

Increasing the Security of Elections: The Effect of Identification Requirements on Turnout of Minority Voters

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Voter fraud is a well-documented and existing problem in the United States.¹ While it is safe to say that many elections are conducted without voter fraud affecting the outcome or representing a significant factor in the race, there are sufficient cases of proven fraud and convictions by both state and federal prosecutors to warrant taking the steps necessary to improve the security and integrity of elections. There were many cases reported in the press in 2004 of thousands of fraudulent voter registration forms submitted to election officials in a dozen states across the country.² Obviously, when such fraudulent registrations are not caught by registration clerks, these registrations become a possible source of fraudulent votes as do frauds caused by impersonations of registered voters. For example, a New Mexico voter was not allowed to vote in 2004 because when he appeared at his polling place, he was told that someone else had already voted in his place.³ In addition, someone could vote under the name of voters still on the rolls but who have moved or died. In 2000, a review by two news organizations of Georgia's voter registration rolls for the previous 20 years found 5,412 votes had been cast by deceased voters – some on multiple occasions - and at least 15,000 dead people were still registered on the active voting rolls.⁴

Investigations by both the *Milwaukee Journal Sentinel* and a Joint Task force formed by the Milwaukee U.S. Attorney's Office and local law enforcement agencies found thousands of fraudulent and suspicious votes in that city, in a state that John Kerry won by only 11,384 votes in the 2004 election. Among the findings were that Milwaukee showed at least 4,500 more votes cast than the number of people listed as voting, as well as instances of suspected double voting, voting under fictitious names, and voting in the names of deceased voters.⁵ As the *Milwaukee Journal Sentinel* noted, some of this voter fraud could have been prevented through photo identification since the Task Force had noted "cases of persons voting in the name of a dead person or as someone else...persons listed as voting who said they did not vote...people [who]

¹ See Larry J. Sabato & Glenn R. Simpson, *Dirty Little Secrets: The Persistence of Corruption in American Politics* (1996); John Fund, *Stealing Elections: How Voter Fraud Threatens Our Democracy* (2004); Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004* (2005); Publius, "Securing the Integrity of American Elections: The Need for Change," *Texas Review of Law & Politics*, Vol. 9, No. 2 (Spring 2005).

² Publius at 288. See also "Vote Fraud, Intimidation & Suppression in the 2004 Presidential Election," American Center for Voting Rights, August 2, 2005, available at <http://www.ac4vr.com/reports/072005/default.html>.

³ Testimony of Patrick Rogers, Committee on House Administration, U.S. House of Representatives, Hearing on Non-Citizen Voting, June 22, 2006, <http://cha.house.gov/hearings/Testimony.aspx?TID-896>.

⁴ "Even Death Can't Stop Some Voters – Records: Illegally Cast Ballots Are Not Rare," *The Atlanta Journal-Constitution*, November 6, 2000.

⁵ Preliminary Findings of Joint Task Force Investigating Possible Election Fraud, May 10, 2005, available at <http://www.gwu.edu/~action/2004/states/wifraud051005.html>.

registered and voted with identities and addresses that cannot in any way be linked to a real person.”⁶ These cases illustrate the need for requiring voters to show photo identification at the polls to authenticate their identity.⁷

A related and growing problem that also supports the need for requiring photo identification when voting is the increased number of noncitizens, both legal and illegal, who are registering to vote and voting in U.S. elections.⁸ In the past four years alone, the Department of Justice has convicted more than a dozen noncitizens in Florida for registering and voting in elections in Broward, Miami-Dade, St. Lucie, Martin, and Palm Beach Counties, including one individual, Rafael Velasquez, who was a former candidate for the Florida legislature.⁹ While this may seem to be a relatively small number of convictions, it is important to keep in mind that the Department of Justice has not conducted any comprehensive or systematic check of voter registration rolls in Florida to find noncitizens. There are at least 1.5 million noncitizens of voting age in Florida – “only 540 of them would have had to vote (or 540 more ineligible voters than may actually have voted) for Gore to reverse the presidential winner” in the 2004 election.¹⁰ Could this many noncitizens vote in any one election? That question is succinctly answered by the findings of the Committee on House Oversight in the Dornan-Sanchez congressional election dispute in California in 1997. The Committee found 748 invalid votes due to noncitizens who had registered illegally in just one congressional district.¹¹

According to Dan Stein of the Federation for American Immigration Reform, there were 11 states carried by President Bush in the 2000 election that “had small enough winning vote margins that voting by noncitizens could have tipped the results to Vice President Gore.”¹² As another example of the prevalence of this problem, in a February 8, 2005 report to the President of the Utah Senate, the Legislative Auditor General John Schaff found that more than 58,000 illegal immigrants had Utah drivers’ licenses and 37,000 had nondriver’s license identification cards. Almost 400 of these illegal aliens had registered to vote and at least 14 had actually voted

⁶ Greg J. Browski, “Inquiry Finds Evidence of Fraud in Election,” *Milwaukee Journal Sentinel*, May 11, 2005.

