



April 13, 2023

Governor Eric Holcomb
200 W. Washington St.
Indianapolis, IN 46204

VIA EMAIL: govholcomb@gov.in.gov; tness1@gov.in.gov

Re: Opposition to House Bill 1334 Restrictions on Voting by Mail

Dear Governor Holcomb,

The undersigned non-partisan organizations who work to protect voting rights and increase civic participation oppose the unfair and unlawful restrictions on voting by mail in Indiana House Bill 1334. We are writing to respectfully request that you veto the bill.

As we set forth in written testimony submitted to the House Elections and Apportionment Committee on March 19, 2023, HB 1334 functionally requires additional fields of identification in absentee ballot applications, an already limited and exclusionary process, and will lead to a person not receiving their absentee ballot if the voter does not take the specified extra steps. Such an absentee voting system would violate federal legal protections and would increase disenfranchisement of marginalized communities, including seniors, students, voters of color, voters with disabilities, members of the military, and people in pretrial detention.

The non-partisan voting rights work conducted by our organizations puts us in a unique position to understand barriers to access from the point of view of the voter. Chicago Lawyers' Committee, Common Cause Indiana, and the Indiana State Conference of the NAACP are proud to have collaborated on litigation challenging Indiana laws that undermine the fundamental right to vote.

HB 1334 would violate the Civil Rights Act of 1964, 52 U.S.C. § 10101(a)(2)(B), which prohibits the rejection of applications, ballots, and any other forms prerequisite to voting because of an error or omission of information that is not material to determining a voter's eligibility. The bill would also violate the United States Constitution, which prohibits voting restrictions that place unjustified burdens on the fundamental right to vote.

Let us be clear: HB 1334 would violate federal civil rights protections that were historically enacted to stop suppression of Black voters. Given the dark history of disenfranchisement in our country and our state, Indiana government leaders should exercise caution in restricting voter



access. Hoosiers deserve better than for Indiana to become the next example of unfair and unnecessary voter suppression.

Proponents of HB 1334 have failed to provide concrete facts to support a legitimate election administration or election security justification for creating additional, onerous absentee ballot application requirements. It is understandable that Hoosiers have questions about the integrity and security of our elections, and they deserve accurate answers. The small number of voter fraud convictions in the past decade indicate that it is exceedingly rare. IndyStar's comprehensive 2020 story¹ is one of the few empirical resources on voter fraud in Indiana. According to that report, voter fraud is rare both nationally and in Indiana. When questioned for the report, the Indiana Secretary of State's office stated that they do not track voter fraud cases, and the Indiana Attorney General's office directed reporters to the Secretary of State's office. The Secretary of State's office stated clearly that Indiana's elections are safe and secure, including absentee-by-mail voting.

Thank you for considering our request to veto HB 1334. For your reference, we also enclose here testimony that we submitted to the Indiana Senate Elections Committee on March 19, 2023.

Sincerely,

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¹ <https://www.indystar.com/story/news/politics/elections/2020/10/06/voter-fraud-indiana-cases-show-rarity-voter-fraud/3586956001>



**TESTIMONY BY CHICAGO LAWYERS' COMMITTEE FOR CIVIL RIGHTS,
COMMON CAUSE INDIANA, INDIANA STATE CONFERENCE OF THE NATIONAL
ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE (NAACP), AND
NATIONAL ASIAN PACIFIC AMERICAN WOMEN'S FORUM - INDIANA
BEFORE THE INDIANA SENATE ELECTIONS COMMITTEE
IN OPPOSITION TO HOUSE BILL 1334
MARCH 19, 2023**

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I. Introduction

Our non-partisan organizations submit this testimony today in opposition to Indiana House Bill 1334 (HB 1334). The right to vote is fundamental to a healthy democracy. Chicago Lawyers' Committee for Civil Rights is a non-profit, non-partisan organization that has been working for the past 50 years to advance racial equity and economic opportunity for all. Common Cause Indiana is a non-partisan organization that works to promote open, ethical, and accountable government for every Hoosier. The Indiana State Conference of the NAACP is a civil rights organization advocating for educational equity, employment fairness, environmental justice, and protecting the right to vote. The Indiana Chapter of the National Asian Pacific American Women's Forum (NAPAWF) is an organization that builds power with AAPI women and girls in Indiana to influence critical decisions that affect our lives, our families and our communities.



