



PROTECTING THE VOTE FOR ALL AMERICANS

**Fair Elections Center Testimony in Opposition to SB 1118**  
**Virginia Senate Privileges and Elections Committee**  
**Tuesday, January 26, 2021**

Fair Elections Center opposes SB 1118 because this bill would prevent thousands of eligible Virginia voters from voting by subjecting their right to vote to data entry errors, typos, and other non-substantive problems unrelated to their eligibility to vote. It would do so by requiring voter registration applicants' information to match information held by government databases in order to fully register to vote and stay registered. The process laid out in this bill is *not* required by federal law, and may well fall disproportionately on voters of color. A similar if not identical bill was vetoed in 2019.<sup>1</sup>

Fair Elections Center is a national, nonpartisan voting rights and election reform organization which works to remove barriers to registration and voting for traditionally underrepresented constituencies. Formed in 2017 to continue the work of the Fair Elections Legal Network, the Center works to improve election administration through legislative, legal and administrative reform, to protect access to the ballot through litigation, and to provide election law expertise, voter information and technical assistance to voter mobilization organizations.

SB 1118 would require that before any applicant is registered to vote, the applicant's name, date of birth, and social security number provided by the applicant on the voter registration application must match the information on file with the Social Security Administration or other database approved by the State Board of Elections in order to be fully registered to vote. Otherwise, the person will be registered to vote only provisionally, and would be required to show a valid Virginia driver's license, valid United States passport, or another photo ID issued by the Commonwealth, one of its political subdivisions, or the United States. These photo ID options are even narrower than those allowed under the photo ID law and do not contain any exceptions.

In addition to its requirements for new registration applications, the bill also requires that registrars regularly apply these matching requirements to existing registered voters and if they do not match, initiate cancellation procedures under state law. The bill does not contain a cure opportunity for existing registered voters.

**If passed, this bill would likely stop thousands of eligible Virginians from voting by making their fundamental rights subject to government data entry errors, typos, and other non-substantive problems unrelated to eligibility.** In litigation concerning a database matching

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<sup>1</sup> Virginia SB 1038 (2019).

prerequisite to voter registration in Georgia in 2016, analysis of rejected voter registration applications demonstrated that tens of thousands of applicants were rejected due to the exact match prerequisite, in which applicants' information was required to exactly match the information in the Social Security or Georgia Department of Driver's Services databases.<sup>2</sup> Troublingly, applicants who submitted complete applications that were entirely valid on their face were rejected.

What makes this process so unpredictable and unduly burdensome for applicants is that even perfect applications can fail the matching process, through no fault their own, because of data entry errors in the creation of the database records, inherent limitations in the matching software and algorithms that are used to compare the data, system glitches, and other problems that applicants have no ability themselves to discern or to correct. As a result, eligible applicants are rejected or unfairly subject to a stringent and burdensome provisional ballot process with a stricter photo ID requirement than other voters, even if they did everything right.

**In addition to its burdens on new registrants, it would effect a massive purge of the existing voter rolls.** This problem seen in Georgia would be compounded in Virginia by the requirement in the bill that existing registered voters also match the Social Security or other database. We are unaware of any state that has attempted to purge the rolls in such a manner and would expect the process to result in a high proportion of inaccurate and likely illegal cancelations of eligible voters. There is also no legal basis in federal list maintenance law for existing registered voters to be removed from the rolls based on a non-match. The General Assembly should not waste taxpayer funds enacting restrictions likely to become mired in costly litigation.

**The Social Security Administration's Office of Inspector General issued a report in June 2009 admitting that flaws and errors in the SSA's voter registration verification system were preventing eligible applicants from registering to vote.** The report admitted that matches using its data can be inaccurate and acknowledged that the SSA's Help America Vote Verification program "provided the States with responses that may have prevented eligible individuals from registering to vote and allowed ineligible individuals to vote."<sup>3</sup> Virginians' voting rights should not rely on such inaccuracies including those that the Commonwealth cannot control or fix.