⁷ Although this paper focuses on voting in polling places, the many reported cases of absentee ballot fraud make it clear that individuals submitting absentee ballots by mail should be required to include photo copies of identification documents with their ballots as well.

⁸ Publius at 292-296. At least eight of the 9/11 hijackers were registered to vote. Diane Ravitch, “Were the Hijackers Registered to Vote?” October 29, 2001, Hoover Institute; “House Passes Strong Border Security,” Press Release of Cong. Sam Johnson, February 11, 2005.

⁹ “Department of Justice to Hold Ballot Access and Voting Integrity Symposium,” Press Release of Department of Justice, August 2, 2005; “Election Fraud Prosecutions & Convictions, Ballot Access & Voting Integrity Initiative, October 2002 – September 2005,” Public Integrity Section, Criminal Division, United States Department of Justice.

¹⁰ Testimony of Dan Stein, President, Federation for American Immigration Reform, Committee on House Administration, U.S. House of Representatives, Hearing on Non-Citizen Voting, June 22, 2006, <http://cha.house.gov/hearings/Testimony.aspx?TID=893>.

¹¹ Comm. on House Oversight, “Dismissing the Election Contest Against Loretta Sanchez,” H.R. Doc. No. 105-416, Feb. 12, 1998, p. 15.

¹² Testimony of Dan Stein (“[t]hose states were Colorado, Florida, Georgia, Missouri, Nevada, New Hampshire, North Carolina, Ohio, Tennessee, Texas, and Virginia. A switch of three votes in the Electoral College from Bush to Gore would have reversed the outcome of that election, so that voting of enough noncitizens to reverse the outcome in any one of those 11 states would have reversed the final outcome.”)

in Utah elections. In the ongoing lawsuit in Arizona over the state's new requirement that individuals registering to vote show proof of citizenship, the plaintiffs have apparently been forced to concede that Arizona has uncovered several hundred instances in which noncitizens were fraudulently registered to vote.¹³ A review in 2005 by Paul Bettencourt, the Voter Registrar for Harris County, Texas, the third largest county in the country, found at least 35 cases in which noncitizens applied for or received a voter card, including a Brazilian woman who voted at least four times. As Bettencourt stated, "we regularly have elections decided by one, two, or just a handful of votes in any one of our more than 400 local government jurisdictions."¹⁴

It should be kept in mind that the federal government does not cooperate with inquiries by local election authorities on the immigration status of registered voters. Even if it did, it could only provide information on noncitizens that are in its files – individuals who are here legally and illegal immigrants who have been caught and a file created. Since the vast majority of illegal immigrants are not in its information system, the federal government could not provide accurate information on every registered voter even if it wanted to. Since more than half of the states do not require proof of legal presence in the U.S. to apply for a driver's license and the National Voter Registration Act (also known as Motor Voter) requires states to offer voter registration to persons who apply for a driver's license, voter rolls are guaranteed to become "inflated by non-citizens who are registered to vote...[t]he only question is the number."¹⁵

The solution to preventing fraudulent votes from being cast in polling places is to require all voters to present photo identification, a recommendation made by the bipartisan Carter-Baker Commission on Federal Election Reform. The Commission's recommendation was based on photo identifications issued under the REAL ID Act of 2005,¹⁶ which requires states to verify each individual's full legal name, date of birth, address, social security number, and U.S. citizenship before the individual is issued a driver's license or personal identification card.¹⁷ Similarly, the solution to preventing noncitizens from registering and voting in elections is to require all individuals registering to vote to provide proof of citizenship.

Those opposed to these requirements argue that they are unnecessary and discriminatory, and will lead to reduced turnout by minority voters. However, contrary to those claims, the documented history of fraudulent voter registrations and voter fraud, and increasing incidents of noncitizens registering and voting, show the need for such requirements. As former Congresswoman Susan Molinari pointed out, "[f]ar from discriminatory, a mandatory voter ID

¹³ *Gonzalez v. Arizona*, CV-06-1268 (D. Az. June 19, 2006), Brief of Protect Arizona Now and Washington legal Foundation as Amici Curiae in Opposition to Motions for Preliminary Injunction, p. 13.