HB 1334 functionally requires additional fields of identification in absentee ballot applications, an already limited and exclusionary process, and will lead to a person not receiving their absentee ballot if the voter does not take the specified extra steps. Such an absentee voting system would violate federal legal protections and would increase disenfranchisement of marginalized communities, including seniors, students, voters of color, voters with disabilities, members of the military, and people in pretrial detention. Proponents of HB 1334 have failed to provide concrete facts to support a legitimate election administration or election security justification for creating additional, onerous absentee ballot application requirements.

The non-partisan voting rights work conducted by our organizations puts us in a unique position to understand barriers to access from the point of view of the voter. Several of our organizations assist voters through Election Protection, the nation's largest and oldest non-partisan voter protection program, which operates the 866-OUR-VOTE hotline and supports companion lines at 888-VE-Y-VOTA, 888-API-VOTE, and 844-YALLA-US. Hoosiers called Election Protection in record breaking numbers during recent elections, with many of them reporting unfair barriers to registering and voting. Chicago Lawyers' Committee, Common Cause Indiana, and the Indiana State Conference of the NAACP are proud to have collaborated on litigation challenging Indiana state laws that undermine the fundamental right to vote.

II. HB 1334 would impose unlawful and unjustified burdens on Indiana absentee voters.

HB 1334 would violate the Civil Rights Act of 1964, 52 U.S.C. § 10101(a)(2)(B), which prohibits the rejection of applications, ballots, and any other forms prerequisite to voting because of an error or omission of information that is not material to determining a voter's eligibility. Indiana Code § 3-7-13-1 sets the criteria for eligibility to register to vote, and Indiana Code § 3-11-10-24 sets the criteria for eligibility to vote by mail: neither provision requires a voter to possess and be able correctly recite their Indiana driver's license number, state identification number, or voter registration number, as well the last four digits of their Social Security number.¹ Further, where the other information provided on the application is itself sufficient for election officials to determine the voter's eligibility, error or omission of additional information is immaterial because it does nothing to aid in the election official's determination. *See, e.g., Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1308-09 (N.D. Ga. 2018) (prohibiting rejection of absentee ballots because of the voter's error or omission of their birth year in part on the basis that election officials could readily determine the voter's eligibility using other information provided on the ballot envelope).

HB 1334 would also violate the United States Constitution, which prohibits voting restrictions that place unjustified burdens on the fundamental right to vote. HB 1334 will cause voters who apply to vote by absentee ballot to not receive a ballot for reasons that are unrelated to voter eligibility and that a voter might not even be able to anticipate. For example, if the voter provided their state identification number when originally registering to vote but provides their driver's license number

¹ Ind. Code § 3-7-13-13 explicitly recognizes that federal law prohibits states from conditioning eligibility for voter registration on possession of a driver's license or Social Security number. *See id.* (citing 52 U.S.C. § 21083).



and social security number on their ballot application, that application will be rejected despite no fault of the voter. And, if the voter did not provide either their social security number *or* driver's license number to their election jurisdiction when registering to vote,² neither number will be found in their record and their application will be rejected. HB 1334 makes no attempt to account for voters who registered in another legally permissible manner, for example by providing proof of residency through a utility bill, paycheck, or government document. Instead, HB 1334 disqualifies these eligible, registered voters from absentee voting.

HB 1334 would violate federal civil rights protections that were historically enacted to stop suppression of Black voters. Indiana government leaders should help community members come together, rather than dividing us further. Hoosiers deserve better than for Indiana to become the next example of unfair and unnecessary disenfranchisement.

III. HB 1334 would disenfranchise seniors, students, voters with disabilities, voters of color, members of the military, voters in pretrial detention, and other Hoosier voters who already face barriers to voting.

