

Date of Hearing: April 26, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 985 (Travis Allen) – As Amended April 19, 2017

**SUBJECT:** Elections: voter identification.

**SUMMARY:** Requires a voter to provide specified identification in order to have his or her ballot counted. Specifically, **this bill:**

- 1) Requires a person desiring to vote at a polling place to present one of the following forms of identification to a member of the precinct board before receiving a ballot:
  - a) A valid California driver's license;
  - b) A valid California identification card;
  - c) Any other form of photographic identification issued by the state or its political subdivision;
  - d) A valid United States (U.S.) passport;
  - e) A valid tribal enrollment card containing a photograph of the voter;
  - f) A valid student identification card containing a photograph of the voter that is issued by an institution of higher education in the state;
  - g) A valid pupil identification card containing a photograph of the voter that is issued by a public or private school in the state; or,
  - h) A valid employee identification card containing a photograph of the voter that is issued by the voter's employer in the ordinary course of the employer's business.
- 2) Permits a voter who presents one of the forms of identification listed above that has been expired for less than one year to receive a ballot.
- 3) Requires a precinct board, if a voter is unable to present one of the forms of identification listed above, to furnish the voter with a provisional ballot in accordance with existing law. Requires a voter, if the voter is issued a provisional ballot, to present one of the forms of identification listed above to the elections official in order for the voter's provisional ballot to be counted.
- 4) Requires a voter, who does not have one of the forms of identification listed above, to be provided a free registered voter identification card that contains a photograph of the voter.
- 5) Requires a vote by mail (VBM) identification envelope to contain the following:

- a) The last four digits of the voter's California driver's license number or California identification card number, or, if the voter has neither, the last four digits of the voter's social security number (SSN);
  - b) A security flap or sleeve to conceal the voter's signature and identifying information during mailing; and,
  - c) A notice that the envelope contains an official ballot and is to be opened only by the canvassing board if the voter's signature and identifying information on the envelope are verified.
- 6) Requires an elections official, upon receipt of the VBM ballot, to verify that the numeric identifying information is consistent with the voter's state or federal records. Prohibits an identification envelope from being opened and the ballot from being counted if the numeric identifying information is not consistent.

**EXISTING LAW:**

- 1) Requires a voter who appears at the polling place to vote to announce his or her name and address to a precinct officer. Requires the precinct officer, upon finding the name in the roster of voters, to repeat the voter's name and address. Requires the voter to then write his or her name and residence address on a roster of voters, whereupon the voter is provided a ballot.
- 2) Permits a voter to vote a provisional ballot if his or her qualification or entitlement to vote cannot be immediately established upon examination of the roster of voters for the precinct or upon examination of the records on file with the county elections official.
- 3) Authorizes a member of the precinct board to challenge the ability of a person to vote on various grounds, including that the voter is not the person whose name appears on the index, is not a precinct resident, is not a U.S. citizen, has already voted on that day, or is not imprisoned or on parole for the conviction of a felony.
- 4) Provides that any person who votes more than once, attempts to vote more than once, or impersonates or attempts to impersonate a voter at an election is guilty of a crime punishable by imprisonment for 16 months or two or three years, or in county jail not exceeding one year.
- 5) Requires a voter who submits his or her voter registration form by mail and who has not previously voted to present one of a number of specified documents to establish identity before receiving a ballot. This requirement only applies the first time an individual votes after registering to vote.
- 6) Requires a VBM identification envelope to contain specified information, including the signature of the voter.

- 7) Requires an elections official, upon receipt of a VBM ballot, to compare the signature on the identification envelope with specified voter records. Prohibits a ballot from being counted if the elections official determines that the signatures do not compare.

**FISCAL EFFECT:** Unknown. State-mandated local program; contains reimbursement direction.

**COMMENTS:**

- 1) **Purpose of the Bill:** According to the author:

AB 985 will require a State-Issued ID to be presented upon check-in at a polling place, allowing the voter to cast their ballot or submit their absentee ballot. A simple and largely nonintrusive requirement for identification would prevent many opportunities for voter fraud and provide more confidence in the electoral process.

- 2) **Voter Fraud Allegations:** Despite recent allegations of voter fraud, many elections experts and studies have concluded there is no evidence of massive voter fraud occurring, particularly in California. In fact, many have proven that voter fraud is extremely rare and in-person voter fraud is so rare as to be almost non-existent. Moreover, voter fraud allegations on examination often turn out to be caused by clerical or typographical errors by the individual voter or elections officials, or by bad data matches.

