

**VOTER IDENTIFICATION IN MINNESOTA:
A review of the proposed constitutional amendment
to be submitted to voters in November 2012**

**MINNEAPOLIS CITY COUNCIL
Standing Committee on Elections**

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CONSTITUTIONAL AMENDMENT ON VOTER IDENTIFICATION: POTENTIAL IMPACT ON ELECTION ADMINISTRATION FOR THE CITY OF MINNEAPOLIS

I. Introduction

In November, Minnesota voters will be asked whether the state constitution should be amended to implement new regulations affecting voting rights, including a mandate for certain identification provisions; changes to in-person and absentee voting including Same Day Registration and vouching; changes to polling places and election judge responsibilities and the introduction of provisional balloting.

This report summarizes possible effects the proposed amendment could have on the administration of elections based on an analysis of the ballot language and a comparison of similar voter identification laws and their effects from other states. Any analysis of Minnesota's proposed amendment is speculative at this point due to the vague ballot language and the need for more precise implementation, funding, and operational regulations. As a result, this report is not intended to be comprehensive but rather it seeks to outline the potential impacts to the City of Minneapolis and its voters, should the amendment be adopted.

II. Minnesota's Proposed Constitutional Amendment

Pursuant to Session Laws 2012, Chapter 167¹, the following amendment to the Minnesota Constitution will be submitted to the electorate in November 2012 in the form of a ballot question:

"All voters voting in person must present valid government-issued photographic identification before receiving a ballot. The state must issue photographic identification at no charge to an eligible voter who does not have a form of identification meeting the requirements of this section. A voter unable to present government-issued photographic identification must be permitted to submit a provisional ballot. A provisional ballot must only be counted if the voter certifies the provisional ballot in the manner provided by law. All voters, including those not voting in person, must be subject to substantially equivalent identity and eligibility verification prior to a ballot being cast or counted."²

¹ For a full copy of the legislation see Exhibit A.

² <https://www.revisor.mn.gov/laws/2012/0/Session+Law/Chapter/167/>

In an attempt to more fully understand the potential impacts (or range of impacts) the proposed amendment could have, it is useful to approach each clause of the ballot language separately.

“All voters voting in person must present valid government-issued photographic identification before receiving a ballot.”

In other states that have already adopted and implemented voter ID laws, a variety of exemptions have been incorporated to address factors that would potentially preclude a voter from providing proper identification; these include: military and civilian absentee voters, voters with religious objections to being photographed, voters with disabilities, and voters who are residents of nursing homes or long-term care facilities. Since the Minnesota proposal does not provide any exceptions, the identification requirements would presumably apply to “all voters.”

Furthermore, the requirement that the mandated identification must be “government-issued” would limit the types of identification voters could use to prove their identity. For example, this would mean that many forms of identification that are currently accepted under state law would no longer be permitted, such as ID cards issued to students from private colleges and universities. A broader, more encompassing provision would be possible if the mandated identification were “government-approved,” rather than an ID that must be “government-issued.” This kind of broader, permissive approach would enable the state to regulate which forms of identification are permissible, even if not produced by a government agency.

“The state must issue photographic identification at no charge to an eligible voter who does not have a form of identification meeting the requirements of this section.”

The Minnesota Division of Vehicle Services estimates that there are approximately 144,000 voting-age Minnesotans without IDs. A comparison of the Voter Registration (SVRS) and Department of Public Safety databases showed there are actually about 215,000 current voters who do not have IDs issued by the State of Minnesota or ID that has the wrong address, all of whom may qualify for a free ID under the proposed amendment.

Beyond the on-going government cost to maintain ID programs, all individuals without IDs will have to cover the cost to obtain the documents needed to get an ID, which includes birth certificates and marriage licenses for individuals who may have changed their names. [See Section IV. Voter Identification for more detail.]

“A voter unable to present government-issued photographic identification must be permitted to submit a provisional ballot. A provisional ballot must only be counted if the voter certifies the provisional ballot in the manner provided by law.”

This clause institutes provisional balloting in Minnesota in order to accommodate potentially-eligible voters who lack an acceptable government-issued ID on Election Day. Such voters would be allowed to submit a provisional ballot. Provisional ballots are a guarantee under the Help America Vote Act of 2002 to protect the rights of voters when there are questions in regard to voting eligibility. [See Section V. *Provisional Voting for more detail.*]

“All voters, including those not voting in person, must be subject to substantially equivalent identity and eligibility verification prior to a ballot being cast or counted.”

