

AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE

From: Gilles Bissonnette, Legal Director, American Civil Liberties Union of New Hampshire
To: The Honorable Members of the New Hampshire Senate Election Law and Internal Affairs Committee
Date: January 23, 2018
Re: ACLU-NH Opposition to SB527

I submit this testimony on behalf of the American Civil Liberties Union of New Hampshire (ACLU-NH)—a non-partisan, non-profit organization with approximately 9,000 members and supporters working to protect civil liberties throughout the state. SB527 would hinder the voting rights of disabled, constitutionally-eligible voters in New Hampshire who vote by absentee ballot. We respectfully urge the Committee to recommend that the Senate deem SB527 *inexpedient to legislate* or, at the very least, send the bill to *interim study*.

- **What SB527 Does:** SB527 effectively imposes a new voter identification system on all absentee voters in the state of New Hampshire, including on those voters who vote absentee because they are elderly or have a disability that prevents them from going to the polls on election day. Under SB527, an absentee voter using the mail must enclose a physical photocopy of his/her identification on two occasions during each election: (i) first, when the voter submits the absentee ballot application to request an absentee ballot; and (ii) second, when the voter submits the absentee ballot in the absentee ballot affidavit envelope. Each absentee voter must submit photo ID twice in every election in which he or she votes absentee. If a voter does not have identification or does not submit it, that voter will then be subjected to two separate signature-match comparisons (unless the voter has someone help them fill out the application or ballot). Under the first signature matching process (which is new under SB527), the signature on the application has to match the signature on the voter registration form which is often completed years earlier. Under the second signature matching process, the signature on the absentee ballot affidavit envelope has to match the signature on the absentee ballot application form. This signature mismatch process is fraught with error and resulted in the current *Saucedo* litigation. And if the signatures are believed not to match by poll workers—which particularly impacts elderly or disabled voters who have not secured the assistance of others—that voter will then have to submit, before the election, a verification form (also by mail or in person) that is notarized by a third-party official. Otherwise, the voter’s vote will not be counted.
- **SB527 Will Burden Thousands of Voters, Particularly Disabled Voters, By Asking Them to Not Only Have Photo ID, But Also the Ability to Obtain and Provide a Photocopy of this ID:** Voters in New Hampshire can vote absentee due to disability, religious commitment, or inability to be at a polling location on election day. Approximately 74,000 voters voted absentee in New Hampshire on Election Day. This bill imposes new burdens on this population of voters above and beyond what is being challenged in the *Saucedo* litigation—burdens that can easily deter these populations (particularly, the disabled and elderly) from voting. These burdens are listed below.
 - **Access to Identification:** Absentee voters—including those who are disabled—are now required to have qualifying photo identification (limited to a driver’s or non-driver’s license, passport, or military or school ID). At the very least, all disabled absentee voters (not just those who need assistance when voting) should be exempted from this identification (and subsequent signature mismatch) requirement. The U.S. Department of Justice has explained that the requirement of a driver’s license for identification might screen out a person with a disability.¹ Moreover, a 2002 survey by the U.S. Department of Transportation’s Bureau of Transportation Statistics found that 35 percent of adults with disabilities do not drive compared to 12 percent of adults without disabilities. *See* U.S. Department of Transportation, Bureau of Transportation Statistics, 2002 National Transportation Availability and Use Survey. Thus, adults with disabilities are three times more likely not to drive (and probably not have a driver’s license) as the rest of the population.²
 - **PLUS Means to Copy/Scan and Send the Identification:** In addition, under SB527, disabled voters (excluding those who need assistance when voting) must not only have identification, but also access to the means to photocopy it and mail it to elections officials—an obligation that is burdensome on these vulnerable populations who often have difficulty traveling. Of course, not all disabled or elderly voters will have the means to photocopy or electronically scan a copy of their ID (if they have ID at all).
 - **The “Notary” Verification Process:** And if these voters do not have ID and poll workers believe that there is an issue with these voters’ signatures (unless the disabled voter obtains the help of someone else), then these voters then have to submit a verification form that is effectively notarized by a public official (not just a regular person) before election day.

¹ “For example, requiring presentation of a driver’s license as the sole means of identification for purposes of paying by check would violate this section in situations where, for example, individuals with severe vision impairments or developmental disabilities or epilepsy are ineligible to receive a driver’s license and the use of an alternative means of identification, such as another photo I.D. or credit card, is feasible.” 28 C.F.R. Part 35, Appendix B, at section 35.130(b)(8).