¹⁴ Testimony of Paul Bettencourt, Tax Assessor-Collector and Voter Registrar, Harris County, Texas, Committee on House Administration, U.S. House of Representatives, Hearing on Non-Citizen Voting, June 22, 2006, <http://cha.house.gov/hearings/Testimony.aspx?TID=895>.

¹⁵ Testimony of Patrick Rogers.

¹⁶ Pub. L. No. 109-13, 49 U.S.C. §30301.

¹⁷ Report of the Commission on Federal Election Reform Building Confidence in U.S. Election, September 2005, pages 18-21, available at http://www.american.edu/ia/cfer/report/full_report.pdf. The author was one of the experts consulted by the Commission.

provides means by which more Americans may obtain the identification already required for daily functions – such as cashing a check, entering a federal building, or boarding an airplane.”¹⁸ There is also no evidence that minority voters have less access to identification documents than other voters, or that requiring proof of citizenship will disproportionately affect minority voters or lead to lower turnout of eligible voters if either requirement is implemented. As John Lott concluded in a recent study, “the non-photo ID regulations that are already in place have not had the negative impacts that opponents predicted.”¹⁹

On October 29, 2002, President George Bush signed into law the Help America Vote Act of 2002 (“HAVA”).²⁰ HAVA contained the first nationwide identification requirements for voters. It applies to first-time voters who register by mail and who have not previously voted in a federal election.²¹ Under §303(b)(2)(A) of HAVA, when voting in person, such voters must present a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. Voters can avoid this requirement if they submit a copy of one of these documents with their voter registration form or if they drop off their registration form with an election official *instead* of mailing it in.²² First-time registrants voting by mail using an absentee ballot must submit a copy of one of these documents with the absentee ballot. Any voter who does not have any of these documents can vote a provisional ballot that must be verified by local election officials to determine whether the voter is eligible to vote.²³ States and localities were required to comply with these provisions beginning January 1, 2004.²⁴ However, HAVA specifically provided that these identification requirements, as well as the other requirements in Title III of the law such as provisional voting and statewide computerized voter registration lists, were “minimum requirements” and nothing prevented a state from establishing requirements “that are more strict” so long as they are not inconsistent with other federal laws.²⁵

Spurred in part by the passage of HAVA and the 2004 election, a number of states such as Georgia, Indiana, and Missouri passed legislation implementing photo identification requirements for voters that were stricter than the HAVA requirement. In addition to a voter identification requirement, Arizona also passed a requirement that an individual registering to vote show proof of citizenship. All of these state statutes have been attacked in court in litigation alleging violations of state law, the Voting Rights Act, Equal Protection, or the 24th Amendment (poll taxes). The objection to photo identification requirements is that they will reduce the turnout of black voters because fewer blacks possess identification documents than

¹⁸ *Id.* at 90.

¹⁹ John R. Lott, Jr., “Evidence of Voter Fraud and the Impact that Regulations to Reduce Fraud have on Voter Participation Rates,” August 18, 2006, available at <http://ssrn.com/abstract=925611>.

²⁰ H.R. 3295, Public Law 107-252, 42 U.S.C. 15301 *et. seq.*

²¹ §303(b)(1), 42 U.S.C. §15483(b)(1).

²² This illustrates a major defect in HAVA – it is still possible for an individual to register to vote without any check being made of his identity.

²³ §303(b)(2)(B) and §302(a)(3) and (4), 42 U.S.C. §§15483(b)(2)(B), 15482(a)(3) and (4).

²⁴ §303(d)(2), 42 U.S.C. §15483(d)(2).

²⁵ 42 U.S.C. §15484.

whites or that they will be intimidated by identification requirements and will not vote. These theories, however, are mostly anecdotal and not based on any objective evidence.²⁶ The new statutes passed by Georgia, Indiana, Missouri, and Arizona are either too recent to judge their possible effect on the turnout of voters or have not been implemented because of restraining orders. However, a number of states (including Georgia) have had less strict voter identification requirements in place for a number of years, and a review of turnout in those states reveals that they not only have no effect on the turnout of black voters, turnout actually increased after implementation of some requirements. Additionally, available information on photo identification possessed by individuals, particularly driver's licenses, shows no discrepancy between blacks and whites.

