



Legislative Study Group

Texas House of Representatives

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Legislative Study Group

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LSG Recommendation on SB 362: **Unfavorable**

Policy Primer for Members: Voter Photo Identification

Members, as you are aware, the Senate passed and sent to the House a Voter Photo ID bill, SB362. For the past two legislative sessions, the Legislative Study Group (LSG) has labeled similar legislation as “Unfavorable” when it reached the House floor. For your reference, as this bill advances through the House, we have compiled a brief policy primer to outline the reasons the LSG continues to oppose such legislation. Please feel free to contact our office if we can provide any additional information or answer any questions, including providing links to the studies mentioned.

SB362 and Related House Bills

At this time, it’s not clear how the House will address Voter Photo ID. In addition to SB362, several House bills have been filed that address the issue. Although there are some differences in these Voter ID bills, all of them deny voters the right to vote by presenting only a legitimate voter registration card. Instead, a voter would have to present additional identification before she or he is accepted to cast a ballot in person at the polls. The proposed identification requirements include:

- a government issued photo ID, e.g., a driver’s license or state ID card;
- two other official forms of non-photo ID, such as a birth certificate, library card, utility bill, or concealed weapon permits – not items typically carried to the polls.
- ID requirements that apply only to voting in person at the polls;
- limiting voters who do not have the required identification to casting provisional ballot. However, neither Texas law nor SB362 provides a mechanism for a voters to subsequently prove their identity, so that provisional ballots would rarely, if ever, be counted. In 2006, Texas failed to count over 70% of the provisional ballots cast. Texas ranks in the bottom 10 states nationally in terms of counting provisional ballots.

www.american.edu/cdem/pdfs/Pre-Election%20Assessment%20-%20Final%20-%202010-13-08Revised.pdf

Voter Photo ID Proposals Lack Any Public Policy Justification

Voter ID proposals are typically justified by a great deal of rhetoric about a so-called voter fraud epidemic and political charges and countercharges. The LSG will work to provide members an accurate public policy assessment on this highly charged issue. Ultimately, legislators must ask the same question about this legislation that they ask with every bill: Is this bill necessary as a policy matter? What problem will it solve? Are there benefits that would outweigh likely negative repercussions?

Upon a careful examination of academic and nonpartisan research on Voter ID proposals and laws in other states, the LSG position is that Voter ID proponents have presented no evidence that a voter photo identification requirement would solve any problem or provide any public policy benefits that would merit an affirmative vote by any member of the House. To the contrary, it would erect numerous barriers for many Texans before they could exercise their fundamental right to vote.

Voter ID Proponents Rely on Exaggerated, Unsubstantiated Claims

Voter ID proponents claim that the bill will prevent a voter fraud epidemic. However, nonpartisan, academic, and government studies indicate that Photo ID would do nothing to prevent voter fraud.

- The only kind of voter fraud that a voter ID bill would address – “voter impersonation” at the polling place – is extremely rare and poses no systematic threat of fraud. In fact, most fraud cases involve isolated, local elections and have nothing to do with voter impersonation or the unproven claim that non-citizens are risking deportation by going to a polling place to vote.
- Voter ID proponents often suggest that hundreds or thousands of dead people and non-citizens are voting, but when examined by independent press or academic organizations, these claims have proven to be inaccurate conclusions based on faulty database matching and clerical errors made by election officials
- Many of the claims made about alleged Texas cases are also based on similar unsubstantiated allegations, as evidenced by the fact that a major “stop voter fraud” campaign started by the Attorney General in 2005 has resulted in only a handful of indictments and prosecutions of cases that actually involved an improperly cast ballot, and none of them involved voter impersonation.

Voter ID Laws Suppress Turnout Among Certain Groups

Nonpartisan and academic studies do indicate that Voter ID proposals threaten the most basic right in a democracy – the right to vote - a right that should never be compromised by partisan legislation or in reaction to unsubstantiated threats. These studies found that Voter ID laws suppress voter participation by seniors, renters, women, the poor, and people of color – those who would be less likely to possess a government-issued photo ID reflecting their current name and address.

