



MALDEF

Mexican American Legal Defense and Educational Fund
QUESTIONS FOR THE RECORD

From Senator Amy Klobuchar

"The State of the Right to Vote After the 2012 Election"

December 19, 2012

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Voter ID Laws:

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- To the best of your knowledge, did the implementation of new voter identification requirements cause confusion or contributed to long lines at the polls in this year's election?

First, I would like to thank Senator Klobuchar and the Senate Judiciary Committee for the opportunity to provide additional information regarding restrictive voter identification requirements at the polls. As I mentioned in my oral testimony, we believe there are many reasons for long lines at the polls on Election Day and that restricting voter identification rules are a contributing factor to poll worker and voter confusion that can and often does lead to longer lines.

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In Texas for example, the proposed photo voter ID law enacted by the Texas Legislature under SB 14, but not implemented because it failed to gain preclearance under section 5 of the federal Voting Rights Act, did result in confusion for poll workers and election officials. On March 12, 2012, the United States Attorney General denied administrative preclearance of the Texas photo voter ID law (SB 14), concluding that Texas had failed to show that SB 14 will not have "the effect of denying or abridging the right to vote on account of race." On August 30, 2012, the United States District Court for the District of Columbia issued an order in *State of Texas v. Holder*, Civil Action No. 1:11-CV-00128, denying the state's request for a declaratory judgment preclearing SB 14. Nonetheless, the Texas Secretary of State required county election officials to add language to the registration certificates sent to every Texas voter describing the requirements of the photo voter ID that never went into effect.

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The voter registration certificate designed by the Secretary of State stated:

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Upon federal approval of a photo identification law passed by the Texas Legislature in 2011, a voter must show one of the following forms of photo identification at the polling location before the voter may be accepted for voting: Driver's license, election identification certificate, personal identification card or concealed handgun license issued by the Texas Department of Public Safety; United States Military identification card that contains the person's photograph; United States citizenship certificate that contains the person's photograph; or a United States passport.

Because Texas counties are required by law to send this certificate to all registered voters, including those who registered to vote following August 30, 2012, millions of individuals continued to carry an official election document stating inaccurate information regarding the requirements for voting in the November 6, 2012 election.

The voter confusion created by the dissemination of inaccurate voter registration certificates was compounded by the incorrect information provided to voters by the Texas Secretary of State on her websites.

The website for the Elections Division of the Secretary of State provided a number of links for voter information, including a tab for "Voter Information" and "Frequently Asked Questions." These tabs guided the voter to the website VoteTexas.gov (also maintained by the Secretary of State) and a page titled "Need ID?" which did not provide a complete list of acceptable voter identification documents established by the Texas Election Code §§ 63.001 and 63.0101. Most important, the Secretary of State excluded from her list the voter registration certificate, which is acceptable voter identification under current Texas law and also the most accessible form of identification because it does not cost money and comes to the voter by mail before an election. The Spanish language translation of the site contained the same error. Thus Texas voters searching online for information from the Secretary of State on acceptable voter ID were seriously misinformed about their ability to vote at the polls on Election Day.

Many Texas county election officials provided links to the erroneous Secretary of State election webpages on their own websites, which further exacerbated the problem of misinformation on voter identification. Even worse, some counties that correctly stated that voters may use their voter registration certificates as voter identification at the polls contradicted themselves by linking to the websites maintained by the Texas Secretary of State. Finally, other counties that relied on the Secretary of State websites for voter identification information provided contradictory information in English and Spanish. For example, Tarrant County correctly stated on its website in English that voters may use their voter registration certificates as voter identification, but then directed Spanish speaking voters to the incorrect information on the Secretary of State websites.

Media outlets in Texas that relied on the information distributed by the Secretary of State also reported incorrect lists of voter identification. For example, in McAllen, Texas, a city of more than 125,000 that is also 85% Hispanic, the local television station reported an incorrect list of acceptable voter ID.

Thus, voters who were initially confused by the restrictive SB 14 identification requirements printed on their voter registration certificates were further misled by the information presented by the Texas Secretary of State as well as local election officials and news outlets that relied on the Secretary of State's websites.

