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September 25, 2006

The Honorable Trent Lott
Chairman
Committee on Rules & Administration
United States Senate
487 Russell Senate Office Building
Washington, DC 20510

The Honorable Chris Dodd
Ranking Member
Committee on Rules & Administration
United States Senate
448 Russell Senate Office Building
Washington, DC 20510

The Honorable Arlen Specter
Chairman
Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington, DC 20510

The Honorable Patrick J. Leahy
Ranking Member
Committee on the Judiciary
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

Re: Companion Bills to H.R. 4844

Dear Senators Lott, Dodd, Specter and Leahy:

I write on behalf of the Association of the Bar of the City of New York (“the Association”) to urge you to oppose any companion bill to H.R. 4844, recently passed by the House of Representatives, that may be introduced in the Senate. We urge you to reject such legislation because it would unfairly suppress voting, and is totally unnecessary to prevent voter fraud.

Under H.R. 4844, beginning with the 2008 federal election, no voter may participate in any federal election unless he or she presents a “current and valid” government-issued photo identification (“photo ID”). Moreover, starting in 2010,

voters will be unable to obtain the type of photo ID required by H.R. 4844 unless they prove their citizenship by providing certain government-issued documents that many eligible citizens do not own, and that are costly to obtain. These conditions will prevent many Americans – in particular, people of color and low-income, elderly, disabled and homeless persons – from exercising the fundamental right to vote.

While backers of H.R. 4844 contend that it is necessary to prevent fraudulent voting and voting by non-citizens, in fact, it simply represents a divisive, partisan attempt to gain political advantage by appealing to anti-immigrant sentiments. Most troubling, H.R. 4844 is a wholly unnecessary response to the specter of voter fraud that will inevitably discourage the participation of our most vulnerable citizens in the democratic process while doing little or nothing to actually prevent electoral misconduct.

H.R. 4844's Proof of Citizenship Requirement is a Modern-Day Poll Tax.

While it is not disputed that only citizens can be permitted to vote, H.R. 4844's requirement that citizens furnish documentary proof of citizenship to obtain a permissible photo ID will burden Americans with the expense of acquiring costly government documentation – such as birth certificates, passports, or naturalization papers. People of color and elderly and low-income citizens are the least likely to possess the relevant documents: for example, elderly African Americans and Native Americans in many parts of the country lack birth certificates because they were born in their homes. And while the requirement of proving citizenship may not impose a severe burden on those citizens who already possess a passport or birth certificate, for the thousands of eligible voters who lack such documentation, the process of securing it is not so simple. Obtaining a birth certificate may cost as little as \$10 for citizens living in the city and state where they were born, but for citizens who have moved out of state, the cost can rise to many times that amount.¹ Acquiring a passport costs \$97,² and replacing naturalization papers costs \$220.³ Many Americans lack the means to acquire these documents, and H.R. 4844 will prevent them from voting.

¹ See, e.g., <http://www.birthcertificatesusa.com/birthusa/pricelookup.asp>.

² This includes a processing fee of \$55, an application execution fee of \$30, and a security surcharge of \$12. See <http://foia.state.gov/FORMS/Passport/ds0011.pdf>.

³ See <http://www.uscis.gov/graphics/formsfee/forms/n-565.htm>.

That H.R. 4844 will do so is demonstrated by Arizona's recent experience with a similar law. Under that state's Proposition 200, which imposed a citizenship requirement for voter registration, more than 10,000 Arizonans in Maricopa County alone had their applications rejected for insufficient proof of citizenship, and 60% of new registrants in Pima County saw their applications rejected, notwithstanding that they were all eligible applicants.⁴ This is too steep a price to pay in the name of preventing non-citizens from voting – especially because evidence suggests very few illegal aliens vote, and because there are ample penalties in place to stop such ineligible individuals from voting. All registrants must already affirm that they are eligible citizens, under penalty of perjury.⁵ And any non-citizen who attempts to register and vote is subject to substantial jail time and stiff fines, as well as automatic deportation. Given these measures that adequately prevent non-citizens from voting, there can be no justification for a bill that will disenfranchise so many Americans.

H.R. 4844's Photo ID Requirement is an Unnecessary and Unreasonable Obstacle to Voting.