This clause reframes how absentee voters (whether military or civilian) would be allowed to vote. The “*substantially equivalent*” standard would require all absentee voters to provide verification of their identity—using the same criteria for “*government-issued*” identification—as a voter exercising his or her voting rights at the polling place on Election Day. Minnesota would be one of few states to require absentee voters to meet this burden of proof. The requirement would likely impact 250,000 military, overseas, and domestic absentee and mail-in voters in Minnesota during presidential elections.

In addition to impacts on absentee voting, this clause would eliminate vouching and could potentially modify or eliminate Same Day Registration. Under the system prescribed by the proposed amendment, same-day voters would be required to cast provisional ballots since they would be unable to prove their identity at the polling place lacking proper photographic identification issued by a government agency. If Same Day Registration were eliminated, an estimated 500,000 voters could be impacted in presidential elections. As indicated above, before provisional ballots are counted, those voters must verify their identity with election officials within a pre-determined period of time. Increasing the number of provisional ballots increases the number of ballots not processed and counted on Election Day, which potentially delays official election results. [See Section VIII. *Same Day Registration for more detail.*]

III. The National Context

As stated earlier, much of the analysis of the proposed amendment is speculative. Still, some important points can be gleaned from the experiences of other states that have voter identification laws.

The United States Supreme Court addressed voter identification requirements in *Crawford v. Marion County Election Board* (2008). That case examined the constitutionality of a law

requiring voters to present government-issued photo identification at the polls before receiving a ballot. In a 6-3 decision, the Supreme Court upheld the new requirements as constitutional, finding that Indiana had asserted legitimate interests relevant to protecting the integrity and reliability of elections which outweighed the potential burden on voters.

Earlier this year, the Justice Department rejected South Carolina's voter ID law for the second time. South Carolina is one of sixteen states whose voting laws and regulations are subject to federal approval under the Voting Rights Act of 1965 because of a history of discriminatory laws and practices in those jurisdictions. In its ruling, the Justice Department noted that the South Carolina voter ID law could disproportionately affect black voters. The state sued, and a federal court is scheduled to take up the case in September.

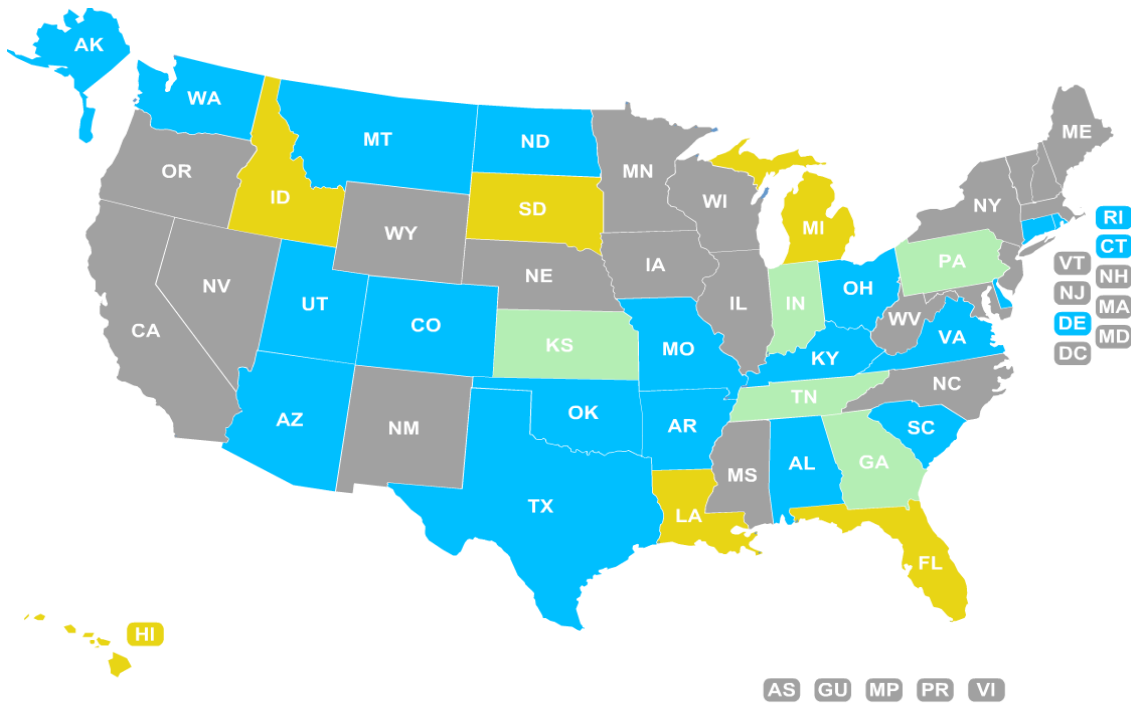
Similarly, a federal court began hearing arguments this last week on whether a voter ID law in Texas discriminates against Hispanic voters. A Wisconsin judge declared that state's voter ID law to be a violation of the state constitution. An appeal is likely. Michigan Governor Rick Snyder vetoed a bill last week that would have required voters to show identification before casting absentee ballots. Finally, the Obama administration is suing Florida in response to Governor Rick Scott's efforts to purge voter rolls of individuals that the state claims may not be American citizens.

