

4. VOTER IDENTIFICATION

BACKGROUND

Perhaps the most divisive and partisan issue in election administration, voter identification predates the Help America Vote Act and the 2000 election fiasco as a significant issue of concern in a number of states. The issue is a classic question of balance: many view requirements for polling place identification as necessary to ensure ballot security. Only those who are qualified to vote can cast ballots, and those who would commit fraud would be thwarted by requirements to prove their identity beyond stating their names or signing a poll book.

Others, conversely, often refer to voter identification rules as a “solution in search of a problem.” They argue it is an unnecessary burden that does not prevent fraud, in that most fraud does not occur at the polling place; it potentially intimidates certain segments of the population from going to the polls; and it may disenfranchise those groups less likely to have required verification: the elderly, the poor, and language or ethnic minorities.³²

In 2002, Congress tried to craft a compromise: Title III, section 303 of the Help America Vote Act mandates that only those voters who register for the first time in a jurisdiction through the mail—and who fail to include a copy of their license, copy of a utility bill, bank statement, government check, or other government document that shows a voter’s name and address, or to provide their driver’s license number or the last four digits of their Social Security number—present identification at a polling place the first time they vote. If they fail to do so, they are entitled to a provisional ballot, which should be counted if the voter is later determined eligible under state law.

In 2000, eleven states required voters to show some verification of their identity before voting. Four states allowed poll workers the option of demanding voter identification or allowed localities to establish their own rules. Nine states required a signature match, while eighteen required a voter's signature in a poll book. In nine states, voters were asked to state their names.³³

In thirty-three states and the District of Columbia, HAVA's rules represented the first time any voters were required to show identification. The passage of HAVA, however, as well as the post-2000-election flurry of legislation around the country, led to a marked increase in the number of states requiring all voters to show identification. Lawmakers in six states—Alabama, Colorado, Montana, North Dakota, South Dakota, and Tennessee—confronted with the necessity to update voter identification laws to make them HAVA compliant went further and enacted universal voter identification. (North Dakota, which enacted voter identification in 2003, does not require voter registration.) In 2004, lawmakers in thirteen more states debated similar voter identification bills.

At the time of this report, a total of twenty states have laws requiring all voters to show identification when voting. There are indications that the number of states requiring identification will continue to rise.

As in previous years, the debate in state legislatures regarding this issue has been partisan and sometimes racially divisive. For example, according to a recent report in the *Atlanta Journal-Constitution*,

Lingering anger over a vote to require picture IDs at the polls spilled over into a special Saturday session of the Georgia General Assembly centered on the symbolic repeal of the state's Jim Crow laws. African-American lawmakers, and some white ones, staged walkouts in the House and Senate on Friday night to protest proposed photo ID requirements that they likened to the poll taxes, literacy tests and other obstacles used to suppress black votes during segregation.³⁴

Senators Mitch McConnell (R.-Ky.) and Christopher “Kit” Bond (R.-Mo.) recently introduced federal legislation (S. 414) that would require all voters to show identification around the country. It would place the burden on states to provide identification to all voters free of charge, with money provided by federal grants.

In fact, while much of the emphasis on ballot security and fraud reduction has centered on proposals to introduce or change

requirements for polling place identification from voters, election officials in many states have said that the mail (that is, absentee ballots and early voting by mail) provides the best opportunity for those seeking to undermine the election process and commit fraud on a much larger scale. That is because the anonymity and privacy of the ballot—critical ingredients of the election system’s integrity—are most easily compromised when voters cast absentee ballots. For example, if absentee ballots are sent to a married couple, it would be possible for one spouse to vote the other spouse’s ballot and then have him or her sign the outside envelope. The potential for coercion—of spouses, children, or even parents—lurks in a way that it does not in the privacy of the voting booth. No-fault absentee voting also raises the possibility of vote-buying schemes. If someone tries to pay a voter to vote for a particular candidate, the offerer of the bribe cannot verify whether the voter has actually done so if the voting took place at a precinct, given the secrecy of the ballot. The same cannot be said for mail-in ballots.

By contrast, there is a good deal of anecdotal evidence suggesting polling place voter fraud is exceedingly rare.³⁵ As Georgia secretary of state Cathy Cox wrote in a letter to Governor Sonny Perdue opposing the state’s new identification bill,

One of the primary justifications given by the Legislature for the passage of the photo identification provisions of House Bill 244—the elimination of voter ID fraud at the polls—is an unfounded justification. I cannot recall one documented case of voter fraud during my tenure as Secretary of State or Assistant Secretary of State that specifically related to the impersonation of a registered voter at voting polls. Our state currently has several practices and procedures in existence to ensure that such cases of voter fraud would have been detected if they in fact occurred, and at the very least, we would have complaints of voters who were unable to vote because someone had previously represented himself or herself as such person on that respective Election Day.³⁶

RECOMMENDATIONS

- 4.1 We recommend that states not expand voter identification rules at this time—for example, by requiring all voters to show identification documentation at the polls—as there has been insufficient time for a thorough evaluation of all relevant information

and options relating to such rules. Instead, this report encourages policymakers and policy analysts to explore new approaches that might minimize the scope and extent of policy disagreement on the topic of voter identification and, optimistically, to defuse some of the intense controversy surrounding this topic.

