Just Now: North Carolina Senate Passes Its Version Of Their Nuclear Voter Suppression Bill, Next: Back To State House

Author : michaelbloomer

Michael Matthew Bloomer, July 23, 2013

Breaking, 5:20pm. The North Carolina Senate just passed its version of HB589, the Voter Information Verification ACT (VIVA)/Election Reform Act. It now goes back to the House where a much less draconian version originated in April 2013, and was passed by the House on April 24, 2013.
For a brief legislative history of HB589 through today's Senate proceedings, much of which is discussed in detail below, click here.

The following was prepared just prior to this evening's passage of HB589.

North Carolina's voter suppression bill was introduced on April 4, 2013 in the Republican-controlled House of Representatives. Much the same as other voter ID proposals in Republican-controlled states, North Carolina's Voter Information Verification ACT (VIVA) passed the House 20 days later, 81-36, with a unanimous GOP and only four Democrats aboard. Since then HB589 underwent a makeover that transformed it from burdensome and unnecessary voter identification package into the growling predatory beast that will likely be approved today in the state's Senate.

***Shelby v. Holder*, A Game Changing Supreme Court Decision.** On April 24, 2013, North Carolina's House passed HB 589, the Voter Information Verification Act (VIVA). It contained across-the-board voter ID provisions, and came in at a sparse 16 pages. The bill reached the Senate the next day where it was referred to the Committee On Rules and Operations of the Senate. Until yesterday, July 24th, HR589 sat in Committee. During its nap time, the U.S. Supreme Court, on June 23rd, delivered its landmark voting rights decision, Shelby County v. Holder. In that ruling a divided Court invalidated the 1965 Voting Rights Act §4 coverage formula[1] that, for more than 40 years, determined which states were subject to D.C. District Court or the Justice Department preclearance before their administering or enacting "any voting qualification or prerequisite to voting, or standard, practice, or procedure" which differed from those in force on November 1st of 1964, 1968, and 1972.[2] (See here for §4, as amended and

codified in the United States Code (USC) as 42 USC 1973c).

In brief, *Shelby* litigants maintained that the need for preclearance, intended as a temporary measure, had passed, and that evidence of the last nearly 50 years of progress on voting rights in preclearance states, counties, and townships indicated that the offending provisions be ruled unconstitutional. (Here is the official preclearance list, now, after *Shelby*, presumed dead: 28 CFR Part 51, Appendix to Part 51 — Jurisdictions Covered Under Section 4(b) of the Voting Rights Act, as amended. Here too is a map highlighting preclearance jurisdictions.)

The Court agreed with Shelby County and showed Eric Holder the door. Chief Justice John Roberts, writing for the majority, explained:

> Nearly 50 years later, [the preclearance provisions] are still in effect; indeed, they have been made more stringent, and are now scheduled to last until 2031. There is no denying, however, that the conditions that originally justified these measures no longer characterize voting in the covered jurisdictions. [*Shelby*, at 2]
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> . . .
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> Nearly 50 years later, things have changed dramatically. Shelby County contends that the preclearance requirement, even without regard to its disparate coverage, is now unconstitutional. [*Shelby*, at 13]

The decision was limited, however: "Our decision in no way affects the permanent, nationwide ban on racial discrimination in voting found in §2. We issue no holding on §5 itself, only on the coverage formula. Congress may draft another formula based on current conditions." Nonetheless, what's the betting line that this Congress will amend the coverage formula provision?

So it came to pass that yesterday the North Carolina Senate Rules Committee reported and adopted a much revised and expanded HR589, a substitute noticeably crafted with the *Shelby* decision in mind. Following *Shelby v. Holder*, HB589 grew from 16 pages confined to photo identification to 56 pages chock full of a Republican wish list of GOP voter-friendly provisions. Demonstrably, North Carolina Republicans now feel free to propose laws that suppress the vote of those they view as opponents and benefitted from the pre-*Shelby* environment, *i.e.* Democrats: young and old, African-American and Hispanic, poor and nearly poor, whom and whomever the please. This maxed-out HB589 restricts voter registration, early voting, preregistration, and other factors by adding these provisions to the originally introduced bill that was restricted to voter ID requirements only.

A Tale of Two Pities. April's pre-*Shelby* House-passed HB569, for example, included a list of the permissible photo ID that a voter may present for registration, for an absentee ballot, and for on-

site voting included:

- A North Carolina drivers license including a learner's permit or a provisional license.
- A special identification card for nonoperators.
- A United States passport.
- A United States military identification card.*
- A Veterans Identification Card issued by the United States Department of Veterans Affairs for use at Veterans Administration medical facilities, except there is no requirement that it have a printed expiration or issuance date.
- A tribal enrollment card issued by a federally recognized tribe or a tribe 38 recognized by this State under Chapter 71A of the General Statutes.
- A drivers license or nonoperators identification card issued by another state, the District of Columbia, or a territory or commonwealth of the United States, but only if the voter's voter registration was within 90 days of the election.
- **Every provision below this line was included in the pre-Shelby version of HB589, but was *removed* by the post-*Shelby* Senate substitute now being debated**

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- An employee identification card.
- An identification card issued by The University of North Carolina or its constituent institutions.
- An identification card issued by a North Carolina community college.
- An identification card issued to a fireman, EMS, hospital employee, or law enforcement officer.
- An identification card issued by a unit of local government, public authority, or special district.
- An identification card issued for a government program of public assistance.