In Minnesota, a petition⁶ was filed in the State Supreme Court on or about May 30, 2012, alleging that the ballot question formulated by the State Legislature is unconstitutionally misleading and seeking to have the Court restrain the Secretary of State Mark Ritchie from submitting the question to the electorate as part of the November 2012 general election ballot. Oral argument in this case began on Tuesday, July 17, 2012.

⁶ See Exhibit B for a copy of the petition.

IV. Voter Identification

To date, a total of 30 states—60 percent of the nation—have enacted legislation which requires or requests some form of voter identification.⁷ This is visually depicted on the following map, which was prepared by the National Conference of State Legislatures (NCSL).⁸



Voter ID Requirements Currently in Effect:

Strict Photo	Photo	Non-Photo	No ID Law
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As shown, eleven states mandate photographic identification requirements; these include: Florida, Georgia, Hawaii, Idaho, Indiana, Kansas, Louisiana, Michigan, Pennsylvania, South Dakota, and Tennessee.⁹

According to the National Conference of State Legislatures, states that have enacted voter identification legislation can be distinguished by two primary criteria.

⁷ See Exhibit C for National Conference of State Legislatures' State Requirements for Voter Identification Chart

⁸ For an interactive version of the map see <http://www.ncsl.org/legislatures-elections/elections/voter-id.aspx>

⁹ For a survey of states approaches to Voter ID issues see Exhibit D.

The first criterion is whether the law is “strict” or “non-strict.” A “strict” law requires a voter to verify their identity using legally-prescribed form of identification before being allowed to cast a ballot. Other forms of identification, or exceptions, are not generally authorized, but could be allowed under specific conditions such as oversees military voters. When a voter is unable to comply with the identification requirement, he or she may be allowed to cast a provisional ballot provided that proper identification is provided to the local elections official shortly after the election (usually a few days). Examples of states with “strict” identification laws include Kansas, Indiana, Tennessee, Georgia and Pennsylvania.

A “non-strict” law may require some form of identification, though not necessarily a government-issued form of identification and not necessarily photographic identification. Moreover, some states *request* identification that includes a photo, but do not strictly enforce this provision. Examples of states with “non-strict” identification laws include Idaho, Louisiana, and South Dakota. Other states require identification that meets specific criteria, but do not necessarily require photographic forms of identification nor government-issued forms of identification. Examples of states with “non-strict” identification requirements that do not include photo ID or specific government-issued forms of ID include Alaska, Connecticut, and Missouri.

Georgia and Indiana have the longest standing voter ID laws requiring photo identification, dating back to 2006. Both states have “strict” ID laws requiring all voters to show valid government-issued photo identification at the polls. But Georgia and Indiana both allow for early voting, which lessens the burden on administering provisional balloting on Election Day. Georgia also institutes no-fault¹⁰ absentee balloting. The Wisconsin law, which also has strict photo ID requirements, would still allow for Same Day Registration. The Minnesota amendment would require identification that included a photo to help prove identity; however, it goes one step further by requiring the government-issued form of identification to also verify a voter’s address in order to confirm the correct voting precinct. No other state laws currently mandate both a photo and home address to prove identity. Based on these criteria, if approved, the amendment would appear to make Minnesota the most restrictive state in the nation in terms of mandated, government-issued photo identification requirements, establishing a new benchmark against which voter ID laws could be evaluated in the future.

V. Provisional Voting

One of the most significant changes that would affect the voting process if the proposed amendment is passed would be the implementation of provisional voting. A provisional ballot would be cast when:

- The voter refuses to show proper identification;
- The voter’s name does not appear on the election roster of the given precinct;

¹⁰ No fault absentee balloting does not require a valid reason in order to be granted an absentee ballot.