Earlier this year the National Association of Secretaries of State, which represents 40 of the nation's chief state election officials, issued the following statement, "We are not aware of any evidence that supports the voter fraud claims made by President Trump, but we are open to learning more about the Administration's concerns. In the lead up to the November 2016 election, secretaries of state expressed their confidence in the systemic integrity of our election process as a bipartisan group, and they stand behind that statement today."

- 3) **Voter Fraud Prevention:** The author's statement contends that this measure will prevent voter fraud and provide more confidence in the electoral process, however, the author has not provided the committee with any evidence that voter fraud of the type that would be prevented by identification requirements at the polls and on VBM ballots is a problem in need of a solution.

California law already requires the elections officials to compare the signature on a VBM ballot envelope with the signature on that voter's affidavit of registration before the VBM ballot may be counted. If those signatures do not match, the ballot will not be counted. A person who casts a fraudulent VBM ballot at an election can be charged with a number of different felonies, any one of which is punishable by up to three years imprisonment. Given that a signature comparison is already done on every VBM ballot before the ballot is counted to protect against fraud, and given that casting a fraudulent VBM ballot is a felony, it seems unlikely that VBM ballot fraud is widespread.

In addition, a voter who wishes to vote at the polls on election day must have and confirm his or her name and address on the roster of voters. If a voter's name is not on the roster, that

person is allowed to vote a provisional ballot, which is later reviewed by the elections official to determine the person's right to vote, before being included in the official canvass. As such, the roster of voters plays a big role on election day to minimize the occurrence of fraud. Current law requires county elections officials to take several steps to ensure that the voter rolls are accurate, such as continuous review and maintenance of the rolls to remove obsolete, duplicative, and non-eligible names.

Other efforts required by law to reduce potential fraud include a voter fraud hotline maintained by the Secretary of State (SOS), the ability of a member of the precinct board to challenge any person attempting to vote at the polls if the voter's qualifications to vote are in question, and vigorous prosecutions by local law enforcement agencies working together with the SOS's office.

Furthermore, according to information provided by the SOS's Election Fraud Investigation Unit, over the course of 20 years, between 1994 and 2014, there were 7 convictions for fraudulent voting, 23 convictions for double voting, and 5 convictions for non-citizen voting. However, it is unclear whether these acts occurred while attempting to vote at the polls or if the violations occurred by a VBM voter. Given the small number of convictions in the past two decades, it is reasonable to believe that the current efforts to thwart voter fraud are working.

- 4) **Voters Who Lack ID:** A November 2006 survey by the Brennan Center for Justice found that 11% of United States citizens do not have government-issued photo identification. To the extent that this figure is reflective of the California electorate, it is possible that a significant number of Californians who are eligible and registered to vote do not have a form of identification that would meet the requirements of this bill. This same survey also demonstrated that certain groups – primarily poor, elderly, and minority citizens – are less likely to possess these forms of identification.

Although this bill requires a voter, who is unable to present one of the forms of identification required, to be provided a free registered voter identification card that contains a photograph of the voter, it does not provide any detail as to who provides the free identification and what is required of a voter in order to obtain a free identification card. A voter could encounter financial and logistical hardships if the voter is required to provide certain documentation in order to obtain the free identification card. For example, in order to be issued a California identification card, an individual must go to a Department of Motor Vehicle's office during business hours and provide, among other things, verification of birth date by submitting documents such as a certified copy from the state or local vital statistics office of the individual's birth certificate. Such documentation may be difficult to obtain and typically requires an additional fee.

- 5) **Will This Bill Disenfranchise Voters Due to Inadvertent Errors?** While it seems unlikely that this bill will provide any meaningful protection against fraud, it also seems likely that one consequence of this bill will be the invalidation of a number of legally cast ballots. For instance, if a voter transposed two of the digits from his or her driver's license number, identification card number, or SSN on their VBM identification envelope, his or her ballot would be rejected under the provisions of this bill even if the signature on the ballot was a

match to the signature on that voter's registration card. Similarly, to the extent that a person neglected to provide the last four digits of his or her driver's license number, identification card number, or SSN, or failed to provide that information due to fear of identity theft, this bill would require that the ballot be invalidated even if there was no question that the ballot was cast by the voter to whom it was issued.

- 6) **More Logistical Issues:** As mentioned above, this bill requires a poll worker to provide a voter with a provisional ballot if the voter is unable to present an acceptable form of identification. In order for the provisional ballot to be counted, this bill requires the voter to follow up and present an acceptable form of identification to the elections official. This bill, however, does not provide any timeframe for when the voter must follow up and present identification. If a voter is required to show proof of identify after election day they may need to travel to the elections official's office in order to do so. Again this could be burdensome and impose unnecessary costs on the voter to travel to the elections official's office.

