Testimony of the Mexican American Legal Defense and Education Fund (MALDEF) on HB 516 House Elections Committee

February 16, 2005

Chairwoman Denny and Members of the House Elections Committee, I am Nina Perales, Regional Counsel of the Mexican American Legal Defense and Educational Fund, a non-partisan legal organization founded in Texas in 1968 to defend and protect Latino civil rights, including voting rights.

I am here today to advise you of MALDEF’s opposition to HB 516. MALDEF opposes this bill because it will have a negative impact on Latino voter registration and also because it runs contrary to federal election law and the Voting Rights Act of 1965.

HB 516 provides that applicants for voter registration must complete the voter registration form and also provide documentary proof of the applicant’s citizenship. In Texas, documents that would currently satisfy the requirement of this proposed law would be a birth certificate, passport or citizenship papers. For naturalized citizens, the only documentary proof would be a naturalization certificate.

Currently, Texas law provides that voter registration applicants can submit their application either in person or by a business reply postcard. Elec. Code Section 13.121. The applicant is then registered and can go to the polls and vote. The Help America Vote Act only requires that, in the case of first-time registrants by mail, the voter bring proof of identity to the polling place at the first time of voting. The range of identity documents for

1Delivered by Nina Perales, San Antonio Regional Counsel.

Celebrating Our 35th Anniversary
Protecting and Promoting Latino Civil Rights
www.maldef.org
this group of voters is intentionally broad, and includes a utility bill and a bank statement. Elec. Code Section 63.0101.

HB 516 imposes a burden of providing documentary proof at the time of registration, which then makes it impossible to register with the business reply postcard, or at the Department of Public Safety, where people don’t often bring their citizenship documents. HB 516 requires the aspiring voter to secure a photocopy of his or her proof of citizenship and then spend the money and time to get the document to the voter registrar, along with the application.

If the registration applicant doesn’t have one of the citizenship documents at hand, it will take even more time and cost to obtain it. It costs $12 for a birth certificate in San Antonio and almost $14 if you want a birth certificate from another Texas city. If you were born out of state, the birth certificate can cost more than $15 ($18 in Los Angeles). The applicant will also have to take the time to appear in person at the vital statistics office or use mail, fax machine or the Internet to place the order with either a check or a credit card. A U.S. passport costs $85 for first-time applicants over the age of 16. If you want expedited processing, that costs an additional $60, bringing the total amount to $145. If your passport is expired, you have to pay $55 to renew it. If you have a lost or damaged naturalization certificate, it will cost $210 and take up to 6 months for the Department of Homeland Security to get you a new one. Perhaps even more problematic, the naturalization certificate states on its face “IT IS PUNISHABLE BY U.S. LAW TO COPY, PRINT OR PHOTOGRAPH THIS CERTIFICATE WITHOUT LAWFUL AUTHORITY.” This language will deter naturalized citizens who want to register to vote but who are afraid
that they are not the people authorized to make a photocopy of their certificate.

HB 516, because it renders impossible voter registration by a postage-paid application form, and renders unlikely registration at DPS, will push Texas into violation of federal election law, which requires that states offer these methods of registration for all persons seeking to vote in federal elections. The only way that Texas can implement HB 516 is to create what is called a bifurcated voter registration system, in which it applies one set of rules to people who want to register to vote in state elections and another set of rules for people who want to register to vote in federal elections. I am sure the Committee can imagine the amount of grief that will be suffered by county registrars who will not only have to inspect and verify all of these citizenship documents but also will have to implement two different voter registration systems and keep two sets of voter rolls.

Finally, changes in methods of voter registration are subject to § 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973. 28 C.F.R. 51.13(b); Allen v. State Board of Elections, 393 U.S. 544, 565 (1969). Because Texas is a covered jurisdiction for the purposes of §5, this State has the burden of demonstrating that any proposed change in voter registration will not have the effect of retrogressing (i.e. setting back) minority voting strength. MALDEF is convinced that the elimination of the postage paid mail option for registration, combined with the requirement that voter registration applicants expend significant time and resources to provide documentary proof of citizenship, will decrease Latino voter registration and thereby retrogress Latino minority political strength in the State.