Texas poll worker confusion regarding voter identification was chronicled by Wayne Slater, a Dallas Morning News Reporter, when he attempted to vote in Williamson County utilizing his

utility bill (an acceptable form of voter identification in Texas) and was asked by the poll worker for additional identification.¹

The nonpartisan Election Protection coalition in 2012 reported misinformation and confusion about voter identification in Michigan and Pennsylvania.² In Pennsylvania many voters reported being confused and deterred by requests for ID. Election Protection received reports from across the state from voters who were improperly turned away for lacking photo ID and reported the following:

This was exacerbated by widespread misinformation disseminated at polling places. Voters in polling places in Dauphin County, for example, were greeted with misleading signs stating that voters must show an approved form of photo ID to vote. The state itself put out such misleading information, issuing a mailing the week before the election that read, 'If you want to vote, SHOW IT....Under a new law, voters are supposed to show a form of ID' and contained no mention that voter's did were not required to show photo identification in order to vote on Election Day.³

Ultimately, it's difficult to quantify the confusion caused by strict voter identification requirements (enacted or proposed) and its relationship to long lines in polling places. Voters obtain election information from multiple sources including media, word of mouth, official and non-official websites, mailers and emails from political parties, poll workers, county officials, candidates, and third parties. In states with litigation over enacted voter ID laws such as Texas and Pennsylvania, misleading and inaccurate information, in some cases from the election officials themselves, likely caused confusion among voters and poll worker alike as well as delays in accepting voters on Election Day when poll workers demanded the wrong types of ID.

➤ In your opinion, are any types of voter ID laws consistent with protecting voting rights?

The short answer to your question is yes. MALDEF does not contend that all voter identification requirements will automatically result in violations of the Voting Rights Act or any other Constitutional or legal protections. With that said, MALDEF believes that any voter identification requirement ought to allow eligible voters who do not have preferred identification to participate by showing other forms of identification, signing an affidavit, and/or providing other identifying information. Furthermore, any substantive change in voting policies, including a change in identification requirements, must be accompanied by a robust and multi-faceted public education campaign. Last, voting should not cost money, and any additional identification requirement should be accompanied by a program to ensure that required identification is free of cost, including underlying identification needed to obtain voter ID, such as birth, marriage and naturalization certificates as well as, where feasible, mobile identification units to provide identification to those who cannot physically go to government agencies that issue state photo identification documents.

¹ Available at <http://trailblazersblog.dallasnews.com/2012/10/voter-id-is-not-the-law-in-texas-but-law-schmaw-demand-it-anyway.html/>

² See <http://www.lawyerscommittee.org/admin/site/documents/files/EP-2012-Preliminary-Report-to-Congress-FINAL.pdf> at 15.

³ Id.

The most detailed information we have about the impact of voter identification laws comes from the litigation in which MALDEF represents eligible voters who were turned away or would have been turned away from the polls as well as voter organizations. These cases include *Gonzalez v. Arizona*, 677 F.3d 383 (9th Cir. 2012) and *Texas v Holder*, 2012 WL 3743676 (D.D.C. 2012).

At the trial of *Gonzalez v Arizona*, Arizona could not produce any example of impersonation voter fraud to justify its voter ID law. The lack of evidence of even a single incident of impersonation voter fraud is consistent with the U.S. Supreme Court's observation in the Indiana voter ID case that "the record contains no evidence of any such fraud actually occurring in Indiana at any time in its history." *Crawford v. Marion County Election Board*, 553 U. S. (2008) (slip op at 11). What we have learned about voter ID laws is that they are unjustified by a real problem of impersonation voter fraud and are thus a solution in search of a problem.

Although unsupported by the evidence, Arizona's voter ID law has resulted in thousands of voters being turned away from the polls. During these elections, a voter whose name was on the rolls but who could not provide the required ID was given a conditional provisional ballot and told to return within five days with ID or the ballot would not be counted.

Because of Arizona's voter ID law, many eligible voters whose names were on the voter rolls found themselves suddenly unable to vote because of one problem – they did not have the specific combination of documents required by the Arizona voter ID law. These citizens – all ages, races, party affiliations and income levels – were representative of the general electorate but found themselves excluded from the democratic process.

For example,

- Karen Lewsader, a police officer and registered Republican, was forced to cast a conditional provisional ballot because her driver's license listed a different address than the address assigned to her in the voter rolls. She had previously moved and changed her address with the Motor Vehicles Department, but the practice of the agency is to change the records in its database and not replace the physical driver's license unless the driver pays an additional fee. When she was at the poll Ms. Lewsader went back to her car to try to find another form of identification with the correct name and address so she could cast a regular ballot, but the vehicle registration information she found was under her husband's name. When the demands of her job prevented her from returning to the county to show additional ID, her vote was not counted.
- Kristopherlee Russell, a registered Democrat, was forced to cast a provisional ballot because his driver's license and voter roll addresses did not match. His license had the address from his time as a student at the University of Arizona. After graduation he went to the DMV to update his information, but did not pay for a replacement license. When he went to vote his valid driver's license and voter registration card were not sufficient proof of identification. Mr. Russell did not have any other acceptable form of identification with him at the time and ultimately cast a provisional ballot. Minutes after leaving the polling place he found his Vehicle Registration and Proof of Insurance information in his car and attempted to present them at the same polling place as proper

forms of identification, but the poll workers did not allow him to change ballots. Mr. Russell's vote was not counted.