Moreover, this bill requires a voter, who does not have one of the acceptable forms of identification, to be provided a free registered voter identification card that contains a photograph of the voter. Again, this bill does not provide any detail for this process. Who provides the free identification? When will the free identification be provided? Will the voter be able to vote in the current election or will the voter only be able to use the free identification card in future elections?

- 7) **Other States:** According to a 2017 report by the National Conference of State Legislatures, 34 states have laws requesting or requiring voters to show some form of identification at the polls (32 of which are in force this year). Eighteen states use other methods to verify the identity of voters, such as asking a voter to sign an affidavit asserting their eligibility to vote, comparing a voter's signature, or asking a voter to provide personal information, either verbally or in writing at the polls.

According to the report, those states who ask for identification can be categorized in two ways – states that ask for photo identification, such as a driver's license card, military or tribal identification, and states that accepts identification without a photo, such as a bank statement with the name and address. According to the report, using this categorization for laws that are in effect in 2017, there are 17 states that ask for photo identification and 16 states that accept non-photo identification.

The report also discusses the procedures for when a voter does not have identification and categorizes the states in two ways – non-strict and strict. Non-strict states are those in which some voters without acceptable identification have an option to cast a ballot that will be counted without further action on the part of the voter. For instance, a voter may sign an affidavit of identity or a poll worker may vouch for the voter. Moreover, in some non-strict states, a voter without identification is permitted to cast a provisional ballot. The report categorizes a strict state as those that require a voter who is unable to provide acceptable identification to vote a provisional ballot and also take additional steps after election day for it to be counted. For instance, a voter may be required to return to an election office within a few days after the election and present acceptable identification to have the provisional ballot

counted. However, if the voter does not come back to show identification, the provisional ballot is not counted.

8) **Arguments in Support:** In support, the Howard Jarvis Taxpayers Association writes:

[Howard Jarvis Taxpayers Association] believes the integrity of our voting system should be beyond reproach. The right to vote is a fundamental one offered to American citizens, and it should not be abused by those seeking to fraudulently profit, either financially or politically, from the results. Both of these scenarios are entirely plausible without the ability to show some form of identification before voting.

Current California law already requires individuals to show identification in many aspects of daily life including driving on our roads, or obtaining library cards. It is not unreasonable to expect people to show proof of identity in order to vote. Doing so would also help to curtail voting by illegal aliens, parolees, minors, and non-citizens.

9) **Arguments in Opposition:** In opposition, the American Civil Liberties Union of California writes:

Voter identification laws like AB 985 are a solution in search of a problem. There is no evidence that the type of fraud AB 985's photo identification requirement purports to address – voters who misrepresent their identity – is anything but an anomaly. A recent study found that since 2000, in a period of time where over one billion voters were cast, there were only 31 credible allegations of voter impersonation. These cases of in-person impersonation voter “fraud” are almost always the product of an election worker's or a voter's honest mistake, and that even these mistakes are extremely infrequent...

Not only are voter identification laws expensive and unnecessary, they unfairly depress voter participation. A 2014 study from the Government Accountability Office found that strict photo identification voting laws reduce election turnouts by two to three percentage points, which can translate into tens of thousands of votes lost in a single state. These laws also have a disproportionate impact on voters of color. A Caltech/MIT study found that minority voters are more frequently questioned about their identification than white voters. Several studies found that photo identification laws have a particularly depressive effect on turnout amongst racial minorities and vulnerable groups, which exacerbates the existing participation gap between voters of color and whites.

10) **Previous Legislations:** AB 1157 (Jones) of 2013 contained similar provisions to this bill. AB 1157 failed passage in this committee on a 2-4 vote.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Howard Jarvis Taxpayers Association

**Opposition**

American Civil Liberties Union of California

American Federation of State, County and Municipal Employees, AFL-CIO

Asian Americans Advancing Justice - California

California Common Cause

California Teachers Association

Community Action Fund of Planned Parenthood of Orange and San Bernardino Counties

League of Women Voters of California

National Association of Social Workers, California Chapter

Planned Parenthood Action Fund of the Pacific Southwest

Planned Parenthood Advocacy Project Los Angeles County

Planned Parenthood Advocates Pasadena and San Gabriel Valley

Planned Parenthood Affiliates of California

Planned Parenthood Central Coast Action Fund

Planned Parenthood Mar Monte

Planned Parenthood Northern California Action Fund

Secretary of State Alex Padilla

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