



Testimony In Opposition to SB 32 – Voter Registration Matching
Virginia Senate Privileges and Elections Committee
Tuesday, January 16, 2024

Fair Elections Center is a national, nonpartisan voting rights and election reform 501(c)(3) organization based in Washington, D.C. Its mission is to use litigation and advocacy to remove barriers to registration and voting, particularly those disenfranchising underrepresented and marginalized communities, and to improve election administration.

The League of Women Voters of Virginia (LWV-VA) formed November 10, 1920 out of the suffrage movement. Its mission is to empower voters and defend democracy. The LWV-VA encourages informed and active participation in government to increase understanding of major public policy issues and to influence public policy through education and advocacy.

Thank you for the opportunity to submit testimony on this important voter registration issue. Because this bill would stop eligible citizens from voting by making their fundamental right to vote subject to data entry errors, typos, and other non-substantive problems unrelated to the applicants' eligibility to vote, we urge you to defeat this measure and to instead focus on reforms that would expand and promote citizen participation in elections. This legislation has been offered several times in the past (see, e.g., SB 965 (2023)) and rejected, and should be rejected again.

SB 32 would require that before any applicant is registered to vote, the applicant's name, date of birth, and social security number provided by the applicant on the voter registration application must match the information on file with the Social Security Administration or other database approved by the State Board of Elections in order to be fully registered to vote. Otherwise, the person will be registered to vote only provisionally, and would be required to show a valid Virginia driver's license, valid United States passport, or another photo ID issued by the Commonwealth, one of its political subdivisions, or the United States. These photo ID options are far narrower than the identification needed to vote under existing Virginia law, and many voters do not have these documents.

In addition to its requirements for new registration applications, the bill also requires that registrars regularly apply these matching requirements to existing registered voters and if they do not match, initiate cancellation procedures under state law. The bill does not contain a cure opportunity for existing registered voters.

If passed, this bill would likely stop thousands of eligible Virginians from voting by making their fundamental rights subject to government data entry errors, typos, and other non-substantive problems unrelated to eligibility. In litigation concerning a database matching prerequisite to voter registration in Georgia in 2016, analysis of rejected voter registration

applications demonstrated that tens of thousands of applicants were rejected due to the exact match prerequisite, in which applicants' information was required to exactly match the information in the Social Security or Georgia Department of Driver's Services databases.¹ Troublingly, applicants who submitted complete applications that were entirely valid on their face were rejected.

What makes this process so unpredictable and unduly burdensome for applicants is that even perfect applications can fail the matching process, through no fault their own, because of data entry errors in the creation of the database records, inherent limitations in the matching software and algorithms that are used to compare the data, system glitches, and other problems that applicants have no ability themselves to discern or to correct. As a result, eligible applicants are rejected or unfairly subject to a stringent and burdensome provisional ballot process even if they did everything right.

This problem would be compounded in Virginia by the requirement in the bill that existing registered voters also match the Social Security or other database. We are unaware of any state that has attempted to purge the rolls in such a manner and would expect the process to result in a high proportion of inaccurate and likely illegal cancelations of eligible voters.

The Social Security Administration's Office of Inspector General issued a report in June 2009 admitting that flaws and errors in the SSA's voter registration verification system were preventing eligible applicants from registering to vote. The report admitted that matches using its data can be inaccurate and acknowledged that the SSA's Help America Vote Verification program "provided the States with responses that may have prevented eligible individuals from registering to vote and allowed ineligible individuals to vote."² Virginians' voting rights should not rely on such inaccuracies including those that the Commonwealth cannot control or fix.

Even where a voter's minor error caused the mismatch, for new voters without state- or federally-issued photo ID, the bill builds in no safeguards or opportunity to cure the errors inherent in a process reliant on data-matching. As a result, many eligible applicants would have no opportunity to resolve minor problems and register to vote.

The provisional registration "cure" process for those who do have state- or federally-issued photo ID is also significantly flawed. First, it only applies to registrants who can show a very limited set of photo IDs rather than all voter photo IDs allowed under Virginia statute, and contains no exemptions. Second, the bill does not specify how or when voters can present the photo ID, leading to potential confusion among local registrars regarding how to apply the law.