- The voter’s registration contains inaccurate or outdated information, such as a misspelled name or an incorrect address; or
- The voter’s ballot has already been recorded.

A provisional ballot is filled out but is not counted on Election Day. When voters cast provisional ballots they must be allowed to return to the polling location or the election headquarters to verify their identity. The length of time allowed for voters to return and verify their identity varies from state to state but generally it appears that the verification can happen between four and twenty days. As a result, additional staff time must be allotted during that time to certify the provisional ballots of those provisional voters.

According to a 2009 survey, 30 percent of provisional ballots nationwide are never counted.¹¹ Minnesota does not currently have provisional balloting. Consequently, state and local government agencies would need to absorb startup costs as well as ongoing operational costs.

VI. Election Judges

Because provisional balloting and photo ID requirements would be new, the training of new and returning election judges would need to be expanded to include the new information and processes involved, which could lead to an increase in training costs. Expanded poll worker training is particularly important for states that enact photo ID laws, which could be enforced in a discriminatory manner.¹² To accommodate increased processing time, extra election judges will be needed, at least one additional election judge per polling place. For Minneapolis, that would result in a minimum of five election judges in each of its 117 polling places, with additional judges needed to offset projected turnout, precincts with high historically participation, including Same Day Registration, etc.

Minnesota election administrators are concerned with how the implementation of a Voter ID law could impact their ability to recruit and retain qualified election workers given the increased demands that would be placed on judges to determine a voter’s eligibility based on his or her ID. The complexity of the new laws may cause high levels of attrition. Additionally, separate training sessions would be required to instruct provisional and head judges of the intricacies certain to be associated with voter’s IDs and provisional voting.

VII. Polling Places

To assure adequate controls over provisional ballots—including segregation from “regular” ballots and a separate ballot box reserved only for provisional ballots—it is imperative that a

¹¹ http://www.pewstates.org/uploadedFiles/PCS_Assets/2009/ELEC_ProvBallot_Brief_0709.pdf

¹² See generally Anthony Page & Michael J. Pitts, *Poll Workers, Election Administration, and the Problem of Implicit Bias*, 15 Mich. J. Race & L. 1 (2009) (finding the discretion afforded by Photo ID laws may lead to a disproportionate number of people from racial and ethnic minority groups either not having their votes counted at all or being given provisional ballots).

separate and distinct area be set aside within each polling place to accommodate provisional voting. In effect, the provisional voting area becomes a “mini polling place” within the larger polling place serving each voting precinct that would be dedicated to processing and accepting provisional ballots. This requirement will impact the City’s size requirements for adequate polling place space. Some of the City’s current polling places (which are well-known and have been used for many years) are likely not large enough to meet these new space requirements. From a practical standpoint, the City will effectively co-locate two overlapping polling places in each space: one serving “regular” voters meeting the new identification requirements and a second to serve provisional voters. Theoretically, it expands the number of polling places that must be staffed, supplied, and managed from 117 to 234. Adding to these space concerns is the possibility that polling places would be required to accommodate CPU equipment with wireless/LAN access to transmit election results.

VIII. Elimination of Vouching and Same Day Registration

The proposed amendment requires all voters to be subject to “*substantially equivalent identity and eligibility verification.*”

Vouching, as a standalone proof of voting eligibility, would be eliminated.

The current process of registering on Election Day and voting in the polling place in the same manner as other voters—known as Same Day Registration—would not meet the proposed amendment’s criteria.

Only eight states (soon to be nine) and the District of Columbia allow for Same Day Registration, whereby any qualified resident of the state can go to the polls on Election Day, register, and vote. Two other states allow voters to register and cast a vote during a defined early voting period. In most other states, voters must register by a set deadline prior to Election Day. That deadline varies from state to state, with thirty days in advance being a common date.

Studies have demonstrated that Same Day Registration supports increased voter turnout. In fact, in those states that allowed Same Day Registration prior to 2006 (which included North Dakota, which has no voter registration requirements), voter turnout is 10 to 17 percent higher than the national average. In Minnesota, it is estimated that Election Day registrations account for between 5 and 10 percent of the total voter turnout and participation statistics.

The following chart identifies those states which currently authorize the use of Same Day Registration, and the date when Same Day Registration was enacted in that state.