The oath of citizenship, which is currently required in Texas, has been used uniformly in the State and nationwide to satisfy the citizenship requirement in voter
registration programs. In fact, the Federal Election Commission, in creating rules to implement the National Voter Registration Act, decided not to require information regarding naturalization in part because “[t]he issue of U.S. citizenship is addressed within the oath required by the Act and signed by the applicant under penalty of perjury.” 59 Fed. Reg. 32,316 (Para. D, Information Regarding Naturalization). Because providing materially false information in the voter registration process is a felony, e.g., 42 U.S.C. Section 1973gg-10, these oaths are taken seriously and given significant weight. MALDEF is unaware of any documented cases of intentional non-citizen voting in Texas or any pressing need to burden and restrict voter registration in the manner proposed by HB 516.

Based on our analysis, MALDEF has concluded that HB 516 will depress Latino registration, run afoul of federal voting laws and create impermissible retrogression in violation of § 5 of the Voting Rights Act. Madam Chairwoman and committee members, we urge you not to support this bill.
MALDEF (Mexican American Legal Defense and Educational Fund) is the leading Latino civil rights organization in the United States. For 37 years we have been in the forefront defending the civil rights of Latinos in the areas of employment, education, immigrant rights, political access, public resource equity, and access to justice.

Political access has been an important issue for our organization. We recognize the historical significance of voting, especially for people of color, and guaranteeing all citizens the right to vote without any encumbrances or obstacles. We are dedicated to working with federal, state, and local election officials to ensure our electoral process is transparent, efficient, and effectively monitored. As well, we support the enforcement of existing federal and state laws to instill voter confidence within all Americans so that the integrity of our democracy is never questioned or found wanting.

Unfortunately, House Bill 244 (HB 244), introduced by State Representative Sue Burmeister (GA-119th), will disenfranchise tens of thousand of Georgians. Further, it violates the spirit of the HAVA (Help America Vote Act) and potentially violates key provisions of VRA (Voting Rights Act).

For these reasons, MALDEF opposes HB 244 and requests all members of the Senate State and Local Governmental Operations Committee to vote against its passage.

If passed, HB 234 would require: (1) all registered voters to present photographic identification prior to being allowed to vote; (2) Limit what documents are considered valid forms of identification in order to vote in person or by mail; (3) Disallow Georgians from using 11 other types of identification currently accepted by the state.

---

1 Delivered by Joel Alvarado, Policy Analyst, Atlanta Regional Office.
Specifically, Code Section 57 would amend Code Section 21-2-417 (a) requiring all voters to only present, prior to completion of a voter’s certificate and prior to being allowed to enter a polling place, the following documents:

1. Valid Georgia driver’s license

2. An identification card issued by a branch, department, agency, or entity of the State of Georgia, any other state, or the United States authorized by law to issue personal identification, provided that such identification card contains a photograph of the elector

3. A United States passport

4. An employee identification card containing a photograph of the elector and issued by any branch department, agency, or entity of the United States government, this state, or any county, municipality, board, authority, or other entity of this state

5. A valid student identification card containing a photograph of the elector from any public or private college, university, or postgraduate technical or professional school located within the state of Georgia

6. A United States military identification card

**HB 244 will negatively impact minorities, the poor, elderly, and disabled**

MALDEF has spoke out against legislation similar to HB 244, both before Congress and in various state legislatures. Our reason for opposition is simple, “these programs are invariably presented as good government measures necessary to prevent voter fraud, but far too often they are actually designed to suppress minority voting.”

Currently the state allows voters to use 17 documents for the purpose of voter verification, including employee identification cards, student identification cards, gun licenses, social security cards, and other documents. The acceptance of all these

---

3 GA Code 21-2-417 lists the following documents as proper identification (valid Georgia driver’s license; valid identification card issued by a branch, department, agency, or entity of the State of Georgia, any other state, or the United States authorized by law to issue personal identification; a valid United States passport; a valid employee identification card containing a photograph of the elector and issued by any branch, department, agency, or entity of the United States government, this state or any county, municipality, board, authority, or other entity of this state; a valid student identification card containing a photograph of the elector from any public or private college, university, or postgraduate technical or professional school located within the State of Georgia; a valid Georgia license to carry a pistol or revolver; a valid pilot’s license issued by the Federal Aviation Administration or other authorized agency of the United States; a valid United States military identification card; A certified copy of the elector’s birth certificate; a valid social security card; certified naturalization documentation; a certified copy of court records showing adoption, name, or sex change; a current utility bill, or of legible copy thereof, showing the name and
documents allows the majority of Georgians to vote without any difficulty. **HB 244 would make voting more difficult for Georgians and place an unreasonable burden on many of our citizens.** Based on 2003 Census data, 137,476 households do not have telephone service, 1,517,990 do not have utility gas, and 1,193,804 do not have electricity.\(^4\) 13% of Georgians 65 and older live below poverty.\(^5\) 13% of the entire population lives below poverty, 10% below $10,000, 5.9% between $10,000 and $14,999, and 12% between $15,000 and $24,999.\(^6\) To smugly contend, as Atlanta attorney Frank Strickland, member of the Fulton County Board of Registration and Elections, did “that photo IDs are required to rent movies or to “cash welfare check” is politically irresponsible and not reflective of the economic realities confronting many Georgians.\(^7\) It costs $15 dollars to purchase a Georgia driver’s license.\(^8\) A United States passport would cost $97 for citizens 16 years of age or older.\(^9\) To require eligible voters to purchase photographic identification is nothing more than a poll tax, a violation of Section 1, Article XXIV, of the United States Constitution which states “the rights of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.”\(^10\)

