



February 28, 2017

Via E-Mail to terence.mcauliffe@governor.virginia.gov

Dear Governor McAuliffe:

On behalf of Project Vote, I am writing to respectfully request that you veto SB 1581, which would require voter registration applicants' information to match information held by government databases in order to register to vote and stay registered. This requirement, while in the guise of "verification," would actually prevent eligible Virginia citizens from voting.

Project Vote is a nonpartisan, nonprofit organization dedicated to realizing the promise of American democracy so that every eligible citizen can register, vote, and cast a ballot that counts. Project Vote has particular expertise on issues related to voter registration. 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, we urge you to veto this bill.

Specifically, SB 1581 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, or the person will not be registered to vote. The bill also requires that registrars verify these matching requirements for existing registered voters and if they do not match, initiate cancellation procedures under state law.

This bill is likely to 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 recent litigation concerning a similar database matching prerequisite to voter registration in Georgia, 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. 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 creating 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 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. Project Vote is 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 cancellations 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."¹ Virginians' voting rights should not rely on such inaccuracies including those that the Commonwealth cannot control or fix.

Burdens caused by the matching prerequisite to voting may well fall disproportionately on minority citizens. Analysis submitted in the Georgia litigation 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. Database matching may cause particular problems for names with special characters, hyphens, and names that are more likely to be transposed by unfamiliar data entry workers.

Even where a voter's minor error caused the mismatch, the bill builds in no safeguards or opportunity to cure the errors inherent in a process reliant on data-matching. As a result, eligible applicants would have no opportunity to resolve minor problems and register to vote.

This bill would 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 America Vote Act of 2002 and the Voting Rights Act of 1870², and in response to a lawsuit and preliminary injunction filing in Georgia in 2016, Georgia informed the court it would suspend its exact matching requirement, return numerous rejected applicants to pending status, and allow such pending registrants to vote upon showing ID.³ Georgia subsequently settled the claims, agreeing to pay significant legal fees.⁴ The General Assembly should be prevented from wasting taxpayer funds on restrictions likely to become mired in costly litigation.

In sum, to protect the rights of eligible Virginia voters, Project Vote urges you to veto SB 1581. Should you wish to contact me regarding this bill, please contact Michelle Kanter Cohen, Election Counsel, at 202-546-4173 ext. 309 or email mkantercohen@projectvote.org.

Sincerely,

Michelle E. Kanter Cohen

Michelle E. Kanter Cohen
Election Counsel, Project Vote

¹ 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

² *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), available at <http://moritzlaw.osu.edu/electionlaw/litigation/documents/STIPULATEDFINALORDERANDJUDGMENTby-JudgeRicardoSMartinez.pdf>.

³ *Ga. NAACP v. Kemp*, No. 2:16-cv-219, Letter from Willard to Judge William O'Kelley, Sept 23, 2016, available at <http://www.projectvote.org/wp-content/uploads/2016-09-23-NAACP-v-Kemp-Letter-from-GA-to-court-resp-to-PI.pdf>.

⁴ *Ga. NAACP v. Kemp*, No. 2:16-cv-219, Settlement Agreement (Feb. 9, 2017), available at <http://www.projectvote.org/wp-content/uploads/Settlement-Agreement-NAACP-v.-Kemp-2.9.17-1.pdf>