Driver's licenses, a primary form of picture identification, are possessed by a vast majority of Americans. According to an FEC report covering the 1995-96 period, approximately 87% of persons 18 years and older have driver's licenses while an additional 3% or 4% have a photo identification card issued by the State motor vehicle agency.²⁷ The Federal Highway Administration ("FHA") reported in 2004 that the number of licensed drivers age 18 and over was 195,432,072.²⁸ Since the total population of the U.S. age 18 and over in 2004 according to the Census Bureau was 215,694,000, the percentage of the U.S. voting age population ("VAP") with a driver's license was 90.6%. Using the FEC's 3% to 4% figure for additional non-driver's license identification cards, approximately 94 to 95% of the VAP has, at a minimum, photo identification documents issued by state motor vehicle authorities. The FHA does not have information on driver's licenses by race; however, these statistics show that the number of individuals of voting age who do not have photo identification is very small.

Claims have also been made, particularly in the litigation in Georgia, that photo identification requirements discriminate against the elderly. But according to the Federal Highway Administration, the number of older Americans who hold driver's licenses as a percentage of their age group is surprisingly high. For example, 90.7% of persons age 65 to 69 have a driver's license; 86.5% of persons age 70 to 74 have a license; and 82% of persons age 75

²⁶ The University of Wisconsin-Milwaukee released a study last year claiming that there is a racial disparity in the driver's licenses held by Wisconsin residents. John Pawasarat, "The Driver License Status of the Voting Age Population in Wisconsin," June 2005, available at www.eti.uwm.edu. However, this study admits that the data it obtained from Wisconsin on "DOT photo ID utilization was only available at the state level by age and gender," and not by race. As John Lott points out, this type of study "provides only a very crude measure of whether photo ID requirements will prevent people from voting. Some people without driver's licenses will not vote even when there are no photo ID requirements and others will go out to get a photo ID in order to vote." Lott at 3.

²⁷ *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 1995-1996*, Federal Elections Commission, page 5-6.

²⁸ *Licensed Drivers by Sex and Ratio to Population -2004*, U.S. Department of Transportation, Federal Highway Administration, Highway Statistics, 2004, available at <http://www.fhwa.dot.gov/polic/ohim/hs04/dl.htm> For this calculation and all other calculations on driver's licenses in this paper, the number of licensed drivers under the age of 18 as listed in the table, *Licensed Total Young Drivers, by Age, 2004*, are subtracted from the total numbers for the U.S. and individual states listed in the first table. That number is then compared to the voting age population provided by the Census Bureau reports on registration and turnout in the 2004 election. These tables will be cited throughout this paper collectively as "Federal Highway Administration, Highway Statistics, 2004."

to 79 have a license.²⁹

The results of the 2004 election certainly do not support the claim that an identification requirement will decrease turnout. HAVA's national identification requirements, although limited, were in effect for the first time all across the country. However, turnout was 60.7% of the voting age eligible population,³⁰ an increase of 6.4 percentage points over the turnout of 54.3% of the eligible population in the 2000 presidential election. This was the largest increase in turnout since the 1948 to 1952 election, when turnout increased by 10.1 percentage points.³¹ The Census Bureau publishes a report every two years on voting and registration in federal elections based on responses from surveys. A comparison of the 2000 and 2004 reports shows that in the 2000 election, 56.8% of the eligible black population reported voting in the election. In 2004, when HAVA's limited identification requirement was in effect, 60% of the eligible black population voted, an increase of 3.2 percentage points.³²

Another revealing analysis is obtained by reviewing the experience of four states that imposed in-person identification requirements on voters at the precinct. South Carolina, Georgia, Virginia, and Louisiana, allow or allowed a voter to present either photo identification or one of a long list of other documents. All but South Carolina allowed a signed affirmation of the voter's identity if the voter does not have the required identification documents. Having an affirmation exception might prevent decreases in minority voter turnout if it is actually true that minorities do not have identification documents. Nevertheless, such an exception would probably not reduce the intimidation factor if it is correct that minorities are intimidated by the challenge of presenting identification or having to take the extra step of completing an affidavit. Turnout would also be reduced (even with an affirmation exception) if it is true that identification requirements are applied in a discriminatory manner against black voters as has been claimed.³³ However, an examination of the turnout figures in presidential elections in South Carolina, Virginia, Georgia, and Louisiana, states that require identification at the polls, refutes these claims, as does the experience of Alabama and Florida.³⁴

²⁹*Distribution of Licensed Drivers – 2004 by Sex and Percentage in Each Age Group and Relation to Population*, U.S. Department of Transportation, Federal Highway Administration, Highway Statistics 2004; available at <http://www.fhwa.dot.gov/policy/ohim/hs04/htm/d120.htm>.

³⁰ U.S. Election Assistance Commission, *Summary of the 2004 Election Day Survey*, September 2005, p. 7.

³¹ Committee for the Study of the American Electorate, "Turnout Exceeds Optimistic Predictions: More Than 122 Million Vote, Highest Turnout in 38 Years," January 14, 2005, at 1, available at http://election04.ssrc.org/research/csae_2004_final_report.pdf.

