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NO PICTURE ID TO VOTE

House Bill 4226 as introduced First Analysis (2-12-97)

Sponsor: Rep. Mark Schauer
Committee: Local Government

THE APPARENT PROBLEM:

Public Act 583 of 1996 (House Bill 5420) made a number of amendments to the Michigan Election Law, the most publicized and most controversial of which is a requirement that a voter, before being given a ballot, present a generally recognized picture identification card to election officials. If the voter does not have such a card, he or she could vote after signing an affidavit to that effect before an election inspector. However, the voter would then be subject to challenge. This new requirement was greeted with consternation in some quarters, and the attorney general has opined that it is unconstitutional (See [Background Information](#)). Legislation has been introduced to repeal the photo ID requirement.

THE CONTENT OF THE BILL:

The bill would remove from the Michigan Election Law the picture ID requirement added by Public Act 583 of 1996.

(Specifically, under Public Act 583, at each election, before being given a ballot, a registered elector would have to identify himself or herself by presenting an official state identification card, a driver's license, or other generally recognized picture identification card.)

MCL 168.523

BACKGROUND INFORMATION:

On January 29, 1997, Attorney General Frank J. Kelley issued an opinion (Number 6930) declaring that the provision in Public Act 583 of 1996 (House Bill 5420) requiring voters to produce a picture identification card or execute an affidavit before being allowed to vote violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The unconstitutional amendment, he said, is severable from the rest of the statute, meaning that the rest of the bill is not affected by the opinion.

In the ten-page opinion, the attorney general cited Dunn v Blumstein (1972): *Statutes affecting constitutional rights must be drawn with "precision," and must be "tailored" to serve their legitimate objectives. And if there are other reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose "less drastic means."*

Attorney General Kelley noted that "in the absence of a showing of substantial voter fraud in Michigan, this restriction on the fundamental right to vote is not necessary to further a compelling state interest. Moreover, Michigan already prevents voter fraud by . . . less drastic means."

FISCAL IMPLICATIONS:

The bill would have no fiscal implications, according to the House Fiscal Agency. (2-5-97)

ARGUMENTS:

For:

The requirement that voters show a picture ID card before voting is unnecessary, at the least, and an attempt to make voting more difficult or to intimidate voters, at worst. Long-time residents and voters will be forced to produce a picture ID for their neighbors working at the polls and will be subject to challenge and be required to fill out an affidavit if they do not have the identification available. The requirement will lead to more delay in voting and counteract other provisions in the law aimed at reducing delay on election day. It could lead to frustrated and upset voters, and local election officials will bear the brunt of the dissatisfaction (as they did with the requirement that voters declare their party preference). Why should people need a picture ID card to vote? How can such a requirement be reconciled with the permitted use of absentee voting where no such requirement would apply (and where there is a greater

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likelihood of voter fraud, according to some election officials)? There is no voter fraud problem in Michigan such as to warrant this new requirement. People have a right to vote, and the election laws ought to be merely instrumental, aimed at protecting that right, not thwarting it and at encouraging voter turnout, not discouraging it.

Moreover, some people are critical of the process by which the ID requirement was added, tacked on to a bill very late in a lame duck session with little public scrutiny or debate.

Against:

What objection can there be to a requirement that people provide proof that they are who they say they are when voting? It is simply a further safeguard against voter fraud. Moreover, provisions are made that allow a person without a picture identification to sign an affidavit and then vote, so it is not fair to characterize the new provision as "requiring" a picture ID to vote. The state constitution says, "The legislature shall enact laws to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the election franchise, and to provide for a system of voter registration and absentee voting" (Article II, Section 4). The election law exists to protect the integrity of the election process, and it is not necessary to wait for widespread voter fraud before acting to improve that process. It is appropriate for the legislature to act proactively on this issue. With the lack of timely "purges" of voter files to eliminate inactive voters, the mobility of the population, and the lack of signatures to use in checking voter identification in some jurisdictions, this new requirement is justified.

Even if one objects to the process by which this requirement was added to the law (and it was, after all, approved by the legislature), that does not mean that the requirement should be repealed.

POSITIONS:

The following indicated their support for the bill before the House Local Government Committee: The Michigan Townships Association, The Michigan Municipal Clerks Association, The Michigan Association of County Clerks, Common Cause, the American Civil Liberties Union, the Michigan Municipal League, Michigan Citizen Action, and the League of Women Voters-Michigan. (2-11-97)

Analyst: C. Couch