Echoing our concerns, a report entitled, “Election Reform Briefing: Voter Identification,” contends that requiring “voter ID is the equivalent of a modern poll tax: a barrier to voting placed squarely in front of those who would be intimidated the most—elderly voters, voters who do not speak English, and the poor, many of whom have no reason in everyday life to possess the identification others use so routinely.”\(^11\) The report further notes that, “there is some evidence that voters—and especially low-income, elderly, and minority voters—do not have certain forms of identification and will be denied the


\(^8\) Information available at \url{http://www.dmvs.ga.gov/drivers/generalIDInfo.asp} (accessed on 18 March 2005).


\(^10\) U.S. Const. art. XXIV § 1.

opportunity to vote if it is required." As well, in 1997, the Federal Election
Commission, in a report to Congress, stated that "obtaining a photo ID entails major
expense, and requiring it at the polls imposes an undue and potentially discriminatory
burden on citizens exercising their right to vote."

Beyond the aforementioned burden this bill would cause, the elderly and the disabled
would be forced to purchase photo identification at the various Department of Motor
Vehicle Safety (DMVS) license centers throughout the state although they possess
physical limitations, causing limited mobility, thus making it extremely difficult to
comply with HB 244.

**HB 244 does not improve or further protect our electoral process**

HB 244, and legislation similar to it, was introduced because of the perceived notion
"that registration rolls are vulnerable to fraud." But, as Chris Riggall, spokesman for
Secretary of State Cathy Cox states, "out of hundreds of election fraud matters before the
Election Board in the last nine years, we can't recall a single one that involved a person
falsely identifying themselves as another registered voter." To date, there has not been
any record of widespread incidences of voter fraud or widespread registration of
ineligible voters in the state.

If the Georgia legislature is serious about preventing voter fraud it should provide
additional funding for the state voter registration database, purchase new technology to
better monitor changes (moving, deaths, felony convictions) within the electorate, and
ensure all eligible voters have the time and means to vote. Indeed, "some election
officials point out . . . fraudulent voters can be identified through other means such as
statewide voter registration databases, confirmation mailings to new registrants, and
matching lists to other state files, making the identification requirement an unnecessary
barrier." More so, "states can reduce the potential for fraud by integrating and
computerizing state voter registration records, as mandated by . . . the Help America Vote
Act. These same reforms also reduce problems at the polls and make registration and
evoting easier."

---

12 Ibid.

15 Nancy Badertscher and Carlos Campos, “Lawsuits likely over vote ID bill,” Atlanta Journal
16 "Election Reform Briefing,” 8.
17 "Securing the Vote: An Analysis of Election Fraud,” 11.
SB 84 could possibly violate Section 2 and Section 5 of the Voting Rights Act and the Help America Vote Act

Voting Rights Act
Consistent with the primacy of the right to vote, the federal government enacted the Voting Rights Act of 1965. Pub. L. No. 89-110, 79 Stat. 437 (codified as amended at 42 U.S.C. §§ 1971, 1973 to 1973bb-1). The Voting Rights Act contains two sections relevant to this case: Section 2 and Section 5. Section 2 applies to all political jurisdictions in the United States and prohibits any state or political subdivision from imposing a "voting qualification or prerequisite to voting or standard, practice or procedure . . . in a manner which results in the denial or abridgement of the right to vote on account of race or color."18

Section 5 of the Voting Rights Act applies only to certain jurisdictions that have historically excluded minority groups from voting. A jurisdiction covered by Section 5 must "preclear" any changes in its electoral laws, including redistricting plans, with the U.S. Department of Justice or the U.S. District Court for the District of Columbia.19

The state of Georgia, to implement HB 244, must first obtain federal preclearance since it is a covered jurisdiction under Section 5. One can argue that the proposed legislation violates both Section 2 and Section 5 of VRA.