Even without the requirement of proof of citizenship, the photo ID requirement is an unnecessary and unreasonable burden on voting. Supporters of H.R. 4844 seek to justify the photo ID requirement by invoking the specter of “voter fraud,” but the photo ID requirement addresses only a single type of alleged fraud: the impersonation of a registered voter. The photo ID requirement does not address more troublesome election irregularities like vote buying or voter intimidation and suppression. Nor does it address voting by ineligible persons with felony convictions, or double voting at two different addresses, which can only be remedied through the regular updating of registration lists (as is required under federal law). And the evidence is clear that the impersonation fraud which a photo ID requirement could conceivably prevent is, in fact, an exceedingly rare and unsubstantiated occurrence.

⁴ See Nicholas Riccardi, *Arizona ID Rule May Deny U.S. Citizens Right To Vote*, San Francisco Chronicle, Nov. 6, 2005, available at <http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2005/11/06/MNGARFJR711.DTL>.

⁵ See 42 U.S.C. § 15483(b)(4)(A) (requiring mail registration form developed under the National Voter Registration Act to require a citizenship check-box); see also Federal Voter Registration Application, available at <http://www.eac.gov/docs/NVRA%20Update%2009-12-06.pdf> (including check-box and oath under penalty of perjury).

As the following examples attest, in spite of the tales of voter fraud that backers of photo ID requirements repeatedly recycle, studies of election fraud reveal virtually no confirmed cases of impersonation fraud:

- In the most comprehensive survey of election fraud to date, Professor Lorraine Minnite of Barnard College and David Callahan of Demos concluded that voter fraud of any kind is “very rare,” is not more than a “minor problem” and “rarely effects election outcomes.” The study confirmed no examples of impersonation fraud, and concluded that the wrongful disenfranchisement of voters is a “far bigger problem” than voter fraud.⁶
- A Department of Justice report detailing 86 convictions for election-related misconduct since 1992 describes incidents of vote buying, campaign finance violations, and harassment to keep voters from the polls – *none* of which would be remedied by requiring voters to show photo ID. The report indicates no cases of impersonation fraud.⁷
- A joint federal and state investigation into an alleged scheme to impact the 2004 election in Wisconsin turned up severe administrative problems with the Milwaukee elections board, but no cases of impersonation fraud. The few incidents of misconduct that were substantiated involved registration fraud, double voting, and voting by ineligible felons, not voter impersonation.⁸
- According to a statewide survey of election officials in Ohio, there were only 4 instances of ineligible persons voting or attempting to vote in the 2002 and 2004 elections, out of 9,078,728 ballots cast – and none of these involved impersonation fraud.⁹

⁶ See Lorraine Minnite & David Callahan, *Securing the Vote: An Analysis of Election Fraud* (2003), at http://www.demos.org/pubs/EDR_-_Securing_the_Vote.pdf.

⁷ See *Fact Sheet: Department of Justice Ballot Access and Voting Integrity Initiative* (July 26, 2006), at http://www.usdoj.gov/opa/pr/2006/July/06_crt_468.html.

⁸ See *Preliminary Findings of Joint Task Force Investigating Possible Election Fraud* (May 10, 2005), at <http://www.wispolitics.com/1006/electionfraud.pdf>.

⁹ See Coalition of Homelessness and Housing in Ohio & League of Women Voters Coalition, *Let the People Vote* (2005), at <http://www.cohhio.org/alerts/Election%20Reform%20Report.pdf>.

These studies' conclusion that impersonation fraud rarely, if ever occurs, is consistent with investigations into widely reported allegations of voter fraud in St. Louis, Detroit and the State of Washington all of which have ultimately proved that most of the allegations were unfounded and incorrect.

Indeed, those states which have adopted a photo ID requirement like that in H.R. 4844 did so in spite of the absence of any evidence of impersonation fraud. Georgia's Secretary of State stated that in her nine-year tenure, she had not heard of a single incident of impersonation fraud.¹⁰ Indiana's photo ID requirement was adopted despite the lack of any evidence of impersonation fraud occurring in the state.¹¹ And Missouri's highest election official stated that there was no evidence of voter fraud in that state, and that existing voter identification requirements were fully adequate.¹² In recognition of the fact that photo ID requirements are an unreasonable and unnecessary response to a wholly unsubstantiated problem, courts have repeatedly enjoined Georgia from enforcing its photo ID law,¹³ and a Missouri judge recently enjoined that state's photo ID statute.¹⁴ A challenge to Indiana's law is pending before the Seventh Circuit.¹⁵