¹ Ex. 6 to Motion for Prelim. Inj., Declaration of Michael McDonald at 17, *Ga. NAACP v. Kemp*, No. 2:16-cv-219 (N.D. Ga. Sept. 14, 2016).

² Office of the Inspector Gen., Social Security Admin., *Quick Response Evaluation: Accuracy of the Help America Vote Verification Program Responses*, Audit Report A-03-09-29115 (June 2009), available at https://oig.ssa.gov/sites/default/files/audit/full/html/A-03-09-29115_7.html

This process is not required by federal law. While the Help America Vote Act of 2002 has requirements for most first-time voters who registered by mail and whose information does not “match” to show some form of ID when they vote, if not before, the IDs allowed by federal law are broad, and in addition to a photo ID include non-photo IDs such as a utility bill, paycheck, or other government document with the voter’s name and address including the voter registration card. Virginia is also exempt from some of the specifics of HAVA’s matching requirement because it requires the applicant’s full Social Security number.³

Burdens caused by the matching prerequisite to voting may well fall disproportionately on citizens who are members of racial or ethnic minority groups. Analysis submitted in Georgia litigation in 2016 over the matching prerequisite found that African-American, Latino, and Asian-American applicants were far more likely to be rejected for failure of their information to match government databases, including Social Security and driver’s license information.⁴ Similar analysis in 2018 had similar disproportionate impact.⁵ One reason for this is that a single out of place character like an apostrophe or hyphen, or a word order different from the person’s voter registration application, triggers a nonmatch. Database matching can thus cause particular problems for names with special characters and/or names that are more likely to be transposed or transcribed inconsistently by unfamiliar data entry workers. These issues are particularly common, for example, in names of people with Black, Asian, or Latino heritage. As a result, the ultimate impact of this bill would be to impose a different, stricter registration process and photo ID requirement in SB 32 disproportionately and unfairly on these voters.

This bill has a significant fiscal impact and makes registration more burdensome for general registrars. Processing applications in the manner required by this bill is time intensive and would therefore require more staff. In addition, our understanding from general registrars is that data from the Social Security Administration comes with inconsistent promptness, and thereby would both delay processing of applications and cause extra burdens for general registrars.

This bill would also likely cost Virginia significant funds in prolonged litigation. For example, a court in Washington State found that an exact match requirement likely violated both the Help American Vote Act of 2002 and the Voting Rights Act of 1870.⁶ In addition, Georgia was repeatedly embroiled in litigation regarding their exact matching requirement rules, and agreed to significant fees to resolve a related 2016 suit.⁷ In the course of a second round of related litigation, “Georgia largely abandoned the practice of denying active voter registration status to tens of thousands of applicants if their name, date of birth, driver’s license or Social Security numbers

³ Help America Vote Act of 2002, § 303(a)(5)(D); § 303(b).

⁴ Ex. 6 to Motion for Prelim. Inj., Declaration of Michael McDonald at 17, *Ga. NAACP v. Kemp*, No. 2:16-cv-219 (N.D. Ga. Sept. 14, 2016).

⁵ Amended Compl. ¶ 9, *Coalition for the People’s Agenda v. Kemp*, No. 1:18-cv-04727-ELR (N.D. Ga. filed Oct. 19, 2018).

⁶ *Washington Ass’n of Churches v. Reed*, 492 F. Supp. 2d 1264 (W.D. Wash. 2006); see also *id.* No. CV06-0726RSM, slip op. at 3 (W.D. Wash. March 16, 2007).

⁷ *Supra* note 5; *Ga. NAACP v. Kemp*, No. 2:16-cv-219, Settlement Agreement (N.D. Ga. Feb. 9, 2017), available at <http://www.projectvote.org/wp-content/uploads/Settlement-Agreement-NAACP-v.-Kemp-2.9.17-1.pdf>

did not ‘exactly match’ data on file with DDS or the Social Security Administration (SSA)” in HB 316 (2019).⁸ Arizona is currently awaiting the results of a two-week trial focused in part on problems with systematic use of large databases for list maintenance. The General Assembly should not waste taxpayer funds enacting restrictions likely to become mired in costly litigation.

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⁸ See No. 1:18-cv-04727-ELR, Third Amended Compl. ¶ 2 n.1 (N.D. Ga. July 24, 2020).