³² U.S. Census Bureau, "Voting and Registration in the Election of November 2000" (February 2002), Table A; Voting and Registration in the Election of November 2004 (March 2006), Table B. These Census Bureau reports are based on surveys conducted by the Census to determine the rates at which individuals register and vote in elections. While these self-reporting surveys may inflate actual results, they provide the best data available on turnout and can be compared historically and geographically since any inflation will be similar.

³³"Rights Groups Say Voter Bill Erects Hurdles," *New York Times*, October 7, 2002. The NAACP claims that if blacks do not have identification, they are sent home, but if whites do not have identification, they are allowed to vote.

³⁴ It must be kept in mind when reviewing turnout rates that other factors may influence turnout such as local races of particular interest to voters and other historical and cultural factors.

Percentage Turnout of Voting Age Population³⁵
(increase/decrease between elections)

<i>Year</i>	<i>South Carolina</i>	<i>Virginia</i>	<i>Georgia</i>	<i>Louisiana</i>	<i>National</i>
1984	40.66%	50.69%	42.05%	54.55%	53.11%
(-/+)	(-1.75)	(-2.46)	(-2.65)	(-3.27)	(-3.0)
1988	38.91%	48.23%	39.4%	51.28%	50.11%
(-/+)	(+6.09)	(+4.61)	(+6.77)	(+8.55)	(+4.98)
1992	45%	52.84%	46.17%	59.83%	55.09%
(-/+)	(-3.44)	(-5.3)	(-3.74)	(-2.85)	(-6.01)
1996	41.56%	47.54%	42.43%	56.98%	49.08%
(-/+)	(+5.04)	(+5.46)	(+1.37)	(-2.75)	(+2.22)
2000	46.6%	53%	43.8%	54.2%	51.3%
(-/+)	(+4.6)	(+3.6)	(+7)	(+4.1)	(+9.6)
2004	51.2%	56.6%	50.8%	58.3%	60.9%

South Carolina

Under South Carolina Code §7-13-710, a voter must present his valid South Carolina driver’s license or other form of identification containing a photograph issued by the Department

³⁵Unless otherwise noted, national and state turnout figures are based on reports produced previously by the Federal Election Commission and now available on the website of the U.S. Election Assistance Commission; the EAC took over responsibility for maintaining election statistics when it was created by HAVA. Historical election turnout information is available at www.eac.gov. The EAC changed the turnout analysis for the 2004 election to citizen voting age population from voting age population, as conducted by the FEC for the 2000 and prior elections. While CVAP is more accurate, this change would obviously makes comparisons between 2004 and prior years difficult. Therefore, the historical turnout provided in this chart from 1984 to 2000 is for the voting age population from historical data; however, the turnout information for 2004 for the VAP is taken from electionline.org, “Holding Form: Voter Registration 2006,” July 2006, p. 15.

of Public Safety at the polls. Under an amendment passed in 1988, if the voter is not licensed, the voter can alternatively present the written registration notification received after registering to vote as required by §7-5-125. This exception was first effective for the 1988 general election. An examination of South Carolina’s turnout figures shows no effect from the state’s identification requirements even with the state’s significant minority population. According to the 2000 Census, South Carolina was 67.2% white and 29.5% black.³⁶ The percentage of the voting age population with driver’s licenses in 2004 was 94.5%.³⁷

South Carolina is one of the only states that provides turnout statistics by race. From 1984 to 2004, the total turnout broken out by the percentages of white/nonwhites voting in the general election was as follows:³⁸

<u>Year</u>	<u>Total voting</u>	<u>White Turnout</u>	<u>Non-White Turnout</u>
1984	1,018,701	754,155 (74%)	264,546 (26%)
1988	1,041,846	796,542 (76.45%)	245,304 (23.55%)
1992	1,237,467	950,556 (76.8%)	286,911 (23.2%)
1996	1,203,486	908,503 (75.5%)	294,983 (24.5%)
2000	1,433,533	1,082,784 (75.5%)	350,749 (24.5%)
2004	1,631,148	1,197,416 (73.41%)	433,732 (26.59%)

³⁶*State and County Quick Facts: South Carolina*, U.S. Census Bureau, <http://quickfacts.census.gov/qfd/states/45000.html>.

³⁷Federal Highway Administration, *Highway Statistics*, 2004.

³⁸*South Carolina General Election, Statewide Votes Cast, Demographics by Race*, www.state.sc.us/cgi-bin/scs...countykey=ALL®vot=VOT&demos=RACE.