- 4.2 Considerable empirical research is necessary to inform the ongoing policy discussion over voter identification. Fruitful avenues for such empirical research include the extent to which identification requirements impose burdens on voters and whether those burdens fall differentially on various subsets of the voting population, including the elderly and language, racial, or ethnic minorities. Likewise, empirical research would help illuminate the extent to which identification requirements contribute to the avoidance of fraud and/or other forms of voting irregularities. Furthermore, empirical research is necessary to address the question of whether identification requirements help or hinder the objective of reducing election-related litigation that tends to undermine the public's confidence in the validity of the election's results.
- 4.3 Careful consideration should be given to whether the obligation to provide documentation, particularly at the time of casting a ballot, has the effect of creating a barrier to the exercise of the franchise and, if so, the steps a state may adopt to avoid this barrier. For example, states that currently require voters to present photo identification when they vote should, with respect to indigent voters, make sure that such documentation is widely available at the state's expense, so that the identification requirement does not have the practical effect of serving as a kind of poll tax. (See Recommendation 4.8.)
- 4.4 In particular, given that HAVA's requirements regarding provisional voting and the creation of statewide computerized databases are novel developments in the field of election law and administration, it is necessary to explore the ways in which these two new developments will interact with the subject of voter identification. In what way does the availability of provisional voting, as an "insurance policy" for properly registered voters, protect the right to vote for those who go to their polling places

without particular identification documents that are required either by HAVA or state law? Conversely, in what way do more stringent polling place identification requirements exacerbate the need to rely on the safety net of provisional voting, thereby potentially leading to more postelection disputes and litigation over the qualification and counting of provisional ballots?

- 4.5 Similarly, what forms of identifying information and/or documentation are necessary to ensure the reasonable accuracy of statewide voter registration databases, both at the time new registrations are entered into the database and with respect to the ongoing maintenance of the names in the database? If and when appropriate standards and procedures are in place with respect to computerized statewide registration databases, is it possible—particularly with the use of technology in the form of electronic poll books or otherwise—for voters to “sign in” at their polling place on election day simply by verifying the information contained in the computerized statewide registration database?
- 4.6 Most important, whatever particular rules a state adopts regarding required identification at the time of registration and voting, states should devote special attention to making sure they are straightforward and unambiguous, so that both voters and poll workers easily understand exactly what rules apply.
- 4.7 In addition, given the special sensitivity of identification requirements, states should pay close attention to whether their rules, both as written and as implemented, are consistent with the basic principle of treating all voters equally. This point is important not just for the intrinsic democratic reason that all voters are entitled to equal treatment in the electoral process but because of the practical need to avoid potentially disruptive litigation under the Equal Protection Clause of the Fourteenth Amendment, as interpreted in *Bush v. Gore* and related precedents. In this regard, states should be wary of adopting identification requirements applicable to voting at polling places that do not apply as well to absentee or other forms of at-home or mail-in voting. States that require more stringent forms of identification when people vote at polling places than when they vote at home may be expected to have to justify this distinction in equal protection

litigation under the strict scrutiny standard and may be hard-pressed to do so.

- 4.8 States that now require every voter to show identification should provide valid identification free of charge to all voters. Moreover, making a free identification document available through the Department of Motor Vehicles is inadequate; such identification should be very easily obtained and available at many different times and locations, including evenings and weekends. Alternatively, states might mail voters an application that allows the voter to provide some piece of information that would verify his or her identity along with a picture, and to return it postage prepaid.

Many voters cannot meet the financial burden of obtaining a valid identification, particularly if they do not drive and therefore do not need to have the kind of verification required in some states. In addition, many cannot take time off during a workday to stand in line at the DMV to obtain a document necessary to exercise the right to vote.

- 4.9 In their antifraud efforts, states also should focus on absentee ballot fraud, which many states consider a far greater threat to election integrity than polling place fraud. Some states are already beginning to move in this direction.³⁷ Oregon employs a multilayered system in an effort to curtail fraud. First, the ballots cannot be forwarded. Second, the voter is required to sign an outer envelope, which is verified using a computer signature on record. Questioned ballots are put aside for investigation.³⁸ The state has recently added even greater security measures. First, beginning in 2002, the state required all counties to file a “ballot security plan.” Second, the state now requires that ballot drop boxes, which voters can use to save a stamp, must be marked as “official” (when set up by elections officials) or “unofficial” (when set up by others).