



STATEMENT FOR THE RECORD

SUBMITTED TO THE

SENATE JUDICIARY COMMITTEE

**SUBCOMMITTEE ON THE
CONSTITUTION, CIVIL RIGHTS, AND HUMAN RIGHTS**

Regarding

“NEW STATE VOTING LAWS: BARRIERS TO THE BALLOT?”

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AARP is a nonprofit, nonpartisan organization with a membership that helps people 50+ have independence, choice and control in ways that are beneficial and affordable to them and society as a whole. AARP is pleased to submit this statement for inclusion in the hearing record. We thank the Committee for holding this hearing to assess the impact of the many new voting laws being proposed and enacted by states, especially on older voters who vote in disproportionately greater numbers than other age groups in elections around the country. The hearing focus on “Barriers to the Ballot” constitutes the first national assessment by the U.S. Congress regarding this unusual upsurge in state and local voting laws and who is most affected by the changes.

AARP has a longstanding commitment to full citizen participation in the democratic process at the federal, state and local level, and for that reason AARP has supported electoral reform at the federal level -- i.e., enactment of the National Voter Registration Act (NVRA), the Help America Vote Act (HAVA), the Bipartisan Campaign Reform Act (BCRA), and reauthorization of the Voting Rights Act (VRA). AARP also conducts extensive voter education efforts in each of the 53 U.S. states and territories in which it has offices.

The right to vote is the most basic of all political rights. Over the last several years, the American public has become aware of the many inconsistencies that exist in voting systems throughout the country and which compromise the integrity of the election process. Overall, voting mechanisms lack uniform standards, and in many locations, they have failed to keep pace with new technologies. Of particular concern are the unnecessary, complex rules for voter registration and absentee balloting. Physical and other barriers to in-person voting are also rampant. Impediments to exercising the franchise disproportionately prevent minorities, older persons and people with disabilities from voting or from having their vote counted. And as we all know, the overall rate of voter participation in the U.S. is woefully low, especially when compared to other industrial democracies. User-friendly voting and voting procedures would encourage larger numbers of Americans to vote. In order to ensure that more Americans participate in the electoral process, people’s confidence needs to be restored by an election system that is fair, accurate, accessible and secure.

Congress passed HAVA in 2002, requiring states to meet uniform standards in federal election technology and administration. One result of these reforms is that states are required to develop and maintain centralized voter lists, offer provisional ballots, permit voters to verify and correct their ballots, and meet accessibility requirements for voters with disabilities.

HAVA imposes more stringent voter-identification requirements for voters casting a ballot for the first time after having registered to vote by mail. This provision – intended as an anti-fraud measure – discourages participation by otherwise-eligible low-income, minority, foreign-born and older voters. Ultimately, the success of the law in allowing all eligible citizens the opportunity to vote and have their vote accurately counted depends on state implementation laws and administrative procedures.

VOTER ID REQUIREMENTS

As the states have become more active in addressing access to the ballot in recent years, AARP Foundation attorneys have represented citizens – a great many of whom are aged 50+ – who are in danger of disenfranchisement. AARP also has participated in various advisory capacities, at both the federal and state levels, to support citizen empowerment through meaningful opportunity to exercise the franchise.

AARP Foundation attorneys have served as one of the counsel for plaintiffs in federal lawsuits challenging burdensome and unreasonable state laws in Georgia (GA) and Arizona (AZ). AARP also has filed “friend of the court” briefs in the highest state courts in Missouri (MO) and Michigan (MI) to challenge similarly restrictive voting rules. AARP filed such a brief in the U.S. Supreme Court, focusing on the adverse impact on older voters, minority voters and voters with disabilities, in the case involving the Indiana (IN) voter ID law, *Crawford v. Marion County Election Board*, recently decided by the Supreme Court. We believe the evidence shows that “photo ID” voting requirements unnecessarily limit rather than expand citizen participation in the electoral process. The use of “photo ID” to address in-person voting fraud is an overly broad response to a “problem” that the Supreme Court acknowledges barely exists, if at all.

