HB 934 harkens back to the attempts by powerful government officials to block eligible citizens from voting. A voter ID law like HB 934 is discriminatory against a significant block of eligible voters who do not have government-issued photo identification. Data indicates that approximately 11 percent of United States citizens do not have government-issued photo ID,<sup>1</sup> and they are disproportionately African-Americans, the elderly, and the working poor. Research shows that 25 percent of adult blacks do not have this form of ID, compared to 8 percent of white adults. Eighteen percent of citizens age 65 or older and 15 percent of persons who earn less than \$35,000 per year do not possess the type of ID required in HB 934.

Intended or unintended, this bill would disfranchise citizens who have the right to vote.

HB 934 also implements an entrance fee for voting. No United States citizen should have to pay fees to vote. While the bill allows the Department of Transportation to distribute non-driving identification cards at no costs, the documents required to get the card, such as a birth certificate,<sup>2</sup> cost money.

The free ID card provision in HB 934 also presumes a level of mobility that some citizens do not have. In a well-documented situation in Indiana in 2008, a group of elderly nuns were unable to vote. All of the nuns were over the age of 80, did not drive, and had a history of voting in past elections. Their limited mobility made it difficult for them to obtain the necessary identification to vote.

Other states that have implemented voter ID laws like HB 934 have found that implementation has cost millions in taxpayer dollars. Missouri estimated that a proposed voter ID law would cost \$6 million in the first year and \$4 million annually thereafter, and states have found that implementing these laws increase their spending

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<sup>1</sup> 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*. Available at [http://www.brennancenter.org/page/-/download\\_file\\_39242.pdf](http://www.brennancenter.org/page/-/download_file_39242.pdf).

<sup>2</sup> Pennsylvania Department of Health. *Birth Certificates*. Available at [http://www.portal.health.state.pa.us/portal/server.pt/community/birth\\_certificates/14121](http://www.portal.health.state.pa.us/portal/server.pt/community/birth_certificates/14121).

on elections by as much as 50 percent.<sup>3</sup> The state accrues costs in distributing the free identification cards, in training for poll workers, and in public education to inform the public of the change in the law. Enacting HB 934 will be expensive.

Supporters of HB 934 may mistakenly believe that the United States Supreme Court has upheld the constitutionality of voter ID laws because the court did not overturn Indiana's version of this law.<sup>4</sup> In fact, HB 934 could still be the subject of a constitutional challenge. In the Indiana case, the court upheld the law against a "facial" challenge but noted that the law could still be overturned if plaintiffs could show a burden on a particular group of citizens, including elderly persons born in another state, people of faith who object to having their picture taken, homeless persons, and anyone who for economic or other reasons is unable to obtain the birth certificate required to apply for an identification card.

HB 934 is vulnerable to a civil rights challenge.

The introduction of this bill suggests that there is a problem that needs to be solved by HB 934. In fact, this bill is a solution in search of a problem. Supporters of HB 934 have failed to show a systemic problem with in-person voter fraud. 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>5</sup>

It's not surprising that almost no evidence exists of in-person voter fraud. The risks outweigh the payoff. A person would risk the potential of jail time for one vote. The risk increases for an immigrant in the United States without status, as some legislators have suggested that undocumented immigrants try to vote. Immigrants without status do not want to be detected by authorities and would not chance deportation for one vote. No evidence exists that undocumented immigrants attempt to vote.

HB 647 is equally onerous and will certainly lead to some citizens opting to not participate in the voting process. The provision in this bill that requires a citizen who registers to vote to supply two photographs adds extra steps to the registration process that are not currently in law. This will prove burdensome to the voter and to the county elections offices that must file the photographs and create the new registration card with a photograph. It will also come with financial costs.

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<sup>3</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).

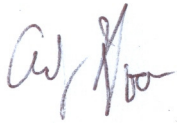
<sup>4</sup> Crawford v. Marion County Election Bd., 128 U.S. 1610 (2008).

<sup>5</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.

House Bill 934 and House Bill 647 will lead to the disfranchisement of a significant bloc of citizens who are eligible to vote. Those most affected will be the elderly, racial minorities, and the working poor. U.S. citizens without ID have a right to the vote like every other citizen and don't deserve to have their vote taken in this way. The ACLU of Pennsylvania opposes HB 934 and HB 647, and we are hopeful that members of the House State Government Committee will agree.

If you have further questions about the position of the ACLU of PA on this or any other issue, you are always welcome to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Andy Hoover', is positioned below the word 'Sincerely,'.

Andy Hoover  
Legislative Director