

Date of Hearing: August 29, 2012

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
SJR 29 (Yee) – As Amended: August 27, 2012

SENATE VOTE: 22-12

SUBJECT: Voting: disenfranchisement.

SUMMARY: Proclaims the Legislature's support for the investigation by the federal Department of Justice (DOJ) into whether state legislatures are discriminating against and suppressing the vote of minorities, senior citizens, young adults, or those with physical disabilities or limited economic means and denounces any law that disenfranchises society's most disadvantaged eligible voters. Specifically, this resolution:

- 1) Finds that with great enthusiasm and interest, more than five million new voters participated in the 2008 statewide general election.
- 2) Finds that many new voters in 2008 were minorities, which included African Americans, Asian Americans, and Latinos.
- 3) Finds that the voter participation gap between Caucasians and minorities fell in 2008 elections.
- 4) Finds that African Americans and Latinos registered to vote at nearly twice the rate of Caucasians in voter registration drives in 2008.
- 5) Finds that after 2008, more than 30 state legislatures introduced voter suppression laws that may disenfranchise an estimated five million voters from registering to vote or casting a ballot in the 2012 statewide general election.
- 6) Finds that prior to 2006, no state required an individual to show a government-issued photo identification to vote.
- 7) Finds that the most underserved and least powerful, which include the poor, the homeless, minorities, the disabled, and the elderly, are disproportionately affected by the requirement to show a state-issued identification card, due to the lack of financial means, time, or mobility.
- 8) Finds that voter registration drives are the single most effective means of registering minority voters.
- 9) Finds that eliminating same-day registration in some states, or shortening the period of time for in-person early voting in others, deters citizens from participating in democracy.
- 10) Finds that nearly all instances of alleged voter fraud are either clerical or typographical errors on the voter roll.

- 11) Finds that the act of fraudulently voting is a singularly inefficient and ineffective act, carrying the risk of five years in prison and a ten thousand dollar (\$10,000) fine for each offense.
- 12) Finds that many state legislators now argue voter fraud is rampant, leading 16 states to enact voter suppression laws in 2011 that require state-issued identification, restrict voter registration drives, or limit early voting by either mail or in person.
- 13) Proclaims that the State of California supports the investigation by the federal DOJ into whether state legislatures are discriminating against and suppressing the vote of minorities, senior citizens, young adults, or those with physical disabilities, or limited economic means and that the State of California denounces any law that disenfranchises society's most disadvantaged eligible voters.

EXISTING LAW:

- 1) Provides that the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous conditions of servitude.
- 2) 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.
- 3) Specifies that in order to be eligible to vote, an individual must be a United States citizen, a resident of California, not in prison or on parole for the conviction of a felony, not deemed mentally incompetent, and at least 18 years of age at the time of the next election.
- 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 in the state prison for 16 months or two or three years, or in county jail not exceeding one year.
- 5) 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 on parole for the conviction of a felony.

FISCAL EFFECT: Keyed non-fiscal by the Legislative Counsel.

COMMENTS:

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

Since the 2008 General Election, many state legislatures have enacted laws to make it more difficult to register for an upcoming election or access the ballot box on Election Day. These laws were enacted on the presumption that the integrity of our elections are in

jeopardy due to rampant voter fraud. Yet, only a handful of verified voter fraud cases have been documented, investigated, or prosecuted in the last decade. Without proof of the assertion, it should be concluded that election rules are being changed for other purposes.

When a lawmaker in Pennsylvania declares that their voter [identification] (ID) law will deliver the state to a presidential candidate, we are presented with proof that election laws are being changed for political gain. We must decide whether we will allow this modern form of voter discrimination to continue unchecked. Changes in election laws that benefit one group over another, or clearly limits one group over another, is unfair and undemocratic. This is why we should support Senate Joint Resolution 29 and send a clear message of our support for the Justice Department's investigation into whether state legislatures are discriminating against and suppressing the votes of minorities, senior citizens, young adults, or those with physical disabilities or limited economic means.

- 2) Voting Rights Act of 1965: The 15th Amendment to the United States Constitution provides, in part, that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous conditions of servitude." Additionally, the 15th Amendment authorizes Congress to enact legislation to enforce its provisions. The 15th Amendment was ratified in February 1870.

In 1965, Congress determined that state officials were failing to comply with the provisions of the 15th Amendment. Congressional hearings found that litigation to eliminate discriminatory practices was largely ineffective because state and local jurisdictions would institute new discriminatory practices to replace any such practices that were struck down in court. As a result, Congress passed and President Johnson signed the Voting Rights Act of 1965 (VRA). The VRA, among other provisions, prohibits any "voting qualification or prerequisite to voting or standard, practice, or procedure" from being imposed by any "State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color."

