



ALLIANCE FOR PROGRESSIVE VALUES
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Today the Governor has two bills on his desk that passed the General Assembly by the narrowest of margins on the Senate side. Two bills that either place new barriers to voting or obscure the process by which votes are counted in the Commonwealth. I would point out that these bills do not exist in a vacuum; they are part of a larger movement here in Virginia and across the nation that restrict voting access and serve to discourage portions of the electorate from exercising their rights as citizens. This attempt to "chill the vote" is particularly troubling in states like Virginia where the memory of organized voter suppression is still keenly felt.

We are told that these bills are a necessary reaction to the threat of widespread voter fraud. To date there are few if any cases throughout the country or here in Virginia of voter fraud of any kind. We may have election fraud, yes. But not cases of people presenting themselves without identification in order to vote as someone they are not - rampant election day impersonations are non-existent. We do have reasons to worry here in Virginia about election integrity. The ongoing vulnerability of electronic voting equipment and the fact that without paper ballots we have no valid recourse for a recount are important issues that these bills don't address.

What we seem to have in the legislation that came out of this years GA is a solution in search of a problem.

This session, I should note, there where a lot of solutions being offered around to what amounts to a non-existent problem. There were bills to prohibit assisting more than two people in voting in one election cycle, bills requiring proof of citizenship at polls and a bill to prohibit registering voters at hospitals and nursing homes. Out of this pack of dubious legislation, two bills emerged, SB1 (and its identical companion bill HB9) and HB63. Let's look at what they do.

As the law stands today: when a registered voter goes to the polls this is what happens.

The election officers determine if the voter is qualified to vote. The officer asks the voter their name and address, they check this against their rolls of registered voters and ask for Identification. The following are acceptable: A Virginia voter registration card, Social Security card, Virginia drivers license or other state or federal ID, or a photo ID from a place of employment. If the voter doesn't have this identification, or if the officer or another voter challenges them, they are allowed to sign a sworn affidavit that they are who they say they are and then may cast their vote normally. Lying on this affidavit is a class 5 felony, punishable by up to 10 years in prison and a \$2,500 fine.

Here's the language and pedigree of SB1. As its primary number denotes it was the first bill introduced in the Senate this session and it did not come from a backbencher - it came from the Republican leadership by way of Senator Martin. As introduced, SB1 removes from part B of section 24.2-463, the Virginia voter registration card from the list of identification allowed for voting. Most importantly it removes the sworn affidavit that allowed voters to vote a standard ballot and replaces it with a provisional ballot. Provisional ballots are not counted on Election Day and they often are not counted at all. The voter must return the following day to provide proof of his or her identity before the vote can even be taken up. This shifts the burden of proof to the voter in a troublesome and significantly undemocratic way.

In Committee, the bill was amended to restore the voter registration card and to include further forms of identification such as a copy of a current utility bill, bank statement, government check, or paycheck that shows the name and address of the voter. In the full Senate, the bill was further amended to include college IDs from four year schools in Virginia. These were positive changes in that they bring the language in line with federal voting statutes put in place after the Florida debacle of 2000. It would also allow the election officer to acknowledge that they know the person to be who they say they are and allow them to vote. But the bill still retains the provisional ballot for those who can't pass these tests.

On the House side, this new language was largely stripped out in Del. Cole's Privileges and Elections committee, and the bill was returned much to its original status except that now the voter was required not only to vote a provisional ballot, but to sign an affidavit under penalty of fraud as well.

The bill then languished on the House floor, being passed by for a week. On the 8th day, the House finally rejected the committee substitute and passed the bill as it had come from the Senate, still on a strictly party line vote.

While a number of good amendments that strengthen the bill were attached to Senate Bill 1. The bill works from the assumption that the voter is not who they say they are when there is no statistical or historical reason to believe this is the case. SB1 still requires voters whose names are on the rolls but who lack documentation when presenting themselves to vote, to cast provisional ballots. Provisional ballots do not carry the weight of ballots cast and counted on the day of election. The voter must return to the precinct with establishing documents on the next day. For many segments of society, the elderly, the working poor, immigrants or the disabled this is a burden that they may not be able to meet, especially if they've watched the election called the night before and now feel their vote has no meaning. In such a case, their legal vote is put aside and their right to exercise their franchise is effectively rendered moot.

At what cost? The impact on immigrant, elderly, student and disabled voters will certainly be significant, but what of the impact on state coffers at a time when we are being told that essential services like education need to be curtailed in the name of fiscal responsibility? While Legislative Services' fiscal impact statement says that SB1 will cost essentially nothing, a recent study by the Commonwealth Institute found that Virginia could be in the hole as much as 1.25 million dollars in order to address the non-existent problem of voter fraud. The analysis examines similar voter ID laws in Maryland, North Carolina, Minnesota, Wisconsin, Nevada, Georgia and South Carolina, and considers costs for voter education, staff training, and provisional ballot administration. At a minimum, the report puts costs at over a half million dollars. This is money that could be going to schools, to libraries or to critical services.

Delegate Cole, who also introduced provisional ballot legislation as part of a raft of voter and election related bills, introduced HB63 that deals with who shall be present when the provisional ballots are counted. On the day after the election, the local electoral board meets and counts the provisional ballots cast. If a voter who cast a provisional ballot requests an extension to attend this meeting the board adjourns until the next day. This can continue for up to a week while reported election results become old news to the general public. When the board does meet, the Code states:

“One authorized representative of each political party or independent candidate in a general or special election or one authorized representative of each candidate in a primary election shall be permitted to remain in the room in which the determination is being made as an observer so long as he does not participate in the proceedings and does not impede the orderly conduct of the determination. Each authorized representative shall be a qualified voter of any jurisdiction of the Commonwealth. Each representative, who is not himself a candidate or party chairman, shall present to the electoral board a written statement designating him to be a representative of the party or candidate and signed by the county or city chairman of his political party, the independent candidate, or the primary candidate, as appropriate. Such statement, bearing the chairman's or candidate's original signature, may be photocopied and such photocopy shall be as valid as if the copy had been signed.”

Directly after this passage, HB63 includes the following language:

“Notwithstanding the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), attendance at meetings of the electoral board to determine the validity of provisional ballots shall be permitted only for the authorized representatives provided for in this subsection, for the persons whose provisional votes are being considered and their representative or legal counsel, and for appropriate staff and legal counsel for the electoral board.”

In doing this, HB63 effectively closes the doors of the election board to the public and the press and makes it much harder for watchdog and advocacy groups to monitor what goes on behind these closed doors.

HB63 passed the House on a party line vote and later the Senate on a vote of 20-20 with the Lieutenant Governor casting the deciding vote.

Taken together, these two bills relegate a portion of the legal voting population to a second class status by preventing them from voting normally on election day, and instead requiring them to cast provisional ballots that may or may not be counted at a later date, and then limiting access to the counting of those ballots to party representatives and election officials. If signed, these laws will doubtless have a chilling effect on already marginalized communities.

At a time when we need to be encouraging voter participation and transparency, we believe these bills take Virginia in the opposite direction. At a time when voter turn out is at historically low levels and apathy and cynicism abound in the electorate, these bills send the wrong message: that some votes should count more than others and that only the privileged should be allowed to observe democracy in action. The Alliance for Progressive Values joins with our friends here in asking that Governor McDonnell veto these harmful bills.