



South Carolina Progressive Network
P.O. Box 8325
Columbia, SC 29202

A. Philip Randolph Institute
Access SC
Aiken Peace
Alliance for Full Acceptance
Amalgamated Transit Union Local 610
American Postal Workers Union Local 807
Berea Community Development Corp.
Carolina Alliance for Fair Employment
Carolina Peace Resource Center
CASA/Family Systems
Charleston Peace
Committees of Correspondence
Common Cause of SC
Delta Sigma Theta Sorority Alumnae Chapter-Columbia
Eastern Cherokee, Southern Iroquois & United Tribes of SC
East Cooper CARTA Riders
Environmentalists, Inc.
Garden of Grace UCC
Greater Charleston Central Labor Council
Greater Columbia Central Labor Council
Greater Piedmont Central Labor Union
GROW Food Coop
Hilton Head for Peace
Hispanic Outreach
IATSE 347 (Int. Alliance of Theater and Stage Employees)
IFF ONLYS
International Longshoreman's Assn. Local 1422
NAACP-LowerRichland Branch
National Association of Social Workers, SC
Natural Guard Fund
Open Door Christian Church
P-FLAG-Columbia
Planned Parenthood Health Systems
RH FACTOR
Riverside CDC
Sean' Last Wish
Secular Humanists of the Low Country
SC AFL-CIO
SC Alliance for Retired Americans
SC Assn. of Community Development Corporations
SC Campaign to End AIDS
SC Coalition Against Domestic Violence and Sexual Assault
SC Coalition for Healthy Families
SC Equality Coalition
SC Gay & Lesbian Pride Movement
SC Legislative Black Caucus
SC NAACP
SC Professional Fire Fighters Assn.
SC Rural Education Grassroots Group
SC Voter Education Project
Unitarian Universalist Fellowship, Columbia
Upstate Secular Humanists

September 3, 2011

Senator Dick Durbin, Chair
Senate Judiciary Subcommittee on the Constitution,
Civil Rights, and Human Rights
Re: New State Voting Laws: Barriers to the Ballot?

Dear Senator Durbin,

The South Carolina Progressive Network (SCPN) is a 16-year-old coalition of organizations and individuals committed to just and equitable state policies. The Network has opposed legislation requiring voters to show a photo ID since the bills were first introduced in 2008. Network Executive Director Brett Bursey participated in every subcommittee and committee hearing on the bill's versions. The H-3003 version of the bill was signed into law by Gov. Nikki Haley March 18, 2011.

The SCPN has submitted affidavits from individuals whose voting rights will be abridged by the photo ID law (see attached DOJ affidavits) to the US Justice Department for consideration in their Section 5 deliberations.

We have absolutely no doubt that this law was promulgated and promoted by the American Legislative Exchange Council and is intended to reduce voting by traditional Democratic voters. The 2008 version of the SC photo ID bill (H-3418 attached) was so completely cribbed from ALEC that it contained a provision that allowed voters to show photo ID up to ten days after an election to have their provisional ballot counted. Indiana (the first state ALEC targeted for photo ID) certifies votes ten days after an election, but South Carolina certifies provisional ballots three days after a general election.

After nearly 250,000 SC voters turned out to vote early in-person absentee in the 2008 general election, Rep. Alan Clemmons (R-Horry) proposed legislation to do away with in-person absentee voting. A majority of those early voters were people of color who likely voted Democrat. Rep. Clemmons was the primary sponsor of the state's photo ID law (H-3003) and the chair of the House Election Laws Subcommittee that heard testimony on his bill.

Rep. Clemmons has stated in committee meetings on early voting that everyone voting during the same 12 hour period on election day is "patriotic".

Royal Masset, the former political director of the Republican Party of Texas, was quoted in the Houston Chronicle during a 2007 debate over photo ID as

saying that “among Republicans it is an ‘article of religious faith that voter fraud is causing us to lose elections,’ Masset said he doesn’t agree with that, but does believe that requiring photo IDs could cause enough of a drop-off in legitimate Democratic voting to add 3 percent to the Republican vote. (<http://www.chron.com/news/article/In-trying-to-win-has-Dewhurst-lost-a-friend-1815569.php>)”

For the reasons set forth below, The organizations of the SC Progressive Network have requested that the DOJ deny pre-clearance of SC’s photo ID law, as the proposed changes have no legitimate purpose and will place unnecessary burdens on minority voters.