STATE	ENACTED
CONNECTICUT*	2012
IDAHO	1994
IOWA	2007
MAINE	1973
MINNESOTA	1974
MONTANA	2005
NEW HAMPSHIRE	1996
WISCONSIN	1971
WYOMING	1994

**Connecticut's SDR becomes effective July 1, 2013.*

In addition to those states shown in the table (above), North Carolina has, since 2007, allowed its voters to register and vote on the same day at early voting locations that are open from nineteen days before the election to three days before the election. Ohio also allows Same Day Registration during its early voting period, which is conducted beginning on the last Tuesday in September through the first Monday in October. Despite these similarities, these two states do not permit Same Day Registration on Election Day.

Same Day Registration is also a convenience to voters, especially those who may—from whatever reason—have difficulty pre-registering. And, Same Day Registration gives states more control over their voter registration rolls because they are not subject to National Voter Registration Act (NVRA) purging restrictions.

Critics claim that Same Day Registration practices present opportunities for voter fraud. However, election officials from those states which authorize Same Day Registration (and North Dakota) have pointed out that safeguards are in place to prevent any increase in fraudulent activity in comparison to other states. Some of these safeguards include:

- Requiring some additional level of identification, such as a utility bill, to verify the person's address;
- Segregating SDR ballots and refraining from counting those ballots until verification certificates have been sent out and undeliverable ones are returned;
- Restricting the overall number of sites at which voters can register on Election Day;
- Implementing minimum residency requirements; and
- Stating and enforcing a deterrent penalty for fraud.

Opponents to Same Day Registration demand tighter controls over identity verification, which is more difficult to do for voters who register on Election Day. Under Minnesota’s existing system, the process of verifying a voter’s identity prior to Election Day—that is, for voters who pre-register—includes a rigorous analysis of various government databases that capture personally-identifiable data. For example, the verification of identity, citizenship, residency, and eligibility of voting rights for pre-registered voters is checked against databases maintained by Driver and Vehicle Services, Department of Corrections, Department of Health, State Courts, United States Postal Service, and Social Security Administration. It is unrealistic to expect that a similar, thorough analysis could be conducted in the polling place on Election Day. This level of detailed analysis to verify a voter’s identity and residency would, therefore, need to be completed after Election Day. Thus, under the amendment, those individuals who are unable to produce the mandated identification may still be allowed to vote on Election Day—as a provisional voter. And, as such, they would bear the burden of providing sufficient evidence to prove their identity within a prescribed timeframe after the election in essentially the same manner as pre-registered voters using the government-issued identification.

IX. Absentee Voting Issues

According to the proposed amendment, “*all voters, including those not voting in person, must be subject to substantially equivalent identity and eligibility verification prior to a ballot being cast or counted.*” This *substantially equivalent* standard could be extremely challenging to satisfy for voters opting to participate under the absentee voting process currently allowed in Minnesota. Because the proposed constitutional amendment lacks specificity on standards for *substantially equivalent*, it is impossible to predict how the Legislature may choose to address the legitimate voting needs of those who are unable to participate on Election Day at the designated polling place. This is especially a crucial point for the number of military voters deployed to locations away from their homes—whether elsewhere in the nation or outside the United States. Without clear definitions and standards to prescribe how absentee voters would be served under the proposed constitutional amendment, it is possible that the entire practice of absentee voting could be called into question.

X. Public Outreach & Education

Before implementing a new photo ID regime, Minnesota will need to conduct an aggressive outreach and education campaign to assure that voters understand the new identification requirements—particularly those voters who may not have the government-issued ID and may need additional time before an election to take the steps necessary to obtain that mandated form of identification.¹³ Given the breadth of changes potentially required under this

¹³ See, e.g., *Common Cause/Ga. v. Billups (Common Cause III)*, 504 F.Supp.2d 1333, 1378 (N.D. Ga. 2007), *vacated on other grounds*, 554 F.3d 1340 (11th Cir. 2009) (stating that the court’s earlier rulings striking down the ID law “hinged in large part on the fact that many of the voters who might lack a Photo ID had no real notice of the Photo ID requirement or of how to get a photo ID or vote absentee”); *but see* *ACLU of N.M. v. Santillanes*, 546 F.3d 1313,

amendment, it is reasonable to conclude that the scope of such an educational campaign would be far-reaching and would entail significant expenditures of state (and quite possibly local) revenue.

One of the grounds on which a lawsuit may be based is whether adequate outreach occurred. Georgia's experience implementing voter identification requirements sheds light on the extent of public outreach that may be necessary to pass constitutional muster.