Indiana should be encouraging its citizens to vote. Instead, HB 1334 would take Indiana backward, creating additional and unnecessary hurdles for voters and election officials alike.

Indiana's absentee voting system is already exclusionary, with voters being eligible to vote by mail only if they present a specific type of eligibility criteria, such as voters with disabilities, homebound voters, voters who are 65 years or older, voters confined to a residence or health care facility because of illness or injury, voters who lack transportation to the polls, voters scheduled to work or who will be outside the county during the entire time the polls are open, and active duty members of the military. Indiana's absentee voting system is also quite limited in other ways, including extremely limited drop-off and dropbox options, as well as an unduly early absentee ballot receipt deadline.

Non-partisan civic organizations that engage voters have expressed that adding confusing requirements to the absentee ballot process would cause disproportionate harm to senior voters, first-time voters, voters who are homebound or confined, and citizens for whom English is a second language. Disenfranchising these citizens through HB 1334 would erode their trust in the Indiana government.

² See Ind. Code § 3-7-13-13; 52 U.S.C. §§ 21083; 20505(a) (requiring states to accept and use the federally-prescribed voter registration application form for federal elections). See also *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 12 (2013) (“No matter what procedural hurdles a State’s own form imposes, the Federal Form guarantees that a simple means of registering to vote in federal elections will be available.”).



A. Many absentee voters will not be able to track down the required ID numbers.

Most community members who use absentee voting in Indiana are aged 65 or above or have disabilities. The same circumstances that caused these voters to need absentee voting access in the first place will make it more difficult for them to successfully apply to vote by mail under HB 1334. It is an affront to these voters to require them to track down details about their original voter registration to ensure that their absentee ballot application contains matching data.

Requiring additional identification fields in absentee ballot applications will impose undue burdens particularly on voters of color, as well as seniors and low-wealth voters of all racial and political backgrounds. Through its new restrictions, HB 1334 creates hurdles that impair, if not preclude, these voters from using Indiana's absentee voting program. Many of these voters may find themselves unable to cast a ballot at all.

B. Even for voters who do try to list the ID numbers required by HB 1334, they might still get blocked from voting by mail.

Even for voters who do list one of the ID numbers required by HB 1334, they could then be disqualified from voting absentee if they list different identification data on an absentee ballot application compared to what they listed during voter registration. As stated above, if the voter provided their state identification number when originally registering to vote but provides their driver's license number and social security number on their ballot application, that voter will not receive a ballot despite no fault of the voter.

C. The option to provide a photocopied ID will be impossible or impractical for many.

The option to provide a photocopied ID, which is apparently a backup plan for voters who do not want to or are not able to provide the required ID numbers set forth in the bill, will be impractical for many marginalized voters. Printing a photocopy of an alternate form of ID is in itself burdensome – and is likely to be particularly burdensome for those most likely to not apply with one of the specified identification numbers (a state ID number, driver's license number, social security number, or voter registration number). Seniors, young voters, voters with disabilities, low-wealth voters, voters of color, and voters in pretrial detention will face burdens in trying to vote. The text of the bill itself states that "the application may be delayed" if the voter provides only a photocopied ID without one of the requested identification numbers. Such a delay coupled with Indiana's early absentee ballot receipt deadline will lead to disenfranchisement. This scheme will have a particular impact on voters of color and other voters who are vulnerable to being excluded from voting.



IV. Conclusion

Proponents of HB 1334 have failed to provide any concrete facts to support a legitimate election administration or election security justification for creating additional, onerous absentee ballot application requirements. On the contrary, the facts in Indiana and across the nation demonstrate that our elections are secure and that absentee voting in Indiana is secure. Given the danger caused by efforts to discredit American elections, this is a frightening time for the Indiana legislature to perpetuate false and inflammatory rhetoric about voter fraud.

The state of Indiana should not be telling our most vulnerable community members—individuals who have difficulty voting in person—that their options for voting by mail will be further curtailed because of unfounded fears about election security. Our organizations are deeply concerned about the unlawful and unjustified disenfranchisement that House Bill 1334 would cause. The Indiana Senate Elections Committee should reject this bill. Thank you for your consideration.