- **Disenfranchises Poor Minorities**: Requiring voters to present only photographic identification to vote can possibly disenfranchise many minorities, some of who are poor and do not possess, or can not afford, what is required in this legislation.

- **Undermines Minority Voter Registration Drives**: HB 244 can undermine the ability of nonpartisan organizations to continue their voter registration campaigns within minority communities by limiting what documents can be accepted as valid identification for the purpose of registration. Such voter registration drives are vital to minority communities because it fills the "vacuum in the state's voter registration policies; that is, how many have been left behind by more passive state and county voter registration programs."20

- **Limits the Ability of Minorities to Register by Mail**: HB 244 would severely reduce the forms of identification allowed for voter registration by mail.

---

Help America Vote Act
Section 303 (b)(2)(A)(i & ii) of HAVA states:

An individual meets the requirements of this paragraph if the individual—
(i) in the case of an individual who votes in person—
(I) presents to the appropriate State or local election official a current and valid photo identification; or
(II) presents to the appropriate State or local election official a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter; or
(ii) in the case of an individual who votes by mail, submits with the ballot—
(I) a copy of a current and valid photo identification; or
(II) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.21

HAVA only requires first time voters and individuals who vote by mail to submit specific documentation to verify identification, including valid photo identification. The identification requirement within HB 244 goes beyond, and is far stricter, than what HAVA requires. The assumption is that registered voters have been properly investigated and verified by the state voter registration database and other measures required by federal law. For this reason, HB 244 might find itself in violation of existing federal law.

Further, Georgia is one of 11 states requiring voters to provide some form of identification prior to entering a polling place.22 Passage of HB 244 would place the state in more exclusive company where only “Louisiana and Florida specify photo ID.”23 Why is Georgia more of a threat for voter fraud than California, Michigan, New Mexico, or Maryland?

21 Help America Vote Act (Public Law 107-252), Title III, Sec. 303(b)(2)(A)(i & ii).
22 “Election Reform Briefing,” 10.
23 Ibid, 5.
Conclusion

House Bill 244, introduced by State Representative Sue Burmeister (GA-119th), will disenfranchise tens of thousand of Georgians, will neither improve nor further protect our electoral process, and stands to potentially violate key federal statutes, namely the Voting Rights Act (VRA) (42 U.S.C. § 1973) and the Help America Vote Act (HAVA) (42 U.S.C. § 15483).

For these reasons, MALDEF is opposed to HB 244 and requests all members of the Elections Subcommittee for the House Government Affairs Committee to vote against its passage.
Testimony of the Mexican American Legal Defense and Education Fund (MALDEF) on Voter Identification Senate Bill 42

March 22, 2005

Chairman Reynolds and Members of the Senate Committee on Labor and Election Process Reform, I am Maria Valdez, Regional Counsel of the Mexican American Legal Defense and Educational Fund (MALDEF), a non-partisan national legal organization dedicated to promoting and protecting the civil rights, including the voting rights, of the over 40 million Latinos residing in the United States.

I am here today to advise you of MALDEF’s opposition to SB 42. MALDEF opposes this bill because it removes the accessibility of voters to be allowed to vote and is not based on any substantial evidence of widespread voter fraud by persons who vote in person after presenting a voter registration certificate.

Under current law, previously registered Wisconsin residents may vote by providing their names and addresses to poll workers. They may also register on election day by presenting proof of residence. Voters can currently identify themselves with a copy of a current utility bill, lease, bank statement, paycheck stub, or government document that shows the current name and address of the voter.

The proposed bill eliminates the ability to be accepted for voting by using the forms of identification noted above. The only adequate form of identification under the proposed bill is a state issued driver’s license or identification card.

Delivered by Maria Valdez, Chicago Regional Counsel.

Celebrating Our 36th Anniversary
Protecting and Promoting Latino Civil Rights
www.maldef.org
MALDEF is unaware of any reports of widespread fraudulent voting by persons who appear to vote in person at the polls and present only the voter registration certificate. For this reason, the bill is an unnecessary burden to voters. In addition, because the bill eliminates several alternative forms of residency and identification, the bill will inevitably prevent some voters from casting a ballot on election day.