In 2006, the State of Georgia passed its photo ID law to correct some of the problems with the earlier incarnation of its voter identification legislation which had been blocked by the court. Among other things, the new law provided for an education and publicity campaign regarding the new requirements.¹⁴ Nonetheless, the court again blocked the law, emphasizing the inadequacy of the voter education efforts, especially given the short period of time (three weeks) between the date when the new rules would have gone into effect and the upcoming primary elections.¹⁵ The State had developed paid public service announcements (PSAs) for radio stations, and a letter for voters explaining the rules. In finding these efforts inadequate, the court found it significant that many of the PSAs ran on off-peak hours and on a radio network with a low number of total listeners, and the letter, which was to be distributed at the polls on primary election day, was "not reasonably calculated to reach the voters who are most likely to lack a photo ID, many of whom may not appear at the polls or the registrar's office during those times."¹⁶ However, the court stated that "if the State undertakes sufficient steps to inform voters of the [law's] requirements before future elections, the statute might well survive a challenge."¹⁷

Interestingly, the same court reversed course and upheld the law the following year. In doing so, the court noted that after the 2006 hearings, the State made "exceptional efforts to contact voters who potentially lacked valid photo ID" to inform them of the requirements, procedures for obtaining a free ID, and the possibility of voting absentee without an ID.¹⁸ The State also developed brochures and postcards to distribute to voters, developed a website about the requirements, and advertised on the Clear Channel radio network and through partnerships with libraries and nongovernmental organizations.¹⁹ Additionally, the photo ID requirement

1322 (10th Cir. 2008) (finding that a City's failure to establish plans to inform voters of a new photo ID law was not adequate grounds to invalidate the law).

¹⁴ See *id.* at 1343-45.

¹⁵ See *Common Cause/Ga. v. Billups (Common Cause II)*, 439 F. Supp. 2d 1294, 1345-47 (N.D.Ga. 2006).

¹⁶ See *id.* at 1346.

¹⁷ See *id.* at 1351.

¹⁸ See *Common Cause III*, 504 F.Supp.2d 1333, 1378 (N.D. Ga. 2007).

¹⁹ See *id.* at 1378-80.

was well covered in the press.²⁰ The court held that the State’s extensive outreach and education efforts to inform voters of the new identification requirements well in advance of elections were sufficient to uphold the law.²¹

This experience in Georgia potentially establishes a minimal expected level of outreach and education that could apply in Minnesota if the proposed constitutional amendment is to survive judicial scrutiny. Assuming this is so, a minimum educational campaign in Minnesota could be expected to include: mailings to all citizens informing them of new ID requirements and how to obtain a voter ID; production of radio and television public service announcements; purchase of airtime to broadcast these public service announcements using media outlets and during hours deemed to reach large portions of the population; purchase of advertising space in various newspapers with high circulation numbers to advertise new voter ID requirements; and the creation of website(s) to publicize new voter ID requirements. While these efforts—and the associated costs—to educate voters may start with the State of Minnesota, it is reasonable to conclude that local governments would likely bear a portion (even a substantial portion) of these costs and the responsibility for planning, organizing, and conducting various outreach and educational aspects of a statewide coordinated campaign.

XI. Implementation Issues

Untenable Timeline

If the amendment is adopted, the language specifies that the identification requirements must be implemented in time to be effective for the November 2013 election. This creates a nearly untenable timeline for election officials—especially those with planned elections in 2013, like the City of Minneapolis.

Assuming the amendment is adopted, the State Legislature would need to adopt standards and provide specific direction on the implementation of the new identification requirements as well as other aspects impacted, such as absentee voting. New rules would need to be drafted, debated, and adopted in final form by both houses of the Legislature during its 2013 Session. When the Legislature is able to reach agreement on the scope of these new rules and regulations, the Governor must then sign them into law. It is likely that the interpretation and implementation of these new rules and regulations would be subject to the administrative oversight of the Secretary of State (Minnesota’s chief elections official), which could necessitate additional time to develop, test, and deploy to all counties. Thereafter, training on the new identification requirements needs to take place at the local level to assure that municipal clerks and election judges conform to the new requirements.

²⁰ *See id.* at 1379.

²¹ *See id.* at 1380-82.

Given all of these necessary steps in the process to implement the amendment, local election officials could have potentially five months to as little as four weeks to complete the major reform in time for the November 2013 election.