1. There is no rational basis for the law. Under direct examination by SC Progressive Network Executive Director during subcommittee hearings on H-3003 (now Act R54), bill sponsor Rep. Alan Clemmons conceded that there have been no recorded instances of voter impersonation in South Carolina that the legislation is intended to address. Rep. Clemmons stated that his bill would address the “public perception” that voter fraud is a problem in South Carolina. (See Bursey Affidavit and Clemmons letter to SC Attorney General attached).

2. The state issued Department of Motor Vehicle (DMV) photo identification cards, required for in-person voting, require the voter to have a birth certificate in the name they currently use. This requirement is an unreasonable obstacle for voters, especially elderly, black voters who have never had a birth certificate. Affidavits have been submitted (in DOJ comments and attached) detailing how registered voters are being forced to pay a \$150 filing fee to go to court to have a name changed, prior to having a birth certificate issued by the Department of Health and Environmental Control (DHEC), prior to getting the DMV ID required to vote.

Mr. Larrie Butler was born at home in 1926 and has never had a birth certificate (Butler affidavit filed in previous comments). The DMV would not accept Mr. Butler’s current and valid Maryland driver’s license in exchange for a SC driver’s license, and sent him to DHEC to get a birth certificate. Mr. Butler gathered documents required by DHEC to issue a “delayed certificate of birth”, including his college, high school, medical and military records. DHEC insisted on Mr. Butler producing his elementary school records. Mr. Butler went to an elementary school in a black church, during the Jim Crow segregation of the 1930’s, that no longer exists. Our organization provided Mr. Butler with a 1930 census report that established when and where he was born, but DHEC would not accept the document because it spelled his first name as “Larry”. Mr. Butler was told that he needs to go to court to get his name established.

Mr. Butler honorably served this country in the Army and has been voting since the end of Jim Crow. Mr. Butler, and other South Carolinians in his situation, view the new photo voter ID law as a new twist on an old game, intended to abridge their right to vote.

3. The offer of a free photo voter registration card, should Act R54 be pre-cleared, does little to mitigate the abridgement of minority voting rights.

There is no doubt that the implementation of photo voter registration card’s required by Act R54 will pose an expense on the taxpayers (the entire photo ID implementation, training and education was funded inadequately at \$535,000: http://www.scstatehouse.gov/sess119_2011-2012/appropriations2011/tas79.htm) and a burden on registered black voters.

The funding for the SC Election Commission to buy one camera for each of the 46 county voter registration offices was finally approved by the legislature on August 2, On August 25, the SC Election Commission filed a “Procedure for Issuing Photo Voter Registration Cards” with DOJ (see attached), that details a cumbersome process. Newly registered voters will receive a voter registration card with a letter advising them they can not vote with the card unless they have approved photo ID. The voter can then travel to the county voter registration office and trade their card in for a “temporary photo voter registration card” that is good for 30 days. The voter will then get their permanent photo voter registration in the card from the state Election Commission.

We know that 178,000+ registered voters do not have DMV ID cards (see attachment: ID statistics). We know that a higher percentage of black voters do not have photo ID and that the majority black counties have the highest percentage of voters without photo ID (ibid). These voters will have to have to travel to their county’s voter registration office, a 100 mile round trip for many, to trade their old voter registration card for one with their picture. If you don’t have transportation, can’t afford time off work, don’t have a care-giver for who you are caring for, have disabilities, or are just plain broke, these may be reasons you don’t get to cast a regular ballot in the next election.

4. The law requiring photo ID’s will be applied unequally.

South Carolina’s laws that determine who gets to vote and who counts the votes was established in the Constitution of 1895. That constitution was a product of avowed racist intent to turn back the voting rights blacks had gained following the civil war. This “Jim Crow” legislation put the control of elections in the hands of state senators who appointed the county election boards.

Today, 116 years later, the county election board are appointed by the legislative delegation representing that county. Some are dominate Democrat, most are dominate Republican, but all appointments are political.