- A study of the 2004 presidential election by scholars at Rutgers and Ohio State Universities for the bipartisan Federal Election Assistance Commission found that states with voter ID laws had an overall turnout reduction of 3%, a figure that reached 5.7% among African Americans and 10% among Hispanics.
- This turnout decrease occurred because the working poor and senior citizens are less likely to have a photo ID or the time, money or ability to get one. In 2006, a study by the nonpartisan Brennan Center at NYU Law School found that 25% of African Americans have no government-issued photo ID, nor do 18% of seniors 65 and over or 15% of those who earn less than \$35,000/year.
- Voter ID laws severely impact senior citizens. In Georgia, where a Voter ID law was passed, 33% of seniors over 75 do not have a valid driver's license. The Texas Conservative Coalition Research Institute states that 37% of Texas residents over the age of 80 do not have driver's licenses.
- Voter ID proponents have manufactured new “studies” that claim Voter ID laws in Georgia and Indiana caused a turnout increase in 2008 compared to 2004, neglecting the fact that those two states were targeted with substantial resources by Presidential campaigns for the first time in many years in a historic election year that generated extraordinary excitement and turnout. During the same election, voter turnout increased by 600,000 in Texas, where legislators defeated a Voter ID law the year before.

A “Free ID” Isn’t Free

For many of the Americans who do not have a government-issued photo ID, a “free ID” is not free and amounts to a poll tax. For these citizens, it takes time, money and transportation to obtain a “free ID” through a process that would force them to jump numerous bureaucratic hurdles to get the documents

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needed to get an ID from agencies that are often only accessible in certain communities and for limited hours.

Voter ID Requirements Increase Potential for Discrimination, Abuse, Confusion and Long Lines at the Polls

None of the Voter Photo ID bills explain how disputes over the validity of an ID card should be handled at the polling place. New Voter ID requirements would be enforced by thousands of \$7-an-hour poll workers, many of whom are poorly trained. Academic studies show that individual poll workers apply the law differently, which makes the application of a Voter ID law subject to inconsistency, discrimination, abuse and confusion.

- A 15-state study of elections in 2007 and the 2008 Super Tuesday Primary conducted by academics from CalTech, MIT, Harvard and the University of Utah, finds that African-American voters are 14% more likely to be asked for photo ID than whites – a consistent finding in all states, regardless of their ID requirements. Hispanics are 18% more likely than whites to be asked for photo ID, even in states with minimal HAVA requirements.
- The same study also shows a wide disparity in enforcement of Voter ID laws on a regional basis and between individual states, finding that “many voters may be facing *de facto* voter identification requirements that are contrary to state law — either being required to show one when it isn’t required, or being given a free pass when it is required.”

<http://web.mit.edu/cstewart/www/papers/performance.pdf>

- A study of the 2006 and 2008 elections by Stephen Ansolabehere of Harvard University finds considerable racial differences in the application of Voter ID laws. In the 2006 general election, 47% of white voters reported being asked to show photo ID at the polls, compared with 54% of Hispanics and 55% of African Americans. In the 2008 Super Tuesday primary states, 53% of whites were asked to show photo ID, compared with 58% of Hispanics and a staggering 73% of African Americans. These racial differences persist upon holding income, education, political party, age, region, state laws, and other factors constant.

Quoting Dr. Ansolabehere:

The data further show that poll workers do not administer this procedure fairly or without regard to race, which raises the important possibility that in practice voter identification procedures violate the Voting Rights Act.

- A CalTech/MIT study of New Mexico’s new Voter ID law found that Hispanic men are much more likely to be required to show ID than other voters, and concluded:

On some level discrimination at the polls is occurring, even if only in an unbalanced application of the voter identification law. If Hispanics, men or Hispanic men are cued into this subtle and quasi-legal form of discrimination, it may deter them from going to the polls, especially if they lack proper identification or are unclear about their voting rights.

http://vote.caltech.edu/drupal/files/working_paper/vtp_wp59.pdf

Voters Could Be Denied By Address Matches, Name Changes, Mobility and Appearance

According to the Secretary of State, in an opinion delivered in 2004 and repeated during Senate debate on SB362, some election workers would attempt - as some already do - to use information from discrepancies in address and name between photo ID and voter registration cards or rolls to deny an individual’s eligibility

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to vote. Such denials are baseless as voter residency cannot be determined by a photo ID. Women, the elderly, college students and those who have recently moved (especially more mobile lower income renters) are less likely to have additional ID that matches information on the voting rolls.