To further complicate matters, a primary election in 2013 would fall on August 13, with absentee and mail balloting starting sixty days prior to that date, on June 14. Because these primaries would be scheduled prior to the effective date of the new identification requirements, local election officials would be expected to administer the primary under the “old” rules and regulations and then switch in a matter of weeks to the “new” rules and regulations to conduct the November general election.

The last major election reform in Minnesota, which focused on absentee balloting, involved a two-year implementation period. The fact that this proposed amendment would provide a fraction of that time to absorb, adjust, and accommodate to major election process reform is cause for extreme concern among local election officials.

Votes Counted

One issue that may affect the overall number of “official” votes counted is the possibility that many voters may decide to forgo verifying their identification after-the-fact if a “winner” has been declared...even though the outcome could be affected by provisional votes. Oftentimes, news organizations declare an unofficial winner on the night of the election. It is conceivable that provisional voters may choose not to complete the steps required to verify their identity following an election—which would be required to have their vote counted—especially if they believe the outcome has already been decided. Ultimately, this could lead to a lower number of votes being counted. At the extreme, it could lead to further voter apathy and disengagement.

Additionally, due to the complexity of the provisional balloting process, voters are more likely to incorrectly complete a ballot. An Associated Press review of provisional ballots from Indiana and Georgia found that more than 1,200 of those provisional ballots were rejected during the 2008 general election.²² Georgia had 873 rejected provisional ballots due to ID from the 2008 general election while only about 300 ID provisional ballots were counted. The state also had 64 ID-related provisional ballots thrown out in the presidential primary this year. Indiana counties which maintained information from the 2008 election reported having hundreds of ballots rejected, and more than 100 more were rejected in the primary this year.

²² Baker, Mike, The Associated Press, Sunday, July 8, 2012, Columbia Missourian online

XII. S.F. No. 509, 6th Engrossment - 87th Legislative Session (2011-2012)

As already noted, the actual ballot language of the proposed constitutional amendment provides few substantive details about how its mandates could be interpreted, implemented and enforced. In 2012, Governor Dayton vetoed voter ID legislation S.F. No. 509²³ (hereinafter “509”) and while the information within the vetoed bill is far from dispositive, it does provide some comparative information on how the proposed amendment may ultimately be interpreted. The information contained within this section provides details about how 509 would have been effectuated based on research conducted by House and Senate research staff.

Below is a chart which provides a timeline of the legislative history related to the State’s action on various bills related to voter identification in the 2011 and 2012 Sessions.

Action	S.F. 509	H.F. 210	Amendment (H.F. 2738)
Introduction	2/28/2011	1/24/2011	3/7/2012
Second Reading	4/27/2011		3/19/2012
Passed	4/28/2011		3/20/2012
Senate Conferees	5/10/2011		3/27/2012
House Conferees	5/11/2011		3/26/2012
Third Reading	5/18/2011		4/3/2012
Governor’s Veto	5/26/2011		
Presented to Governor			4/5/2012

Provisional Ballots under 509

As already indicated, one of the most significant changes under the amendment (as well as 509) would be the use of provisional ballots.

Section 204C.135 of S.F. 509 describes the requirements for provisional voting. Information required for this provisional ballot include name, address, and date of birth, voter ID number, and any other information prescribed by the secretary of state. Additionally, the voter would have to affirm, in writing, that they are eligible to vote, have not yet voted previously in the same election, and that they meet the criteria for registering to vote in the precinct in which the voter appears. After completion, the ballot would be placed in a ballot envelope colored differently from those provided for absentee voters. These ballots, along with the related documentation would then be delivered to and securely maintained by the municipal clerk.

²³ See Exhibit E for the relevant sections of 509.

The second step of the provisional balloting process under 509 would be the counting of the provisional ballots. A voter who casts a provisional ballot in the polling place could personally appear before the clerk no later than seven calendar days following the election to prove that the voter's provisional ballot should be counted.

The clerk is required to count a provisional ballot in the final certified results from the precinct if:

(1) The statewide voter registration system indicates that the voter is eligible to vote or, if challenged, the county auditor or municipal clerk does not, based upon available records and any documentation presented by the voter, conclude that the voter is ineligible; and

(2) The voter presents proof of identity and residence in the precinct in the manner permitted by 509.

(a) If a voter does not appear before the county auditor or municipal clerk within seven calendar days following the election or otherwise does not satisfy the requirements of 509, or if the data listed on the items of identification presented by the voter does not match the data submitted by the voter on the provisional ballot envelope, the voter's provisional ballot must not be counted.