These figures reveal that in 1988 there was a slight drop in the number of nonwhite voters when compared to the 1984 election. The percentage of such voters was down 2.45 percentage points in the year that voters could use the voter registration card sent to all voters after they register in place of a South Carolina driver’s license. If nonwhite voters had experienced prior problems voting due to the lack of a license, turnout should have increased, not decreased, in the election year when the voter registration card issued to all voters could be used as an alternative. However, this did not occur. A Census survey shows that despite the voter identification requirement, the turnout percentage of the black VAP in South Carolina has steadily risen since 1988, with the exception of 2004, and a slightly *higher* percentage of the black VAP turned out to vote in the 2000 election than the white VAP: 60.7% vs. 58.7%.³⁹ The total number of nonwhites voting has steadily increased since 1988, rising from 245,304 voters to 433,732 voters in 2004.

Census Survey of Turnout of VAP by Race
South Carolina

<i>Year</i>	<i>White</i>	<i>Black</i>
1988	52.3%	40.7%
1992	61.6%	48.8%
1996	56.2%	49.9%
2000	58.7%	60.7%
2004	63.4%	59.5%

Similarly, no conclusions can be drawn of any kind of negative effect from identification requirements on the general trend of South Carolina’s turnout when compared to national turnout. South Carolina has generally had a lower turnout than the majority of states. However, there are other states without identification requirements with lower turnout. Although the 1988 turnout of VAP in South Carolina was below the national average of 50.11%, no significance can be attributed to this fact since other states without identification requirements have had lower turnout than South Carolina in different elections. In 2000, for example, South Carolina ranked 44th in terms of turnout.

In years that national turnout has declined, South Carolina’s turnout has not decreased as much as the national decline; while in years that the national turnout has increased, South Carolina’s turnout has generally increased at a greater rate (with the exception of 2004). For example, turnout declined nationally by 3 points from 1984 to 1988 but only declined 1.75 points in South Carolina. From 1988 to 1992, national turnout increased by 4.98 points from 50.11% to 55.09% yet turnout in South Carolina increased by 6.09 points, going from 38.91% to

³⁹Table 4a. *Reported Voting and Registration of the Total Voting-Age Population by Sex, Race, and Hispanic Origin, for States: November 2000.* U.S. Census Bureau, at <http://www.census.gov/population/socdemo/voting/p20-542/tab04a.pdf>. All references in this paper to self-reported turnout of black and white voters come from these Census Bureau surveys of past presidential elections and will be referenced as “Census Bureau reports.”

45%. This trend was repeated in 1992-1996 (national decline of 6.01 vs. decline of only 3.44 in South Carolina) and 1996-2000 (national increase of 2.22 vs. increase of 5.04 in South Carolina). If identification requirements affected voters, it would be logical to assume that national turnout trends would be offset in states with significant minority populations that arguably make it more difficult for an individual to vote by requiring identification. South Carolina's record does not support that assumption.

Virginia

According to the 2000 Census, Virginia's population is 72.3% white and 19.6% black.⁴⁰ The percentage of the voting age population with driver's licenses in 2004 was 93.8%.⁴¹ Virginia passed a voter identification requirement in 1999 that became effective for the 2000 Presidential election.⁴² It requires a voter to present a voter registration card, a social security card, a driver's license, or any other photo identification issued by a government agency or employer. If the voter has none of these forms of identification, he can sign an affidavit attesting to his identity. Virginia does not keep statistics on the number of voters who complete such an affidavit in lieu of presenting a form of identification. Like South Carolina, however, Virginia's turnout does not substantiate any claim that having an identification or affidavit completion requirement intimidates voters and affects turnout.

In the 1996-2000 period when the national turnout increased 2.22 points from 49.08% to 51.3% and Virginia's identification requirement became effective, Virginia's overall turnout increased 5.46 points, going from 47.54% to 53%. Even after imposing a new identification requirement, Virginia's turnout increased at *twice* the rate of the national turnout. Virginia ranked 29th in turnout in the country. According to Census survey reports, the turnout of black voters in Virginia in comparison to the VAP of blacks dipped slightly, going from 53.3% in 1996 to 52.7% in 2000. The .5 difference between these numbers, however, is within the margin of error of the surveys. Although this study has only examined turnout in presidential elections, it should be noted that reported black turnout in the 1998 congressional election in Virginia according to the Census Bureau was 23.8%; yet in the 2002 congressional election, after implementation of the voter identification requirement, reported black turnout in the state was 27.2%, 3.4 percentage points higher.

