



House Elections and Ethics Committee
June 23, 2021

Promote the Vote submits the below written testimony in opposition to SBs 303 and 304.

SBs 303 and 304 Will Disenfranchise Tens of Thousands of Registered Voters in Michigan; They Will Not Make the State's Elections More Secure.

Promote the Vote opposes SBs 303 and 304 because they will eliminate options for registered voters to prove their identity, disenfranchise tens of thousands of registered voters in Michigan, and disproportionately disenfranchise voters of color.

Michigan already has a voter identification law, which was originally enacted in 1996. Pursuant to MCL 168.523, when a registered voter appears at their polling location to vote, they can prove their identity by either (1) providing one of the specified documents, such as a driver's license, student ID, or passport, or (2) signing an affidavit of identify, swearing to their identify under penalty of perjury. By eliminating the affidavit as an option, SB 303 would radically change and restrict the options available to registered voters. In doing so, SB 303 would eliminate options registered voters in Michigan have relied upon for twenty-five years. SB 303 would disenfranchise voters across the state of Michigan, while doing nothing to make our elections more secure.

By eliminating the affidavit option for registered voters in Michigan, SB 303 would eliminate a key provision that the Michigan Supreme Court relied upon when it found the law to be constitutional. In a 2007 opinion, the Michigan Supreme Court found that Michigan's voter identification law did not impose a severe burden on voters **because of the availability of the affidavit**. *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 479 Mich. 1 (2007). Without the option for voters to sign an affidavit, Michigan's voter identification law will impose a severe and unconstitutional burden on the right to vote.

In last year's presidential election, tens of thousands of voters, distributed across the state and in nearly every county in Michigan, utilized the option to sign the affidavit. Indeed, in November 2020, more than 11,400 eligible voters in 82 out of 83 Michigan counties signed the affidavit. See Oosting, Jonathan, "GOP Targets No-ID Ballots to Cut Fraud; Only 0.2% Voted that Way in Michigan," Bridge Michigan, 5/19/2021 (<https://www.bridgemi.com/michigan-government/gop-targets-no-id-ballots-cut-fraud-only-02-voted-way-michigan>). In November 2016, more than 18,500 eligible voters used the affidavit option, again in 82 of 83 Michigan

counties. See Michigan Secretary of State, “Affidavit of Not in Possession of Picture ID Report for the November 2016 Election,” (https://www.michigan.gov/documents/sos/nov_2016_final_no_ID_608840_7.pdf). While these voters may constitute a small percentage of the electorate, each and every one of them has a constitutionally protected right to vote and to use the affidavit option available under current law. Notably, while voters use the affidavit option for a variety of reasons, most election officials will tell you that the affidavit is most often used because a voter forgot or lost their identification.

Promote the Vote further opposes SB 303 because the elimination of the affidavit option will disproportionately affect voters of color, who are five times more likely to lack access to ID on Election Day. See, Henninger, P., Meredith, M., & Morse, M., “Who Votes Without Identification? Using Affidavits from Michigan to Learn About the Potential Impact of Strict Voter Identification Laws,” *Journal of Empirical Legal Studies* (forthcoming) (https://scholar.harvard.edu/files/morse/files/mich_voter_id.pdf). Such a disparate impact is unacceptable to the voters of Michigan, who made it clear in passing Proposition 3 of 2018 that they wanted a voting system that works for everyone. Such an impact would also undoubtedly subject SB 303 to valid legal challenges, citing violations of equal protection.

That SB 303 provides for voters without identification to receive a provisional ballot does not solve its myriad problems. For a provisional ballot to be counted, an eligible voter must travel to their city or township clerk’s office within six days of the election to provide their identification. Local clerk’s offices often have limited hours, and it can be very difficult for many individuals, including those with significant caregiving or work responsibilities or limited mobility, to find the time to go to their clerk’s office within such a limited set of hours. For those communities whose clerk’s offices are only open during normal business hours, such hours don’t accommodate voters who also work normal business hours. SBs 303 and 304 may require all local clerks to be open for extended evening and weekend hours immediately following each election to enable voters to appear and provide identification.

Furthermore, SB 304 also requires these voters to provide the identification for election purposes that SB 303 now requires and a second form of identification - proof of residency. Under SBs 303 and 304, voters who forgot, lost, or lacked their identification on Election Day must take time from their busy schedules, and possibly time off from work, arrange transportation and travel to the clerk’s office, and provide two forms of identification, when only one form of identification was required of every other voter on Election Day. Under current law, only voters registering to vote within 14 days of an election are required to provide proof of residency.

Finally, SB 304’s provision for certain individuals to be eligible to have the fee for obtaining an official state ID waived is, in practice, useless. Pursuant to SB 304, an individual has six days after the election to present their identification and proof of residency to their local clerk. Even if a registered voter did not previously have identification because obtaining one was prohibitively expensive, and even if the voter learns on Election Day that the state would

waive the fee, the chance that the voter could obtain identification in time to ensure that their ballot is counted is quite slim.

Because SBs 303 and 304 will disenfranchise tens of thousands of registered voters without making our elections more secure, and because they will disproportionately disenfranchise voters of color, Promote the Vote opposes the bills.

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