

FEBRUARY 16, 2017



Ninety-nine problems, and voter fraud's not one of them

Home / Articles / News / Law and the Courts /

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By **Sharon McCloskey** - 3/6/2013 - in Law and the Courts  Print This Article



Here's one thing we can all agree on: Election 2012 revealed plenty in need of fixing at the polls in North Carolina.

Long lines in places ill-equipped to handle the volume, voter frustration and unbridled electioneering were captured in unflattering media reports about pushing and shouting, interrogations by poll observers, and this: "A guy driving a tractor-trailer bed filled with effigies of Democratic officials, including President Barack Obama, with nooses around their neck."

And many voters found themselves with the wrong ballot or at the wrong voting precinct, thanks to redistricting in 2011. "Many, many people walked up to my polling place only to be turned away with directions to a different, new place," said Melody Thomson,

a volunteer at the polls in the 5th district. “My fellow volunteers – in both camps – tried our best to help with directions, share our phones’ GPS and local knowledge, and encourage these voters to persevere. Many were confused, frustrated, running late for work, or just plain irritated and I’m sure a fair number of them never made it to the correct place.”

But voter fraud, that blight on the franchise ostensibly underlying the voter ID movement?

Not a problem.

Still, at a time when they’ve slashed unemployment benefits and rejected expanded Medicaid for the most needy — saying it’s time to rein in costs — state Republican legislators are pressing forward with voter ID legislation that will invariably be costly and most likely disenfranchise voters throughout the state.

“They’re trying to create the perception that there’s rampant voter fraud when there’s no statistics to bear that out,” said Sen. Floyd McKissick. “It will disproportionately impact voters who will likely come to the polls and be more likely to vote either Democrat or independent than Republican, and that is their goal – to repress that vote by any means necessary.”

Rhetoric redux

The myth of voter fraud is nothing new. During George W. Bush’s two terms prosecutors spent much of their time searching for violators to prosecute, to little avail and the consternation of judges before whom cases were filed.

“I find this whole prosecution mysterious,” said Judge Diane P. Wood of the 7th U. S. Circuit Court of Appeals during a hearing involving a felon who voted. “I don’t know whether the Eastern District of Wisconsin goes after every felon who accidentally votes. It is not like she voted five times. She cast one vote.”

Little evidence of voter fraud in North Carolina has been established either, but the majority in the General Assembly still insists that the integrity of the vote is at risk and in need of protection.

Statistics do exist, though, in support of the claim that photo ID requirements disproportionately disenfranchise minority and elderly voters, even in those states offering free photo IDs.

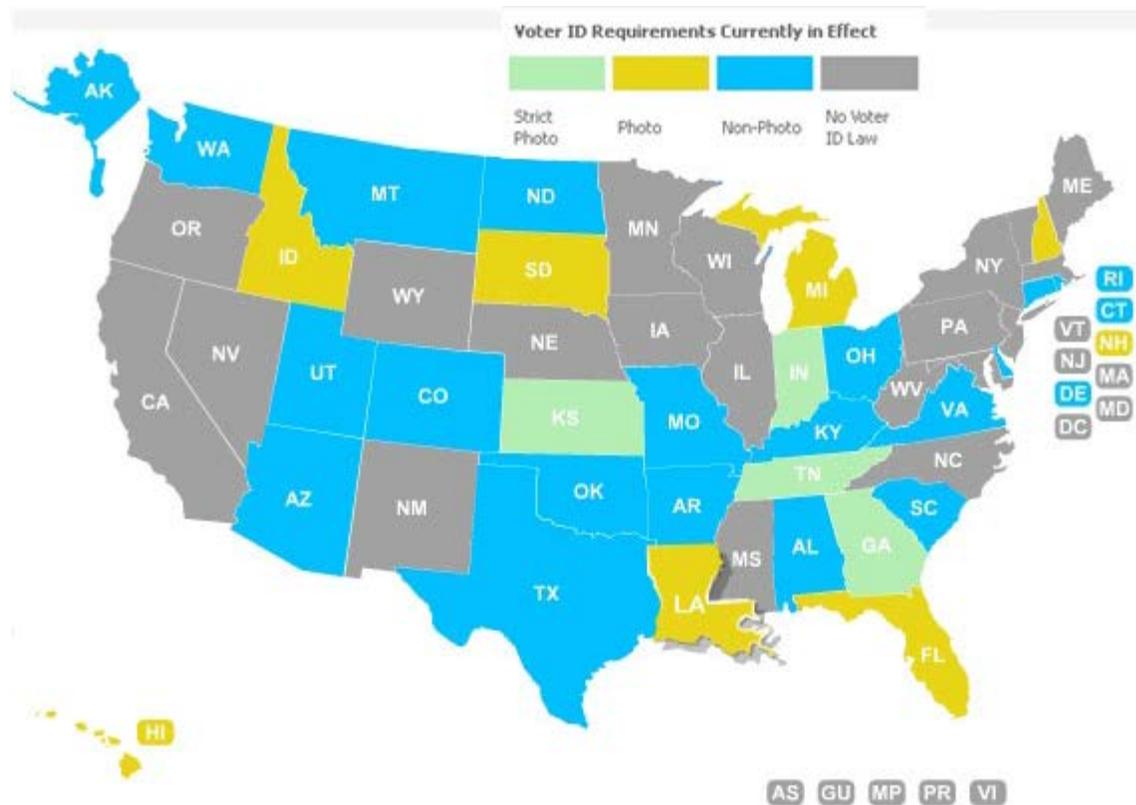
According to a 2012 report by the Brennan Center for Justice, 11 percent of eligible voters—likely minorities and those living in poverty—lack a required photo ID and must travel to a government office to get one but can’t, because they don’t have a car, live too far away from government offices and have no public transportation options.