² Disabled voters are also less likely to possess a U.S. passport. The same study found that 40 percent of adults with disabilities stayed within 100 miles of their home in the past year, compared to only 24 percent of adults without disabilities. *Id.* Disabled voters are less likely to be employed, and therefore less likely to possess an employee photo ID. Bureau of Labor Statistics, June 2012 Report: Persons with a Disability: Labor Force Characteristics – 2011; National Council on Disability, March 2009 report: Federal Employment of People with Disabilities.

This verification process *far exceeds* the affidavit process that currently exists for voters who vote in person, at the polls, without photo identification. This verification process is yet another onerous obligation on this vulnerable group of voters who are disabled or otherwise cannot match (i) their application signature with their signature on their registration form, often from decades earlier, or (ii) their absentee ballot signature with their signature on their absentee ballot application. For these voters, it is already physically impossible for them to go to the polls, yet this bill imposes on them the obligation to leave their home multiple times to obtain copies of documents or have documents effectively notarized by an official. Simply put, a person's right to vote—particularly those who are elderly or disabled—*should not* depend on the charity of others. Also, if a person submits absentee ballot envelope without identification close to the election, that voter will have little time to comply with this verification process.

SB527 would disenfranchise eligible voters. For example, one can easily envision how this bill would place burdens on an elderly or disabled person who lives alone without the Internet or a photocopy machine. The elderly and disabled disproportionately do not have photo identification (let alone the means to photocopy this information if they did have it), and therefore cannot comply with this identification requirement. And these voters—like the 95-year-old plaintiff in the *Saucedo* litigation—have issues writing their names due to a disability. Thus, these voters will now have to comply with the verification process, which requires the efforts of securing a third party officials to effectively notarize a document. When they cannot comply with this burdensome process, they will lose their right to vote.

In 2014 Arkansas special elections, for example, before its absentee ballot photo ID requirement was struck down as unconstitutional, the ID requirement disenfranchised eligible voters who did not have ID. In one Arkansas county special election in January 2014, 63 of 135 absentee ballots were rejected because the voter did not include identification. In another, 78 out of 300 absentee ballots were rejected due to no identification.

- **SB527 Is Unnecessary:** There is no substantial evidence of absentee voter impersonation in New Hampshire. The stated goal of photo identification is to address in-person voter impersonation at the polls (which is exceedingly rare) and allow poll workers to verify a voter by examining his or her picture on the identification. But SB527's absentee photo ID requirement would not prevent voter impersonation fraud (even if it did exist) since there is no way for an election official to determine whether the photo ID is the absentee voter (as the absentee voter is not present). The requirement serves no legitimate purpose and, as explained above, imposes heavy burdens on New Hampshire's most vulnerable absentee voters.
- **At the Very Least, SB527 and its Potential Impact Should Be Further Studied:** Few states impose a requirement of presenting photo identification with an absentee ballot. And none require submissions of ID twice in each election from voters already unable to access the polls. Imposing such a requirement would make New Hampshire an outlier. If this is a path the legislature wishes to consider, it should study it further, including its potential burdens on the elderly and disabled populations.
- **SB527 is Confusing:** The forms in the bill are also confusing and would benefit from clearer language. For example, the forms are unclear as to whether identification is actually required to cast a ballot. It is also unclear whether a person who votes absentee without identification—but with assistance—will have to go directly through the verification process, or if their ballot will just automatically count. Clarity is critical here, as these absentee voters often do not have the opportunity to physically engage election officials to have their questions answered. In short, this bill requires people with disabilities to follow an unnecessarily complex process, and interpret ambiguous legal language at each stage of the voting process.
- **SB527 Does Not Resolve the Issues Raised in *Saucedo v. Gardner*.** In ongoing federal litigation, Mary Saucedo, a 95-year-old and legally blind voter, had her ballot thrown out in the 2016 election because the signature on her absentee ballot application did not match her signature on her ballot affidavit envelope. Hundreds of voters have suffered this fate. Mrs. Saucedo cannot produce the same signature as her voter registration (signed before she lost her eyesight in the mid-1980s) and cannot currently sign the same way twice. She does not drive and does not have access to a photocopy machine or a qualified notary at home. SB527 will burden voters like Mrs. Saucedo who only wish to have their votes counted. And disabled or elderly voters who have no spouse to help them go through the absentee ballot process will be even more burdened by this process.
- **SB527 Improperly Delegates Legislative Power:** SB527 also improperly delegates legislative power by, without any standards, giving the Secretary of State's Office the authority to "include any additional information deemed helpful to voters or election officials." Under this language, the Secretary of State has unfettered authority, without meaningful standard imposed by the legislature, to craft language on absentee voting application forms.