* Note that the Senate version retains the House provisions "A United States military identification card." but adds "except there is no requirement that it have a printed expiration or issuance date."

Moreover, the characteristics of the post-*Shelby* permissible ID card changed radically from the pre-*Shelby* characteristics:

> **Pre-*Shelby*, House-passed HB569, April 25, 2013:**
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> "An identification card that bears either a date of expiration or a date of issuance and that is not more than 10 years beyond the date of expiration or issuance, whichever is later, issued by a branch, department, agency, or entity of the United States, this State, or any other state . . ."

Post-*Shelby*, Senate substitute HB569, July 24, 2013:

As used in this section, "photo identification" means any one of the following that contains a photograph of the registered voter. In addition, the photo identification shall have a printed expiration date and shall be unexpired, provided that any voter having attained the age of 70 years at the time of presentation at the voting place shall be permitted to present an expired form of any of the following that was unexpired on the voter's 70th birthday. Notwithstanding the previous sentence, in the case of identification under subdivisions (4) through (6) of this subsection, if it does not contain a printed expiration date, it shall be acceptable if it has a printed issuance date that is not more than eight years before it is presented for voting."

These changes are significant:

- from no photo requirement to a photo requirement;
- from "bears either a date of expiration or a date of issuance" to "a printed expiration date and shall be unexpired";
- from a requirement for an expiration date on military and Veterans' Administration ID cards to no requirement for either a printed expiration or issuance date despite the general requirement that all IDs have an unexpired expiration date. (This may reflect a Republican belief that military voters vote for Republican candidates; this belief, however, is not universally shared. See here and here.)

Deregistering Preregistration. North Carolina statutes presently defines "preregistration" - "Preregistration. – A person who is at least 16 years of age but will not be 18 years of age by the date of the next election and who is otherwise qualified to register may preregister to vote and shall be automatically registered upon reaching the age of eligibility following verification of the person's qualifications and address in accordance with G.S. 163?82.7."

Preregistration is presently allowed at public high schools:

§ 163?82.23. Voter registration at public high schools.

Every public high school shall make available to its students and others who are eligible to register and preregister to vote the application forms described in G.S. 163?82.3, and shall keep a sufficient supply of the forms so that they are always available. A local board of education may, but is not required to, designate high school employees to assist in completing the forms. Only employees who volunteer for this duty may be designated by boards of education.

The April 2013 version of HB589 had no provision regarding preregistration, however, after *Shelby*, here's the proposed amendment to high school preregistration in the Senate substitute being debated now, with the revision highlighted:

§ 163?82.23. Voter registration at public high schools.

> Every public high school shall make available to its students and others who are eligible to 46 register ~~and preregister~~ to vote the application forms described in G.S. 163-82.3, and shall keep a sufficient supply of the forms so that they are always available. A local board of education may, but is not required to, designate high school employees to assist in completing the forms. Only employees who volunteer for this duty may be designated by boards of education."

Combined with the bar on college IDs, this represents a clear effort to disenfranchise many students, for the obvious reasons.

Quo Vadis, North Carolina? There are many more provisions that bear discussion, for example, the bill reduces early voting, and eliminates a 90-year tradition of straight-ticket voting. It also contains campaign finance provisions that will disproportionately benefit the GOP.

Yet, the underlying North Carolina GOP strategy and tactics, when one compares HB589's provisions before and after *Shelby v. Holder*, could not be clearer. As soon as the Court issued its permission slip, the North Carolina Republican-controlled Senate substitute, without shame or a sense of irony, almost immediately revived an aggressive voter suppression policy that mocked the Supreme Court majority, and their optimistic appraisal:

> Nearly 50 years later, things have changed dramatically. Shelby County contends that the preclearance requirement, even without regard to its disparate coverage, is now unconstitutional.

And the long civil war drags on, in its sneaky subversion of voting rights. I've asked before: *"For the North, was the Civil War a Pyrrhic victory?"* We're moving closer and closer to an answer.

Footnotes:

1. The original VRA was P.L, 89-110, (see uncodified text). The original text of §4(b), which was declared unconstitutional in *Shelby*, read: "(b) The provisions of subsection (a) shall apply in any State or in any political subdivision of a state which (1) the Attorney General determines

maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that jess than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964." This original section, as subsequently amended, is codified at 42 USC 1973c(a).

2. Excerpt from the codified §4(a), which includes the amended text of the original VRA's §4(b), see fn. 1, and to which the Court refers in *Shelby*: "Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b (f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure . . ." 42 USC 1973C(a), accessed on July 23, 2013, at Cornell University Law School, Legal Information Institute website; entire §4 here.]