In the jurisdictions that have embraced strict “photo ID” policy, state statutes or ballot initiatives have sought to enact laws that elevate proof requirements for voters to register and/or to vote in person. These laws are based on assertions of fraud which lack a concrete basis in fact. The assertions of fraud unfortunately serve to heighten tensions among voters across the spectrum. We believe the new state laws and implementing rules will significantly limit opportunities to register and/or vote. Many persons who are qualified to vote, but do not have ready access to documents – such as birth certificates, driver’s licenses and passports – that have never been deemed necessary in the past may lose the fundamental right to vote.

AARP is particularly concerned that such rules will prevent many eligible older voters, voters with disabilities (who may be unable to obtain the requisite photo or citizenship ID) and low income voters (who may not be able to afford such ID) from exercising their right to vote. Such laws adversely affect older voters who (1) no longer drive and do not need licenses; (2) do not now travel or never did and therefore have no passport; or (3) are persons without birth certificates (e.g., Southern blacks or some Native Americans who were not allowed in white hospitals that provided documentation). At a time when democratic elections are being conducted for the first time in many nations throughout the world, any unnecessary erosion in access to the ballot in the world’s oldest electoral democracy should be unacceptable. On behalf of older Americans who have largely shaped the values of our democracy, we urge great care to ensure that the basic right to vote is not trampled in an effort to address unproven allegations of voting abuse.

The larger problem in this country is not people trying to vote who shouldn’t -- it’s all the people who can vote, but don’t. There is very little evidence of in-person voter fraud. Many current rules make it too complicated or costly to go to the polls. We should encourage voting, not make it more difficult. For example, imagine you’re 75 years old, you’ve been going to your local polling place for a half century, and suddenly you’re asked to prove who you are with a new photo ID. The ID will cost extra money to obtain. If you do not have or can not find your birth certificate — necessary to prove you’re a citizen — you may have to spend up to \$200 to get a replacement copy. For someone on a fixed income, this is an unnecessary cost and a nightmare scenario where you have to prove that you are the same person who has been going to the same polling station for decades. Many votes are unlikely to return and vote if rejected. Clearly, there less punitive alternatives are available.

In addition, the potential for poll worker confusion and selective enforcement of voter ID rules are great, further calling into question fair voting practices. In many instances, poll workers are not adequately trained in advance on the basic requirements, such as:

- which IDs are acceptable;
- who should be asked for their IDs;
- what is the proper protocol for attending to persons lacking proper ID; and

- who is responsible for ensuring voter access to a provisional ballot or alternative voting opportunity?

Leaving the decision to subjective interpretation leaves open the path to unfair voting practices.

In a 2009 study AARP conducted with PEW Charitable Foundation, we learned that voter ID laws were unevenly implemented across and within state. The study found:

- In states that require all voters to show photo identification, roughly one-quarter of voters said they showed photo identification not because it was required but because it was convenient.
- In the states that only ask first-time voters to show *any* form of identification (including a letter addressed to them), one-quarter of *all* voters stated they would not have been allowed to vote had they not produced a photo ID.
- African Americans and Hispanics were asked to show “picture ID” more often than Whites — 70% for African Americans, 65% for Hispanics, and 51% for Whites.

Even casting a provisional ballot can be a barrier to voting. Provisional ballots have been suggested as a “compromise” that is equivalent to casting a ballot, but provisional ballots are valid only when counted – and many are not.

AARP believes that voter ID requirements and provisional ballots should be tools to promote honest and effective elections, but should not present administrative, financial or other barriers to the right to vote. Effective remedies legislators could consider include:

- sworn statements affirming in-person voter identity;
- thorough, advance training of poll workers to help ensure that each voter understands how to cast a ballot that will be counted;
- the requirement to provide -- in advance of elections -- free voter ID to registered voters and new registrants for whom the financial and administrative cost of an official ID are burdensome;
- procedures that encourage and promote maximum participation in the electoral process by expanding the range of voting times, locations and means (e.g., by offering in-person, vote-by-mail, early and secure online voting), and
- repeal of unreasonable identification requirements that discourage or prevent certain classes of citizens from voting.