Section 2 of the VRA allows the Attorney General, as well as affected private citizens, to bring lawsuits in federal court to challenge practices that may violate the VRA. Section 5 of the VRA requires certain covered jurisdictions to receive approval for any changes to law and practices affecting voting from the United States DOJ or the United States District Court of the District of Columbia to ensure that the changes do not have the purpose or effect of "denying or abridging the right to vote on account of race or color." Sections 6 through 9 of the VRA allow federal employees to monitor elections to ensure compliance with the VRA. Section 203 of the Act requires certain jurisdictions with significant populations of voting-age citizens who belong to a language minority community to provide voting materials in languages other than English.

- 3) Pennsylvania Voter ID Law: As mentioned above, the Section 2 of the VRA allows the Attorney General and affected private citizens to bring lawsuits in federal court to challenge practices that may violate the VRA. In March of this year, Pennsylvania passed and the governor signed voter ID legislation, which requires a voter to show specified photo ID in order to vote. A voter without the acceptable photo ID may vote a provisional ballot, but the ballot will not be counted unless the voter returns and shows the acceptable photo ID to the

elections official. In May, the American Civil Liberties Union (ACLU) filed suit against the Pennsylvania's new photo ID law alleging that the state's photo ID law violates the Pennsylvania Constitution by depriving its citizens of their constitutional right to vote and asked the Court to issue an injunction blocking enforcement of the law before the upcoming November general election. In early August, a State judge denied the plaintiff's request to issue a preliminary injunction. The ACLU has appealed to the Pennsylvania State Supreme Court.

In July of this year, shortly after Pennsylvania's photo ID law was signed, the United States DOJ's Civil Rights Division launched a formal inquiry of Pennsylvania's compliance with Section 2 of the VRA and other federal voting rights laws. In a letter sent to the Pennsylvania's Secretary of the Commonwealth, the DOJ stated its intention to review Pennsylvania's law requiring voters to provide photographic proof of their identity as a prerequisite to vote and requested information on, among other things, the state's efforts to educate voters about the new law, a complete list of Pennsylvania's voter registration, drivers license and personal identification cards, documents and databases identifying registered voters who lack the acceptable proof of identification, and records supporting statements made by Pennsylvania's Governor and Secretary of the Commonwealth concerning eligible and ineligible voter statistics.

- 4) Voter ID Requirements in Other States: According to the Brennan Center for Justice's Voting Law Changes in 2012 report, in 2011 many state governments across the country enacted an array of new voter ID laws and other changes, including requiring voters to show government-issued photo identification, cutting the time period allowed for early voting, reducing voter registration opportunities, and eliminating same-day registration. Proponents of these laws argue that these laws help to prevent fraud, ease administrative burdens, save money, and protect election integrity. Others argue that these laws have made it more difficult for eligible citizens to vote and to ensure their votes are counted.

According to the National Conference of State Legislatures (NCSL), 30 states have laws in place that will require all voters to show ID at the polls this November. That number could rise to a total of 33 states as Mississippi, New Hampshire, and Wisconsin currently have no voter ID requirement in place, even though laws have been enacted in all three states. The Mississippi ID law was passed by a citizen initiative in November of 2011 and requires both implementing legislation and pre-clearance under Section 5 of the VRA before it can be implemented. New Hampshire's ID law also requires pre-clearance before their newly enacted voter ID law can take effect. Wisconsin's ID law, which passed by its Legislature in 2011, was in effect briefly in early 2012, but was declared unconstitutional by a state judge on March 12, 2012, and the state is barred from enforcing the law unless an appeal overturns the ruling.

The voter ID laws that have been enacted vary from state to state. According to the NCSL report, in some states, a voter cannot cast a valid ballot without first presenting ID and voters that are unable to show an ID at the polls are given provisional ballots. These ballots are not counted unless the voter returns showing the acceptable ID to the elections official. Other states require a voter's ID to show a photo of the voter and again, if a voter fails to show the proper photo ID, they are given a provisional ballot and must return with the acceptable photo ID to have their ballot counted. Other states with less strict photo ID laws, provide

voters without the proper photo ID other options for casting their ballot, such as signing an affidavit of identity or allowing a poll worker to vouch for them. Finally, there are some states that accept a wide range of IDs for voting purposes, some of which do not include a photo of the voter.

- 5) Voter Fraud in California: According to information provided by the Secretary of State's (SOS) Election Fraud Investigation Unit, from 1994 to 2010, there were 23 convictions for double voting, 6 convictions for fraudulent voting, and 4 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.

There are a variety of safeguards in place in California law, which due to small number of convictions in the past decade, it is reasonable to believe are working to thwart voter fraud. For example, existing law 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 in state prison. 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 is 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 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.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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