

ACLU of Virginia

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The Honorable Robert F. McDonnell
Governor of Virginia
Patrick Henry Building, 3rd Floor
1111 East Broad Street
Richmond, VA 23219

March 11, 2013

RE: Veto SB 1256 & HB 1337, Limitations on Voting Rights

Dear Governor McDonnell:

The ACLU of Virginia and the organizations listed below are writing to urge you to veto SB 1256 and HB 1337. The legislation restricts the forms of acceptable identification voters can show at the polls and directly conflict with each other. This legislation will undoubtedly cause confusion and impose additional burdens on voters, who only just became educated about changes in voter ID requirements made last year. Under Executive Order 45 (2012), you required the State Board of Elections (SBE) to issue new voter registration cards and to educate the public about the requirements of last year's legislation at a cost of \$2 million taxpayer dollars. Either of the new bills would nullify that public education campaign. Additionally, you took action last year to ensure a balance between election security and access. While we all agree that the integrity of our elections is paramount, laws that make it harder for eligible Virginians to vote damage our democracy by restricting access. The legislature's proposals counteract your commitment to protecting access to our democracy without due evaluation to determine if our current system is inadequate.

HB 1337

HB 1337 eliminates paychecks, government checks, bank statements, utility bills and social security cards as acceptable IDs for voting. During the 2012 session, legislators eliminated the affirmation of identity affidavit option for voters without ID and required those voters to be offered a provisional ballot and to follow-up with their local board of elections within three days with proof of ID for their vote to be counted. To offset the adverse effects of this onerous change, legislators expanded the types of IDs voters could show to include bank statements, paychecks, government checks, and utility bills. This expansion ensured that voters without acceptable photo IDs could use other forms of identification to exercise their right to vote. HB 1337 destroys the balance reflected in the law passed last year.

SB 1256

SB 1256 mandates that voters show an approved photo ID to vote, and requires the SBE to promulgate rules and regulations requiring local registrars to issue free photo IDs to voters who request them. According to estimates, nearly 870,000 Virginians lack valid,

government-issued photo IDs as required under SB 1256.¹ A disproportionate number of these Virginians are low-income, racial and ethnic minorities, the elderly, students, and individuals with disabilities.² Such an unjustified burden on identifiable groups of voters is unwarranted and unfair and invites litigation.

The legislation includes a provision for free photo IDs to get around the fact that requiring voters to produce such an ID amounts to the imposition of a prohibited poll tax if the voter must pay to obtain one. Nonetheless, it is difficult to understand how, under any circumstances, the photo ID will in fact be “free.” Unless the SBE enacts rules that allow a voter to get an ID from a local registrar simply based on an affirmation of identity, voters seeking “free” IDs could still be required to spend money to get one of the forms of ID required to prove identity to the local registrar. If an affirmation of identity is deemed sufficient to obtain a photo ID, it should be sufficient to vote without having to undertake this unnecessary added burden. For some voters, the process of acquiring identity documents may be expensive and require multiple visits to government offices, some of which, like the Vital Records offices, may not be within close proximity. This will be especially burdensome for voters born outside Virginia. Some voters may not be able to get birth certificates because they never existed (e.g., they were born at home) or are unable to be located. These concerns are exacerbated by the fact that in drafting implementing regulations, the SBE is not required to follow the public notice and comment requirements of the Virginia Administrative Process Act, and therefore may fail to take into account the many ways in which the implementation of the statute may be burdensome to voters.

Additionally, SB 1256 may even invite fraud through identity theft. The opportunity to obtain a “free” photo ID at the local registrars’ offices could attract individuals who wish to use the new photo voter registration card to begin the process of building a new identity—a danger not present when voters are allowed to use documents with their name and address to confirm their identity at the polls.

Financial Burdens on Taxpayers

As a result of the restrictions put on Virginia’s voter ID law in 2012 by General Assembly and in accordance with your Executive Order 45, the SBE sent new voter registration cards to all active Virginia voters at cost of \$1.36 million.³ Further, the SBE engaged in a public education campaign to inform voters of the new law at the cost of \$550,000. In all, Virginia spent nearly \$2 million to receive approval by the Department of Justice to counteract the voters’ confusion caused by the election bills of the 2012 General Assembly session; taxpayers should not be asked to pay for this kind of initiative two years or more in a row.

If Virginia imposes even stricter voter ID requirements, unprecedented resources will be needed to pay for the photo IDs, the underlying documents that may be required to obtain IDs, public education, registrar and election officer training, computer software and hardware security upgrades and protection, and possible litigation costs. The Commonwealth Institute for Fiscal Analysis estimates that SB 1256 will cost taxpayers

¹ The Commonwealth Institute for Fiscal Analysis, *Picture This*, (Jan. 2013), available at: http://www.thecommonwealthinstitute.org/wp-content/uploads/2013/01/130122_picture_this_FINAL.pdf

² Brennan Center for Justice, *Citizens Without Proof: A Survey of Americans’ Possession of Documentary Proof of Citizenship and Photo Identification* (Nov. 2006), available at http://www.brennancenter.org/page/-/d/download_file_39242.pdf.

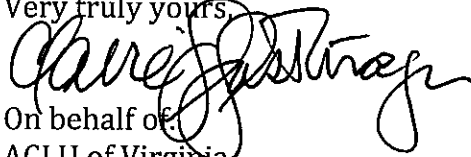
³ <http://hamptonroads.com/2012/09/va-officials-spend-2m-voter-id-compliance>

between \$7.3 million and \$21.8 million.⁴ The General Assembly has only appropriated \$166,250 for photo equipment under SB 1256. HB 1337 requires the General Assembly to fund a public education campaign in 2014. However, funds cannot be appropriated by statute. The current budget includes no funds to implement the law, and there is no guarantee that future legislatures will pass a state budget authorizing the necessary expenditures.

Virginians cherish their right to vote—this was evidenced by the hours citizens across the Commonwealth spent in long lines waiting to vote during the past election. It is imperative that we promote democracy and not enact further burdensome and completely unnecessary obstacles to the ballot box. The right to vote is protected by more constitutional amendments – the 1st, 14th, 15th, 19th, 24th and 26th – than any other right we enjoy as Americans.⁵ The legislature failed to take sufficient time to evaluate Virginia's current law and the effects proposed changes would have on voters and the Commonwealth's budget. While we all share the desire to protect the integrity of Virginia's elections, these proposals make it harder for hundreds of thousands of Virginians to vote.

Our elections should be free, fair, and accessible. These proposals violate these basic values. Respectfully, we ask you to veto SB 1256 and HB 1337.

Very truly yours,



On behalf of:

ACLU of Virginia

Alliance for Progressive Values

The Virginia Interfaith Center for Public Policy

NAACP Virginia State Conference

LatinoJustice PRLDEF

League of United Latin American Citizens (LULAC)

Richmond Branch NAACP

Progress VA

Virginia New Majority

Central Virginia Chapter A. Philip Randolph Institute

Virginia Organizing

Virginia Civic Engagement Table

Virginia Coalition of Latino Organizations (VACOLAO)

LULAC Council 4609

League of Women Voters of Virginia

Virginia AFL-CIO

Shirlington Employment and Education Center, Inc. (SEEC)

Legal Aid Justice Center

NAKASEC

⁴ The Commonwealth Institute for Fiscal Analysis, *Picture This*, (Jan. 2013), available at:

http://www.thecommonwealthinstitute.org/wp-content/uploads/2013/01/130122_picture_this_FINAL.pdf

⁵ *Katzenbach v. Morgan*, 384 U.S. 641, 652 (1966) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)).