Republicans lately have refuted that argument by claiming that despite voter ID requirements, those minority voters turned out in record numbers during the 2012 election.

But just last week, a report by the organization True the Vote supporting that increased turnout argument was exposed as flawed. With corrected numbers, “all but one of the states with new voter ID laws experienced a decline in voter turnout, and most experienced a decline greater than the national turnout decline from 2008 to 2012,” said Rob Ritchie, executive director of the voting reform organization FairVote.

That said, state voter ID laws continue to proliferate. According to the National Conference of State Legislatures, thirty-three states

have passed voter ID laws with varying requirements, though not all are in effect yet as they are in the midst of litigation or awaiting preclearance by the Justice Department (see map).



Source: National Conference of State Legislatures

Some provide for a wide array of acceptable ID, photo and non-photo. And some permit voters without the required ID to vote in any event if they sign or attest to their identity.

The voter ID bill last passed by

the General Assembly but vetoed by Gov. Beverly Perdue in 2011 would have been one of the strictest in the nation. It required voters to present one of eight types of photo identification—including a proposed free voter card available at county election offices—in order to vote. Those who showed up to vote without that ID would have been able to vote by provisional ballot, but would have had to appear at the county election office within a certain period of time afterwards and show required photo ID in order for that ballot to count.

The road ahead

At yesterday’s press conference, representatives Tillis and Lewis outlined a schedule for public input and debate with a likely mid-April vote on a new voter ID bill.

On March 12 the Committee on Elections will hold a public hearing on voter ID. On March 13 the committee will hear arguments from a panel of yet-to-be-identified election law experts in favor of and against voter ID requirements. And on March 20, voter ID experts – also not yet identified – will address the committee, with a focus on administrative challenges to implementing new voting requirements.

Assuming passage by the Senate and signature by the governor, any new law would still need to be precleared by the Justice Department under Section 5 of the Voting Rights Act, at least as of right now. The U.S. Supreme Court is currently considering the viability of that section – which requires certain states local and jurisdictions to get approval for any changes to election processes—

in *Shelby County v. Holder*. A decision in that case is expected before the court closes out its term in June.

Of course, new voter ID laws would also likely be challenged in private litigation. And in the courts, the road to approval is paved with uncertainty, in part due to the varying state requirements at issue.

South Carolina's voter ID law, which was precleared by a three-judge panel in October 2012, requires photo ID but permits voters with a non-photo voter registration card to still vote after they sign an affidavit stating the reasons why they didn't get a photo ID card. As noted by the judges, state election officials agreed that any reason offered by voters that was not false would be accepted.

And New Hampshire's voter ID law was precleared by the Justice Department in September 2012. That law permits a voter without a photo ID to complete a "qualified voter" affidavit at the polls and then vote. Elections officials then will send that voter a letter asking him to confirm that he voted on the stated date. If the voter responds yes, the vote counts. If the voter responds "no," or does not respond, the issue is referred to the Attorney General for further investigation.

Texas, on the other hand, has twice been denied preclearance: once by the Justice Department in March 2012 and then again by three-judge panel in August 2012. The Texas law required one of five forms of photo ID, or a free "election identification card" which voters had to obtain from state public safety offices not necessarily close to home. The card wasn't always free, the court found, given the distance some voters had to travel and the costs incurred in obtaining additional documents needed (copy of a birth certificate, for example) for the voter card. Any further proceedings in the Texas case have been put on hold until the U.S. Supreme Court rules in the *Shelby County* case.

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