Georgia

According to 2000 Census figures, Georgia has a population that is 65.1% white and 28.7% black.⁴³ The percentage of the voting age population with driver's licenses in 2004 according to Federal Highway Administration statistics when compared to Census reports was

⁴⁰*State and County Quick Facts: Virginia*, U.S. Census Bureau, <http://quickfacts.census.gov/qfd/states/51000.html>.

⁴¹Federal Highway Administration, *Highway Statistics*, 2004.

⁴²VA. CODE §42.2-643.

⁴³*State and County Quick Facts: Georgia*, U.S. Census Bureau, <http://quickfacts.census.gov/qfd/states/13000.html>.

89.8%.⁴⁴ Georgia's controversial 2005 photo identification law was actually an amendment to an existing state statute, reducing the number of acceptable forms of identification from 17 to six. In 1997, Georgia first imposed an identification requirement, including both photo identification and a lengthy list of acceptable non-photo identification documents with an affidavit exception.⁴⁵ It was effective for the 1998 Congressional election and was first effective for a presidential election in 2000. Under the 2005 amendment, permissible documents are a driver's license, a federal or state government photo identification, a passport, a military photo identification or a tribal photo identification. The affidavit exemption was eliminated. Discussion of the amended version of the statute will follow a discussion of the effect of the earlier identification law.

Turnout in Georgia has historically been amongst the lowest in the country. In the 1996-2000 period when the national turnout increased by 2.22 points and Georgia's identification requirement became effective, Georgia's turnout *increased* 1.37 points, going from 42.43% to 43.8%. In comparing that increase with the increase/decrease in turnout of all other states, Georgia ranked 37th in the country, ahead of Indiana which suffered a 3.73 point decline in turnout and behind Alaska with a 9.56 point increase in turnout from 1996 to 2000 (the largest increase in turnout of any state). Given Georgia's large minority population, a significant decrease in turnout in the 2000 election would have been expected if the assumptions underlying objections to identification requirements are valid. However, Georgia's turnout *increased* although not at as great a rate as the national increase.

⁴⁴Federal Highway Administration, Highway Statistics, 2004.

⁴⁵GA. CODE §21-2-417.

Additionally, according to a Census Bureau survey, a *higher* percentage of blacks than whites reported voting in the 2000 election: 51.6% vs. 48.3%.⁴⁶ This compares to a Census report for the 1996 election that shows 45.6% of blacks voted and 52.3% of whites voted.⁴⁷ Therefore, the percentage of blacks reporting voting in comparison to the black VAP actually increased by 6 points *after* identification requirements became effective. It appears that black voters were not affected by Georgia's identification requirements in the first presidential election after the law became effective. In the 2004 election, Georgia's total turnout rate increased 7 percentage points from the 2000 election, the tenth largest increase in the nation according to the Committee for the Study of the American Electorate. Even with the state's identification requirement, the Census Bureau survey shows that black voters again reported voting at a higher rate than whites in the 2004 election, 54.4% vs. 53.6%, an increase over their turnout in the 2000 election.

Census Survey of Turnout of VAP by Race
Georgia

<i>Year</i>	<i>White</i>	<i>Black</i>
1996	52.3%	45.6%
2000	48.3%	51.6%
2004	53.6%	54.4%

Because Georgia is covered by Section 5 of the Voting Rights Act,⁴⁸ the state was required to submit the 2005 amendment requiring photo identification to the Department of Justice ("DOJ") before it became effective. DOJ reviews such submissions under a retrogression standard, i.e., will the voting change disproportionately affect minority voters and put them in a worse position than under the current law. DOJ precleared the law, finding no discriminatory effect on minority voters, and explained the reasons for its preclearance in a letter to Senator Christopher Bond on October 7, 2005.⁴⁹ This letter provides valuable information on the question of how many voters possess photo identification and whether there is any significant racial disparity. In fact, the letter states that on the primary claim that "African-American citizens in the State are less likely than white citizens to have the requisite photo identification," that assertion "is not true." DOJ made the following findings:

- Georgia's Department of Driver Services ("DDS") showed 6.4 million photo identification holders, very close to the 6.5 million VAP projected by the Census Bureau, far larger than the 4.5 million registered voters in Georgia. The Census

⁴⁶ Census Bureau reports.

⁴⁷ Census Bureau reports.

⁴⁸ 42 U.S.C. §1973c.

⁴⁹ Letter of October 7, 2005, from William E. Moschella, to Sen. Christopher S. Bond. This letter is available on DOJ's website at http://www.usdoj.gov/crt/voting/misc/ga_id_bond_ltr.htm. The discussion of the preclearance in this paper is based solely on publicly available information and documents.

projection also included ineligible voters such as 50,000 prisoners and 228,000 illegal aliens.