DOJ needs to understand that all the decisions regarding provisional ballots and reasonable impediments will be made by majority party appointees:

SECTION 7-5-10. Appointment and removal of board members; training and certification requirements.

(A) Between the first day of January and the fifteenth day of March in each even-numbered year the Governor shall appoint, by and with the advice and consent of the Senate, not less than three nor more than five competent and discreet persons in each county, who are qualified electors of that county and who must be known as the “Board of Registration of County”. The Governor shall notify the State Election Commission in writing of the appointments. The members appointed are subject to removal by the Governor for incapacity, misconduct, or neglect of duty.

This law has been modified, and any sense of equal protection confounded, by “local legislation” that established different rules for most counties under separate legal codes. Local legislation is introduced and passed with only the representatives of a particular district voting. Individual county laws are established

by Title 7, Chapter 27 of the state code and found at: <http://www.scstatehouse.gov/code/t07c027.htm>.

Our concern about how provisions of Act R54 would be unequally enforced are substantiated by a 2008 ACLU study of county election commission's responses to questions regarding ex-felon voting rights. Responses ranged from felons can never vote (one county) to they have to bring in "appropriate" forms (39 counties).

State statutes allow ex-felons to vote and do not require any forms beyond signing the voter's oath on the registration form that they are not serving a sentence for a conviction. Demanding that ex-felons bring in proof of completion of their sentence is a locally exercised option not supported by statute.

"The state allows counties to set their own policy regarding documentation. Thirty-nine out of forty-six (85%) county representatives said individuals must present a letter from the parole/probation office, while few had no "special procedure" or said that verbal confirmation from the oath was sufficient. (ACLU 2008 study on criminal disenfranchisement attached)"

5. The "Reasonable Impediment" exemption for photo ID is vague and creates a second class of voters.

SECTION 5. Section 7-13-710 of the 1976 Code, as last amended by Act 459 of 1996, is further amended to read:

(b) If an elector does not produce a valid and current photograph identification because the elector suffers from a reasonable impediment that prevents the elector from obtaining photograph identification, he may complete an affidavit under the penalty of perjury at the polling place and affirm that the elector: (i) is the same individual who personally appeared at the polling place; (ii) cast the provisional ballot on election day; and (iii) the elector suffers from a reasonable impediment that prevents him from obtaining photograph identification. The elector also shall list the impediment, unless otherwise prohibited by state or federal law. Upon completion of the affidavit, the elector may cast a provisional ballot. The affidavit must be submitted with the provisional ballot envelope and be filed with the county board of registration and elections before certification of the election by the county board of canvassers.

There is no definition of "reasonable impediment" in the statute. A recent SC Attorney General's opinion on what constitutes a reasonable impediment concluded that a "valid reason" is sufficient cause. The determination of "reasonable" or "valid" will be made by politically appointed, local election boards that are provably subjective and unequal in their enforcement (see #4 comment above).

6. The state Attorney General, in their submission for pre-clearance, claimed that "This office is not aware that the changes in the Act affect any minority or language groups adversely."

The fact that all 28 members of the House Legislative Black Caucus walked out of the chamber, in opposition to this bill, should have sent a message to the all white Republican majority who passed the legislation that the law would affect a minority group adversely. The white majority party does not seem to know why South Carolina is a Section 5 state.

7. The state Attorney General's opinion on the statute's meaning of a "reasonable impediment" (see attached AG's Opinion) contained a single footnote at the end that questioned the constitutionality of the Voting Right Act.

We submit that the footnote: “*We note that the United States Supreme Court recently avoided the question of whether the Voting Rights Act exceeds the constitutional power of Congress to enforce the Fifteenth Amendment, but that Justice Thomas would have decided the constitutional question against the constitutionality of the Act,*” reflects a political and racial bias that should weigh against the pre-clearance of this submission.

For these reasons, the 59 organizations of the South Carolina Progressive Network, requested that DOJ deny pre-clearance of SC’s photo ID law (H-3003: Act R54).

For these reasons, we respectfully request this Senate Judiciary Subcommittee find that South Carolina’s photo ID law is part of a nationwide partisan effort to suppress citizens’ right to vote.

A handwritten signature in black ink, appearing to read "BA Bursey".

Brett Bursey
Executive Director, SC Progressive Network