Even when photo ID statutes like H.R. 4844 mandate that voting identity cards be issued free of charge, the risk that the regulations will disenfranchise voters is not eliminated. For those disadvantaged groups most likely to lack a photo ID – people of color and low income, elderly, disabled, and homeless persons – the process of obtaining a free ID is not simple. Many will have to take time off from work, and because they lack driver's licenses, they must find some means of transportation to get to the issuing agency. The time and inconvenience involved are significant burdens that will discourage many voters in these vulnerable categories from voting. Moreover, for many elderly and disabled persons, the requirement may be an insurmountable obstacle to

¹⁰ See *Common Cause/Georgia v. Billups*, 406 F. Supp. 2d 1326, 1332 (N.D. Ga. 2005).

¹¹ See *Indiana Democratic Party v. Rokita*, No. 1:05-CV-0634-SEB-VSS, 2006 WL 1005037, at *9 (S.D. Ind. Apr. 14, 2006).

¹² See Letter from Robin Carnahan, Missouri Secretary of State, to Matt Blunt, Missouri Governor (May 11, 2006), available at <http://www.sos.mo.gov/inc/05-11-06Carnahan-to-Blunt-VoterID.pdf>

¹³ See *Common Cause/Georgia v. Billups*, 406 F. Supp. 2d 1326 (N.D. Ga. 2005); *Common Cause/Georgia v. Billups*, 439 F.Supp. 2d 1294 (N.D. Ga. 2006); *Lake v. Perdue*, No. 06-cv-119207, Order on Plaintiff's Complaint for Declaratory and Injunctive Relief (Fulton Cty. Sup. Ct. Sept. 19, 2006).

¹⁴ See *Weinschenk v. Missouri*, No. 06AC-CC00656, *Jackson County v. Missouri*, No. 06AC-CC00587, Judgment (Cole Cty. Cir. Ct. Sept. 14, 2006), available at <http://moritzlaw.osu.edu/electionlaw/litigation/documents/MophotoID.pdf>

¹⁵ See *Crawford v. Marion County Election Bd.*, No. 06-2218 (7th Cir. docketed May 1, 2006); *Indiana Democratic Party v. Rokita*, No. 06-2317 (7th Cir. docketed May 8, 2006).

voting. And in any event, it is far from clear that Congress will appropriate the funding states will need to provide photo IDs free of charge.

We also note that the discretion vested in local election officials to determine if a voter's photo ID is "valid" opens the door to discriminatory enforcement and harassment that will further suppress voter participation.

At the same time, it is telling that Congress itself, in enacting the Help America Vote Act ("HAVA"), and 47 states have recognized that a photo ID is not necessary to prevent any possible impersonation fraud, and therefore permit numerous, less onerous means of voter identification.¹⁶

Our nation already suffers from shamefully low voter turnout rates, and as the 2006 election approaches, the enactment of burdensome election regulations throughout the nation threatens to further disenfranchise voters. In this context, there is no justification for laws like H.R. 4844 that are directed at hypothetical, speculative, and unproven problems and will erect additional hurdles to voter participation. These laws are entirely unnecessary, unreasonable, and – as various courts have concluded – unconstitutional. The Association urges you in the strongest terms to vote to reject any bill like H.R. 4844 that subverts our constitutional democracy.

Sincerely,



Barry Kamins

CC: Senator Bill Frist
 Senator Harry Reid
 Senator Orrin G. Hatch
 Senator Charles E. Grassley
 Senator Jon Kyl
 Senator Mike DeWine
 Senator Jeff Sessions
 Senator Lindsey Graham

¹⁶

See 42 U.S.C. § 15483(b)(2); see also National Conference of State Legislatures, *State Requirements for Voter Identification* (Aug. 1, 2006), at <http://www.ncsl.org/programs/legman/elect/taskfc/voteridreq.htm>; Electionline.org, *Voter ID Laws*, at <http://www.electionline.org/Default.aspx?tabid=364>.

Senator John Cornyn
Senator Sam Brownback
Senator Tom Coburn
Senator Edward M. Kennedy
Senator Joseph R. Biden, Jr.
Senator Herbert Kohl
Senator Dianne Feinstein
Senator Russell D. Feingold
Senator Charles E. Schumer
Senator Richard J. Durbin
Senator Hillary Rodham Clinton
Senator Joseph I. Lieberman
Senator Frank R. Lautenberg
Senator Robert Menendez