**Even where a voter's minor error caused the mismatch, for new voters without state- or federally-issued photo ID, the bill builds in no safeguards or opportunity to cure the errors inherent in a process reliant on data-matching.** As a result, many eligible applicants would have no opportunity to resolve minor problems and register to vote.

**The provisional registration "cure" process for those who do have state- or federally-issued photo ID is also significantly flawed.** First, it only applies to registrants who can show a very

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<sup>2</sup> Ex. 6 to Motion for Prelim. Inj., Declaration of Michael McDonald at 17, *Ga. NAACP v. Kemp*, No. 2:16-cv-219 (N.D. Ga. Sept. 14, 2016).

<sup>3</sup> Office of the Inspector Gen., Social Security Admin., *Quick Response Evaluation: Accuracy of the Help America Vote Verification Program Responses*, Audit Report A-03-09-29115 (June 2009), available at [https://oig.ssa.gov/sites/default/files/audit/full/html/A-03-09-29115\\_7.html](https://oig.ssa.gov/sites/default/files/audit/full/html/A-03-09-29115_7.html)

limited set of photo IDs rather than all voter photo IDs allowed under Virginia statute, and contains no exemptions. Second, the bill does not specify how or when voters can present the photo ID, leading to potential confusion among local registrars regarding how to apply the law.

**This process is not required by federal law.** While the Help America Vote Act of 2002 has requirements for most first-time voters who registered by mail and whose information does not “match” to show some form of ID when they vote, if not before, the IDs allowed by federal law are broad, and in addition to a photo ID include non-photo IDs such as a utility bill, paycheck, or other government document with the voter’s name and address including the voter registration card. Virginia is also exempt from some of the specifics of HAVA’s matching requirement because it requires the applicant’s full Social Security number.<sup>4</sup>

**Burdens caused by the matching prerequisite to voting may well fall disproportionately on people of color citizens.** Analysis submitted in Georgia litigation in 2016 over the matching prerequisite found that African-American, Latino, and Asian-American applicants were far more likely to be rejected for failure of their information to match government databases, including Social Security and driver’s license information.<sup>5</sup> Similar analysis in 2018 had similar disproportionate impact.<sup>6</sup> Database matching can cause particular problems for names with special characters, hyphens, and names that are more likely to be transposed by unfamiliar data entry workers. As a result, the ultimate impact of this bill would be to impose the different, stricter registration process and photo ID requirement in SB 1118 disproportionately and unfairly on these voters.

**This bill has a significant fiscal impact and makes registration more burdensome for general registrars.** Processing applications in the manner required by this bill is time intensive and would therefore require more staff. In addition, our understanding from general registrars is that data from the Social Security Administration comes with inconsistent promptness, and thereby would both delay processing of applications and cause extra burdens for general registrars. Furthermore, the fiscal impact statements attached to the bill do not consider the vast numbers of additional provisional ballots that would result, and which require far more time and money to process than regular ballots.

Fair Elections Center requests that you oppose this bill. If you have any questions or need further information, please contact Michelle Kanter Cohen, Senior Counsel, Fair Elections Center, (202) 331-0114, [mkantercohen@fairelectionscenter.org](mailto:mkantercohen@fairelectionscenter.org).

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<sup>4</sup> Help America Vote Act of 2002, § 303(a)(5)(D); § 303(b).

<sup>5</sup> Ex. 6 to Motion for Prelim. Inj., Declaration of Michael McDonald at 17, *Ga. NAACP v. Kemp*, No. 2:16-cv-219 (N.D. Ga. Sept. 14, 2016).

<sup>6</sup> Amended Compl. ¶ 9, *Ga. Coalition for the People’s Agenda v. Kemp*, No. 1:18-cv-04727-ELR (N.D. Ga. filed Oct. 19, 2018).