A number of voters only have the currently acceptable other form of identification and proof of residency when they go to vote. These voters include: elderly voters who no longer drive, non-drivers who live in urban areas, and students who get by with their school identification card. By and large, the impact of this bill’s state issued identification requirement will fall on the physically disabled, the elderly, and the poor. While many people cannot understand why a person would not have a driver’s license or a state issued identification card, it is not that unusual in communities that are comprised of undereducated, poor or physically limited.

The bill before the committee today would force these voters to take additional steps to acquire an acceptable form of identification or exclude these voters from voting altogether. In addition, because the bill would create longer lines at the polls and force some voters to return home for more documentation and then present themselves for voting a second time, the bill will discourage voters from exercising the franchise.

The bill also creates the likelihood that election officials will refuse to accept voters whose photo identifications list an address that does not match their address on the voter rolls. For example, a voter who changes addresses before his drivers’ license expires will have an address on that license that differs from the address in the voter rolls.
If you want a license that reflects your new address, you have to pay additional funds. This fee is not addressed by the voter ID bill presented in today’s hearing. The bill before the Committee today, because it is unclear about what to do when a voter’s photo identification lists a different address from that on the voter rolls, introduce the possibility that voters will be turned away, or offered only provisional ballots, when this situation arises at the polls.

Perhaps most importantly, the bill contradicts the provisions of the Help America Vote Act (HAVA). Wisconsin has accepted millions of dollars in HAVA funds to modernize its elections system and now must comply with HAVA’s requirements. One important provision of HAVA is the requirement that voters who register by mail for the first time, and have not attached a copy of their identification, must show identification when they present themselves to vote for the first time. HAVA sets out the forms of identification that satisfy this requirement. Acceptable identification under HAVA is either a current and valid photo identification, OR, one of the following: a copy of a current utility bill, bank statement, government check, pay check, or government document that shows the name and address of the voter.

Contrary to HAVA, the bill before the Committee today would require a specific form of identification not mandated by HAVA. Because Wisconsin may not require more proof of identification than HAVA for first time voters who registered by mail, Wisconsin will have to run two different systems to accept voters at the polls or place itself in violation of HAVA and risk potential litigation as a result.
Additionally, HAVA requires Wisconsin to create a statewide computerized voter registration list by January 1, 2006. This list will offer a single, uniform official voter registration system that will allow election officials to verify voter eligibility and residency, going a long way toward helping keep better track of voters. Before this legislature resorts to placing this substantial barrier to voter participation, a far better solution would be to let the HAVA provisions work in the way they were meant to – by providing a statewide voter registration database that would be maintained, monitored and accessed to provide information to election officials in an effective manner.

The cost estimates of implementing this bill exceed 1 million dollars annually. There have been some suggestions that the cost could be paid from the HAVA funds. The stated purposes of HAVA was not to restrict access to the polls, but rather to expand the voting franchise through mail-in registration while safeguarding it through a statewide database and an effective voting system that does not result in disparities of access. A better use of the HAVA funds, and of state monies, is to create an effective statewide voter registration database accessible by election officials throughout the state and focus on training poll workers and educating the public on their voting rights and responsibilities.

The result of the legislation might decrease voter turnout, create undue problems for voters and possibly result in the elimination of many votes from minorities and the poor who may not currently have an ID card. The fundamental right of every American is the right to cast a ballot of their choice. Every time we place a restriction on this right we are undermining this right. Requiring voters to present specific type of proof of
identity before voting will not necessarily deter voter fraud. Complaints about voter fraud are frequent, but very few documented cases of fraud on the part of voters exist in Wisconsin. In addition to the potential HAVA violations contemplated by this bill, we are also very concerned that requiring voter ID raises a potential violation of the federal Voting Rights Act because the requirement of state issued photo ID can cause a disparate impact on ethnic and racial minorities.

It is disheartening to see such a restrictive governmental response to an unproven “problem” of potential voter fraud. A good government seeks to limit the barriers to voting – and doesn’t require more bureaucracy than it needs to carry out its functions. The bill before the Committee today places more requirements on voters, particularly disabled, elderly and the poor and lacks justification in any sufficient evidence of fraud by voters. For these reasons, MALDEF opposes this bill and if it passes, will actively monitor the potential legal issues raised by this legislation.