ELECTION TURNOUT, ELECTION ADMINISTRATION & VOTER ACCESS

A positive result of HAVA’s passage has been innovation in the states as election officials have sought creative solutions to the challenges presented by the Act’s mandates. The requirements for accessible voting, the difficulty in recruiting poll workers and the desire to increase voter participation have led a number of jurisdictions to experiment with vote-by-mail (VBM) processes. Oregon, which pioneered VBM in 1980 with a series of pilot projects, was the first state to conduct all elections by VBM, starting in 2000. Election officials in Oregon indicate that VBM has resulted in higher voter participation, lower election costs, and avoidance of controversies over electronic voting systems. They also report strong acceptance by the public and minimal instances of election fraud. In 2005, Washington State passed legislation allowing counties to switch to VBM and in the September 2006 primary election, 93 percent of voters cast their ballots by mail. In 2007, several cities in Montana initiated VBM systems for local elections.

According to a 2007 report by the Pew Center on States, early in-person voting at centralized polling places has increased since HAVA's passage. In 2008, 35 states will allow all voters some option to cast ballots prior to election day. In addition, Montana and Iowa joined six states that currently allow registration and voting on election day. North Carolina allows registration and early voting at the same time, but not on election day itself. AARP urges that we build on these legislative efforts to improve voter turnout, not efforts that discourage voting.

The 2009 AARP/PEW study also looked at the various options citizens have to exercise their right to vote. States vary in how they allow voters to vote, and nationwide in 2008 the study found that:

- 63% of voters voted in person on Election Day,
- 18% voted in-person early (or in-person absentee), and
- 19% voted by mail.

In 11 states, a majority of votes were cast before Election Day, via early or absentee voting. In 13 states, more than 90% of the votes were cast on Election Day. Women, the elderly, individuals with disabilities, and the better educated were more likely to use early or absentee voting.

In addition to HAVA, four other statutes—the Voting Rights Act, the National Voter Registration Act, Voting Accessibility for the Elderly and Handicapped Act of 1984, and Americans with Disabilities Act (ADA)—also promote the right to vote by mandating improved access to registration and polling places and better outreach programs for older Americans and people with disabilities. Because the requirements of the Voting Accessibility for the Elderly and Handicapped Act expired in 1995, the Federal Election Commission can no longer require reporting, yet its voluntary state-reporting guidelines remain. Stairs without ramps remain the greatest physical obstacle at polling places. Periodic accessibility reports should be restored, especially as many states enact laws that reduce polling sites and mandate centralized voting centers.

In addition to physical barriers, other administrative barriers still exist that voters must overcome. Some examples of such legislated administrative barriers include:

- Imposing strict requirements on voters who moved into or within the jurisdiction since the last election;
- Imposing new, burdensome ID and verification requirements for registration by mail;
- Requiring more frequent purging of voter rolls – some as often as monthly -- that increase the likelihood of purging errors;
- Excessively restrictive third-party registration prohibitions that limit civic-minded groups and individuals from assisting unregistered eligible persons to register; and
- Excessively restrictive election protection zones to deter unlawful voter influence and solicitation.

In the latter case, for example, no person, group or organization would be allowed to “solicit” voters within 100 feet of voters standing in line, including offering legal advice or non-partisan, civic engagement efforts regarding voting or ballots.

CONCLUSION

AARP believes that these issues -- directly or indirectly -- affect every voter and should therefore be of concern to all of us. Therefore, AARP urges that:

- Congress should adopt procedures that encourage and promote maximum participation in the electoral process by expanding the range of voting times, locations and means (e.g., by offering in-person, vote-by-mail, early and secure online voting), and oppose unreasonable identification requirements that discourage or prevent certain classes of citizens from voting;
- Federal, state and local governments should ensure that no governmental entity exclude any otherwise qualified person from voting on the basis of medical diagnosis, disability status or type of residence; and
- Uniform standards should be established and reinforced with adequate funding in order to safeguard the integrity of the election process and afford all Americans the ability to express their electoral preference.

Because this is an effort that requires coordination between federal and state governments, AARP looks forward to working with leaders at all levels of government to institute laws, regulations and administrative tools to promote, expand and ensure the exercise of every citizen's right to vote.