(b) The clerk must notify, in writing, any provisional voter who does not appear within seven calendar days of the election that the voter's provisional ballot was not counted because of the voter's failure to appear before the county auditor or municipal clerk within the time permitted by law to determine whether the provisional ballot should be counted.

Finally, prior to counting any provisional ballots, the clerk would need to verify that the number of signatures appearing on the provisional ballot roster from that precinct is equal to the number of provisional ballots submitted by voters on Election Day. Any discrepancy would need to be resolved before the provisional ballots may be counted.

Ultimately, state and local government agencies would need to absorb the startup costs of provisional balloting which state staffers estimated would be approximately \$50 million along with ongoing operational costs to local governments of over \$10 million.

Impact on Postsecondary Institutions under 509

Another aspect of 509 which would affect a number of educational institutions in Minneapolis comes in section 135A.17 subdivision 2. Under 509, all postsecondary institutions that enroll students accepting state or federal financial aid may prepare a current list of students enrolled in the institution and residing in the institution's housing or within ten miles of the institution's campus. The list would include each student's current address and note any student on the list known to not be a United States citizen. The list would be certified and sent to the appropriate

county auditor or auditors, in an electronic format approved by the secretary of state, for use in Election Day registration.

Election Judge Duties under 509

In addition to the new requirements for voters, 509 would also affect the duties of election judges. Section 201.061, subdivision 4 requires election judges to review and act upon a list of individuals reported to be ineligible to vote by the clerk. If an individual who is on the challenged eligibility list submits an application, the election judge would be required to list the voters status as “challenged”. All election judges processing voter registration applications would need to verify the applications using the roster.

Additionally, 509 would remove a presumption against deficient ballots when the voter failed to check a box on the application form where the voter has certified it to be true. Elections judges would also be required to obtain the date of birth of voters who registered before August 1, 1983. Failure of the voter to comply with this request would make the registration deficient.

Residency Requirement

Section 171.01, Subdivision 51 of 509 required that all valid forms of identification must include “residence address” in addition to identity. This requirement precludes the use of passports, military IDs and non-Minnesota driver’s licenses as valid identification.

Section 171.01, Subdivision 3b would require that those voters applying for a voter ID must “state the length of residence at the applicant's current address.” It is unclear how such a requirement would be verified and if verification is impossible, how IDs could be distributed.

Costs under 509

509 authorized the appropriation of \$3,658,000 in Fiscal Year 2012 and \$1,200,000 in Fiscal Year 2013—a total of \$4,858,000—to fund the implementation of changes in elections. Of that total, \$2,450,000 was appropriated from funds available to the State under the Help America Vote Act of 2002. The authorized base appropriation was \$215,000 in Fiscal Year 2014 and each year thereafter to fund the state-subsidized identification card account. This amount appears to be deficient in order to implement and maintain an efficient and fair election.

If 509 were used as a template for enforcement of the proposed amendment some or all of the above could become a part of the voting process in Minneapolis.

XIII. Conclusion

The 20th Century heralded the steady and progressive expansion of the voting franchise, including the Voting Rights Act of 1965, which is generally considered to be the nation’s most successful piece of civil rights legislation. President Lyndon B. Johnson referred to voting as the “first duty of democracy.” In a letter to congressional leaders in May 1966, Johnson stated that “Public confidence in the elective process is the foundation of public confidence in government.”

Still, the definition of “eligible voter” continues to evolve under both federal and state laws. Consequently, voting rights are better understood as “expressly-stated qualifications” that are protected under a number of amendments to the U.S. Constitution. For example, age; race or ethnicity; sex; and religious affiliation are examples of protected qualifications that constitute a part of the voting rights extended to citizens of the United States. Outside of these protected qualifications, the government may choose to limit, restrict, or deny voting rights for a number of other reasons. A prominent example of such a legal restriction is the requirement that voters be citizens of the United States.

This year, as part of the November general election, Minnesotans will be asked whether a further restriction should be placed on potential voters in this state; specifically, to require individuals to provide evidence of personal identity as a precondition to voting. This report has analyzed some of the potential ramifications of the proposed amendment. This report does not evaluate the merits of the base proposition; the question of whether the proposed amendment is beneficial or not is a matter for voters to decide. As election administrators, however, it is our duty to provide facts, relevant information, and analyses to help frame the issue and put into context the range of possible impacts that could affect voters and their confidence in the electoral processes, both today and in future years.



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