- Due to factors like name changes related to marriage and divorce, women are more likely to have a different name on a photo ID than the name on the voter list, and more than twice as likely not have a current photo ID.
- A Wisconsin study found that 97% of all students do not have their current address on their photo ID.
- Drivers holding licenses that do not show their current address, represent a substantial percentage of citizens who have driver's licenses. Americans have an annual mobility rate of 14%. Hispanics and Blacks have an annual mobility rate of 18%, while those with incomes below the poverty level are almost twice as likely to move (24%) as those with incomes above the poverty level (13%).
- Texas drivers renew their licenses every six years, and a good driver can keep the same photo for 12 years with one "automatic" renewal. After 11 or 12 years, a voter may not look like his or her picture on the photo ID. A poll worker may deny a legitimate voter the right to cast a regular ballot based on appearance.

The Cost of Photo ID

In 2007, the fiscal note on HB218, the Voter ID bill, was over \$600,000, a number that represented lost revenue due to a requirement for free ID's. The original SB362 fiscal note was zero, which neglected the enormous potential costs for essential voter education, training election workers on new ID requirements, providing free ID and expanding access to ID by opening more locations for longer hours. The fiscal note also failed to assess the cost of gathering data on the impact of new ID requirements, a requirement for pre-clearance under the Voting Rights Act, as well as the potential cost of legal challenges. According to Senate testimony presented by the former DOJ official who reviewed the Georgia Voter ID law, all these costs would be borne by the state. At this time, the only provision related to these costs has come from Senator Ogden, Chair of the Senate Finance Committee, who introduced a rider to the Appropriations bill that would allocate \$2 million for voter education.

The Carter-Baker Commission Myth

Senator Troy Fraser, the author of SB 362, stated on the Senate floor that his assessment of the need for enhanced voter identification requirements is based largely on his interpretation of the Carter-Baker Commission on Federal Elections, a bi-partisan initiative organized by the American University's Center for Democracy and Election Management (CDEM). Since the release of the Commission's findings in 2005, state legislatures across the country have superimposed its suggestions related to voter identification on preexisting partisan arguments.

However, in the days after the release of the Commission's report, President Carter and former Secretary Baker stated in an op-ed in the New York Times that their intent had been misconstrued and clarified that until we have universal registration, we cannot make having such an ID be a condition of voting. (Source: Jimmy Carter and James A. Baker III, "Voting Reform Is in the Cards," The New York Times, Sept. 23, 2005 (op-ed), www.nytimes.com/2005/09/23/opinion/23carter.html?pagewanted=print).

Dr. Robert Pastor, Director of the CDEM, cautions strongly against an exclusive focus on voter ID requirements, testifying before Congress that:

...if (voter IDs) become the entire part of the solution, then they actually become the problem. The other parts to the solution include expanding access through an affirmative role by the states to provide free voter IDs and to expand the base of registered voters to take steps to insure there is no intimidation and also to examine other kinds of election fraud and take steps against them.

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Testifying at the January 25, 2008 hearing of the Texas House Elections committee was Dr. Toby Moore, who is currently an elections and voting researcher with RTI International, but was with the DOJ prior to joining RTI. He testified on the subject of voter impersonation and voter fraud.

The survey by the Center for Democracy and Election Management at American University, which I helped initiate, surveyed registered voters in three states and estimated that 1.2% of voters lacked IDs. Even at this low percentage, if this held true in Texas, approximately 148,630 registered Texan voters in the 2006 elections would have lacked a government issued photo ID. Like the Brennan Center, the AU survey suggests a disparate impact.

An approach to “secure” elections solely through the means of tightening voter identification requirements without facilitating and funding acquisition of required identification will result in disenfranchisement. Meanwhile, more significant threats to the system, such as mail ballot tampering and loopholes in registration requirements – such as led to the Rainbow’s End travesty will continue unfettered.

The CDEM has found that partisan posturing on the issue erodes public confidence in our election processes – the very basis of our democracy. SB 362 not only fails to fully comply with Carter Baker recommendations related to voter identification requirements, but further fails to recognize and address the fundamental weaknesses of our elections systems, making it more of a problem than a solution.

For these reasons, the LSG deems such legislation unfavorable.

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