- Caleb LaPorte is a technician who works in chemical pumps and mines in Phoenix. Poll workers gave him a provisional ballot because the address on his license did not match the address on the voter rolls, even though he brought a letter from the voting bureau that stated it received his change of address and that he could use the letter as a form of identification. Mr. LaPorte was living with his girlfriend in her apartment at the time, and all the utility bills were in her name. When a poll worker explained that any form of mail would suffice as identification for voting, Mr. LaPorte returned with the only mail he received at that address- advertisement mail. Upon showing the envelope to the poll workers, they concluded it was not acceptable and gave him a conditional provisional ballot. The poll workers told Mr. LaPorte that the only way he could "cure" his ballot was to get a new driver's license. Mr. LaPorte did not have the time to do this before the 5-day deadline and his ballot was not counted.
- Georgia Morrison-Flores was a newlywed when she registered to vote and she registered under her married name. However, when she went to vote her maiden name on her driver's license did not match her married name under which she was registered. Because the names did not match, even though her valid ID showed her photo, birth date and first name, Ms. Morrison-Flores was turned away from the poll by an election worker who knew her and had been her childhood neighbor. Ms. Morrison-Flores was unable to cast a ballot of any kind, despite her status as a qualified voter.

Although the federal courts upheld the Arizona voter ID law is not unconstitutional, the examples of eligible voters turned away at the polls remain in the record as a stark reminder of the disenfranchising effects of such laws.

In Texas, the enacted, but not pre-cleared SB 14 would have been far stricter than Indiana's or Georgia's voter ID laws⁴ as well as Arizona's in terms of acceptable identification and the lack of exceptions for potentially eligible voters that lacked the necessary identification. In *Texas v. Holder*, the U.S. District Court for the District of Columbia found that Texas could not bear its burden to prove by a preponderance of the evidence that the photo ID legislation lacked a retrogressive effect in part because the Legislature rejected amendments that would have ensured appropriate safeguards including, but not limited to, waiving all fees for indigent persons who needed underlying documents, reimbursing low-income Texans that for travel to obtain an ID, including student IDs and Medicare cards in the list of acceptable photo IDs, and accepting expired driver's licenses.⁵

Restrictive photo ID legislation forces certain voters to take additional steps to acquire acceptable forms of identification or exclude these voters from voting altogether. In addition, because these laws force some voters to return home for more documentation before returning to the polls for a second attempt at voting, the present themselves for voting a second time, the laws discourage voters from exercising the franchise.

⁴ *Texas v Holder* opinion at 26.

⁵ See ID at 26, 55-56.

This type of legislation also creates the likelihood that election officials will refuse to accept voters whose photo identifications list an address or name that does not match their address or name on the voter rolls. For example, a voter who changes addresses before his driver's license expires will have an address on that license that differs from the address in the voter rolls. If you want a license that reflects your new address, you have to pay additional fees. Poll workers are often unsure about what to do with a voter whose photo identification lists a name that is different from that on the voter rolls, and sometimes poll workers respond by turning away the voter, or allowing the voter to cast only a provisional ballot that is ultimately not counted.

MALDEF recognizes that not all voter identification laws are the same. Many voter identification requirements include safeguards to ensure voters will not be disenfranchised. Many of these safeguards are more effective than others and if safeguards are combined, it can significantly reduce potential disenfranchisement of eligible voters. These include:

Effective

- Allowing a county or government issued voter registration certificate as acceptable form of identification;
- A broad list of identification documents that includes student identification, non-photo government-sent correspondence and other documents consistent with the Help America Vote Act list of documents for first-time registrants in a state that does not have a statewide voter database;
- An affidavit process similar to Michigan, New Mexico or Florida to ensure eligible voters are not disenfranchised; these safeguards have proven effective in reducing legal challenges;
- Free identification cards become less effective if voters are subject to rules that require other documents that are not free.

Less Effective

- Limiting acceptable identification to photo identification excludes voters who lack a photo ID but who do have other forms of non-photo identification;
- Narrow exceptions for the disability community and those over a certain age fail to provide a meaningful opportunity for many voters who lack ID;
- Short "cure" periods in which voters who cast provisional ballots must return with satisfactory ID present serious barriers to voters with inflexible work schedules or limited access to transportation.

Conclusion:

Ultimately, laws related to voter identification must strike the right balance between security and access to the polls. Attempts to make the identification requirement exceptionally strict are often not rooted in good policy, or even reality, and can result in significant disenfranchisement. Any law that requires an identification requirement beyond what is required by HAVA for first time registrants should be viewed skeptically and should not be implemented without significant efforts to determine the impact on racial minorities, students, the elderly, the disability community, and the indigent. Any change in voter identification laws must be accompanied by a robust education campaign that encourages voters to obtain the necessary and easily obtainable identification and to exercise their franchise. If the proper conditions and safeguards are met, MALDEF does not object to reasonable identification requirements to vote at the polls.