

HB569: A Fiscal and Legal Morass

Bill requiring photo ID and proof of citizenship to vote poses unnecessary costs and legal challenges



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Executive Summary

HB 569 imposes burdensome new voter identification requirements, could cost Virginia millions of dollars to implement, and may ensnare Virginia in costly litigation. As currently drafted, this legislation would (1) require proof of citizenship for new voter registrations (including individuals who move into Virginia after being registered in other states) and (2) photo proof of identification at the polling place.

In order to pass constitutional muster, a photo identification requirement must be accompanied by a number of actions on the part of the state in order to minimize the impact on potential voters. This includes (1) the provision of free photo IDs to voters who do not have a valid photo ID, including making the process of getting an ID accessible and no-cost, and (2) undertaking a public education and outreach campaign to inform voters of the new requirements.

In addition to these constitutional requirements, Virginia would face new costs due to the need to (1) provide training to local election officials to ensure proper implementation of the new provisions and (2) process additional provisional ballots. Based on estimates from other states, implementation of HB569 could cost between \$7.91 million and \$22.59 million.

Costs and Legal Concerns

While HB 569 contains pieces of the requirements necessary for a voter

The High Cost of Voter Photo ID

| | <u>Lower Bound Estimate</u> | <u>Upper Bound Estimate</u> |
|-----------------------|-----------------------------|-----------------------------|
| Provision of free IDs | \$6,972,334 | \$20,917,212 |
| Voter Education | \$501,030 | \$698,275 |
| Staff Training | \$21,233 | \$560,684 |
| Administration | \$418,120 | \$418,120 |
| TOTAL | \$7,912,717 | \$22,594,291 |

Source: TCI analysis of fiscal impact statements from NC, MD, MN, MS, and WI.

photo ID bill to stand legally, it is unlikely to pass constitutional muster. In terms of the provision of free IDs, HB 569 states that the “Department of Motor Vehicles and State Board of Elections shall cooperate in making a photo identification card available, free of charge, to any voter (i) who does not have a form of photo identification required under subdivision B of 24.2-643 and (ii) who affirms by signing a statement that he is unable to afford an identification card issued by the Department.”

However, according to case law out of Georgia, where this approach was tested, this is unconstitutional (Common Cause I, 406 F. Supp. 2d at 1369-70). The court in that case also found that the fact that the waiver allowed some individuals to “avoid paying the cost for the Photo ID card does not mean that the Photo ID card

is not a poll tax.” Georgia changed its law to allow everyone without an acceptable ID to get one for free, which then passed legal muster.

Based on that case, it is unlikely that the proposed requirement under this bill that an individual affirm that they cannot afford identification would pass muster. Another court ruling, *Weinschenk v. Missouri*, found that the costs of obtaining the secondary documents necessary for providing identity (e.g., birth certificates), and therefore obtaining a photo ID to vote, are also equivalent to a poll tax unless the state (a) exempts voters from the requirement of presenting the underlying documentation or (b) covers the cost of obtaining the underlying documentation to prove identity.

Nationally, 11 percent of adult U.S. citizens lack a government-issued photo identification. Another 10 percent of adult citizens with a photo ID do not have both their current address and current legal name on their identification (the elderly and African-Americans have lower rates of having photo IDs, while married women have lower rates of having their current legal name on their photo ID). While HB 569 does not disqualify a person from voting who has a non-matching address, it would disqualify persons with non-matching names. Assuming half of the 10 percent of adult citizens without both the current address and current name have a non-matching name, a total of 16 percent of adult U.S. citizens either lack a government-issued photo identification or have one with a non-matching name. With 5,134,825 registered voters in Virginia as of December 2011, 821,572 currently registered Virginia voters would be forced to obtain a proper photo identification in order to vote.

According to the Virginia DMV, processing a driver's license renewal at a customer service center costs \$22.40¹. Although not identical to the process for applying for a non-driver photo identification card, we would expect the costs for drivers' license renewal processing to be less than or, at most, equal to the costs for processing a new non-driver photo identification card, rather than the \$10 estimated in HB 569's fiscal impact statement.²

Therefore, if we assume an in-person identification transaction cost of \$22.40 per person and approximately 820,000 registered Virginia voters without proper photo identification, then providing free IDs to those Virginians without a proper photo

identification document would cost Virginia about \$18,403,212.

This \$18 million potential cost is before considering the costs to Virginia of paying for potential voters to obtain copies of the underlying documents necessary to (1) prove identity and obtain the photo ID and (2) prove citizenship.

Nationally, about 7 percent of U.S. citizens do not have ready access to a U.S. passport, naturalization papers, or birth certificates, with low-income individuals less likely to have access to one of the documents. Furthermore, 44 percent of adult women do not have ready access to a document with their current legal name. Applying those rates to the estimated 821,572 registered Virginians without proper photo identification, approximately 209,500³ registered Virginia voters would be entitled to free copies of the documents necessary to prove their identity for voting. Obtaining a copy of a Virginia birth or marriage certificate costs \$12 (a marriage certificate is considered proof of name change, therefore allowing someone to present a proof of identification, such as a birth certificate or passport, that does not match their current legal name).

Assuming all of the voters were born in Virginia, providing one form of vital record per affected individual without proper underlying proof of identity would cost Virginia a further \$2,514,000. Although currently registered voters would be exempted from showing proof of citizenship, going forward the state would need to bear the cost of obtaining proof of citizenship documents for the purpose of proving citizenship for voter registration to comply with court rulings in this area.

Based on these assumptions, the cost of providing free photo identifications and free access to copies of the underlying documents would be about \$20,917,212. Even if we assume that the rate of Virginia voters without proper identification is a third of these estimates (a Minnesota match of voter registration and motor vehicle records found 7 percent of registered voters in Minnesota did not have a valid identification and a Missouri analysis found 6 percent of registered voters had no photo identification on file with the state), the cost to Virginia of making photo identification available to voters would still be \$6,972,334.

Other Costs

The other major costs Virginia would face related HB 569 include public education/outreach, training for local election officials, and the processing of additional provisional ballots. Using fiscal impact statements from neighboring states and actual costs from states that have implemented photo identification requirements, it is possible to estimate the costs Virginia could face.

Voter Education / Outreach

In Maryland⁴ and North Carolina⁵, the fiscal impact statements for proposed photo identification rules estimated education/outreach costs of \$500,000 and \$600,000, respectively. Adjusted for the relative size of the states' populations, the proportionate costs in Virginia would be \$698,275 and \$501,030, respectively. With Virginia, like Maryland, having a significant share of its population in the expensive Washington, DC media market, it is likely that Virginia's costs would be at the higher end of these ranges. If, alternatively, we look at states that were early adopters of photo identification requirements,

we see far higher costs. In Georgia, courts found that a simple system of public service announcements and fliers distributed at polling places was insufficient. Instead, the state was required to develop postcards, brochures, run paid radio advertisements, develop a website, and partner with libraries and nonprofits to inform voters of the changes.

Staff Training

Virginia has about 2,354 polling places. Virginia code requires there to be at least 3 election officers at each precinct. Some states have included staff training costs in their fiscal impact statements for their recent photo ID proposals. Minnesota⁶ estimated a cost of \$30,500 for education of election officials, mostly to produce a training video and extend the election judge training session. Nevada⁷ estimated a training cost of \$17,000. Wisconsin⁸ estimated a training cost of \$395,536 due to the need for full-time state staff to provide ongoing support for the local election officials and judges. Adjusted for Virginia's population, these estimates would mean a training cost in Virginia of between \$21,233 and \$560,684.

Provisional Ballot Processing

HB 569 would both shift voters who appear on the poll books but do not have an approved form of ID from signing sworn statements of identity to voting provisionally. Although the exact fiscal impact of processing additional provisional ballots is difficult to estimate, these costs would need to be absorbed by the state or would pass down to cash-strapped localities. In addition to the processing costs associated with new provisional ballots, such a major change in voting

laws is likely to create both confusion and delays at the polls.

Administration and Legal Defense

HB 569 requires that the Department of Motor Vehicles and State Board of Elections engage in electronic database sharing, including the sharing of copies of the documents used to prove legal residence, DMV identification photographs, and signatures. Given the potential for the misuse of this information if it fell into the wrong hands, this database-sharing must be designed and maintained with security and privacy concerns in mind. The state estimates that this will cost \$112,000 in the first two years of implementation.

Virginia's current voter registration applications will need to be redesigned to include fields for proof of citizenship documents. The state estimates this will cost \$20,000 in the first year of implementation. Similarly, the state estimates that it will cost the state Department of Motor Vehicles

\$286,120 to design the new voter identification.

Finally, because Virginia is subject to Section 5 of the Voting Rights Act, these laws will have to undergo pre-clearance from the Department of Justice. Defending this legislation could become extremely costly⁹, as other states that have imposed greater voter identification restrictions have spent years in court attempting to defend them¹⁰.

Endnotes

- 1 <http://www.dmv.state.va.us/webdoc/general/news/news.asp?id=6560>
- 2 <http://lis.virginia.gov/cgi-bin/legp604.exe?121+oth+HB569FH1122+PDF>
- 3 If half of the 821,572 registered Virginians without proper photo identification are women and 44 percent of those women lack the proof of their current legal name, while half are men of whom just 7 percent do not have ready access to proof of identity, then 180,745 registered Virginia women and 28,755 Virginia men would be entitled to free copies of the documents necessary to prove their identity for voting.
- 4 Maryland HB 288, 2011 Session, http://mlis.state.md.us/2011rs/fnotes/bil_0008/hb0288.pdf
- 5 North Carolina HB 351, 2011 Session, <http://www.ncleg.net/Sessions/2011/FiscalNotes/House/PDF/HIN0351v5.pdf>
- 6 Minnesota HF 2010, 2011 Session, http://www.mmb.state.mn.us/bis/fnts_leg/2011-12/H0210_4A.pdf
- 7 Nevada BDR 24-778, 2011 Session, <http://www.leg.state.nv.us/Session/76th2011/FiscalNotes/5558.pdf>
- 8 Wisconsin SB 6, 2011 Session, <http://docs.legis.wisconsin.gov/2011/related/fe/sb6>
- 9 Press accounts report that South Carolina could spend more than \$1 million in its suit challenging the U.S. Dept of Justice's refusal to pre-clear that state's photo ID bill. <http://www.postandcourier.com/news/2012/jan/29/states-lawsuit-over-voter-id-could-cost-more-than>
- 10 See, for example, Georgia's case history, Common Cause/GA v. Billups (Common Cause I), 406 F. Supp. 2d 1326 (N.D. Ga. 2005); Common Cause/GA v. Billups (Common Cause III), 504 F.Supp.2d 1333 (N.D. Ga. 2007), 554 F.3d 1340 (11th Cir. 2009).

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