- DDS had racial data for 60% of the card holders – the card holders who register to vote when they apply for a license. 28% of those card holders were black, slightly higher than the black percentage of the VAP in Georgia, indicating that of the DDS applicants who register to vote, blacks hold DDS identification at a *slightly higher* rate than white Georgians.
- Student photo identification issued by all Georgia state colleges are acceptable under the amended law and data from the university system showed that black students represented 26.8% of public college students, slightly more than their share of the state VAP in 2000.
- 2000 Census data showed that 19.4% of blacks worked for the government at the local, state, or federal level in Georgia, versus only 14.3% of whites. Blacks therefore have greater access to government employee identification.

Georgia also established a mobile bus system to provide DDS identification cards to locations remote from DDS offices and provided such cards to indigents for free. Despite all of these findings, a federal court issued an injunction against implementation of the law.⁵⁰ However, the court did *not* find any violation of the Voting Rights Act; the judge based his injunction on the Equal Protection clause due to problems the law would supposedly cause for elderly and poor voters (not minorities), and the 24th Amendment prohibition against poll taxes despite the state identification card being free for indigents. The judge granted a preliminary injunction against the statute in a 120-page slip opinion issued two days after the hearing on the matter. Since this paper is concerned with turnout results, an in-depth analysis of this court opinion will not be presented. However, the court’s legal analysis is deeply flawed, particularly its view that incidental costs of obtaining a photo identification constitute a “poll tax.” This is discussed at length in the Indiana decision cited later in this paper, where the court correctly noted that “the imposition of tangential burdens does not transform a regulation into a poll tax.”⁵¹

The Georgia legislature amended the law in 2006 to make the state identification card free to any voter who requested one, without having to declare indigence, and authorized every county in the state (not just DDS offices) to issue photo identification cards. Despite these changes, the same federal judge issued a 193-page slip opinion again only two days after a hearing enjoining implementation of the amended statute.⁵² However, this opinion was based on the short time

⁵⁰ *Common Cause v. Billups*, 406 F.Supp.2d 1326 (N.D. Ga. 2005). In what may have been forum shopping, this lawsuit was not filed in the state capitol of Atlanta where the law was passed by the legislature and signed by the governor. It was filed in Rome, Georgia, where there is only one federal judge. The named defendant, Secretary of State Cathy Cox, also stated on numerous occasions, including during her testimony, her opposition to the law. See Letter from Secretary of State Cathy Cox to Governor Sonny Perdue, April 8, 2005, available at <http://www.aclu.org/VotingRights/VotingRights.cfm?ID=18652&c=168>; 406 F.Supp.2d at 6-8.

⁵¹ *Indiana Democratic Party v. Rokita*, No. 1:05-0634 (S.D. Ind. April 14, 2006), slip op. at 90.

⁵² *Common Cause v. Billups*, No. 4:05-00201 (N.D. Ga. July 14, 2006).

remaining before the July 18th primary, the court holding that there was not sufficient time before the primary for individuals to obtain a photo identification or for the state to educate the public about this requirement.⁵³

In June, the Secretary of State also released a statement claiming that a comparison of the state's voter registration roll with the state's driver's license list revealed 676,000 registered voters without a driver's license.⁵⁴ This analysis, however, was deeply flawed, suffering from many of the same shortcomings as the expert analysis submitted to a federal court in the Indiana voter identification lawsuit that is discussed below. Most importantly, despite her access to other state records, the Secretary of State only compared the voter registration list to driver's license records, and did not run a data matching program with other available state records on photo identification cards acceptable under the law such as student identification cards issued by the state university system or employee identification cards issued by the state and local governments.⁵⁵ Individuals on the list without a social security number were shown as "not having a valid Georgia driver's license or DDS-issued Photo ID card."⁵⁶ She also failed to eliminate the names of military and overseas voters who are not subject to the identification requirements – Georgia has several large military installations and local election officials can identify military and overseas voters from their past applications for absentee ballots under the Uniformed and Overseas Citizens Absentee Voting Act.⁵⁷ The problems with Secretary Cox's list of registered voters who supposedly did not have photo identification cards was vividly illustrated by the fact that it mistakenly included a member of the state election board, relatives of two other members of the board (all of whom have photo identification)⁵⁸ and, according to the testimony of the vice-chair of the state election board at the court hearing, included the federal judge in the voter identification case.

Louisiana

According to the 2000 Census, Louisiana has a population that is 63.9% white and 32.5% black.⁵⁹ The percentage of the voting age population with driver's licenses in 2004 was 95.9%.⁶⁰ In 1997, Louisiana passed Act 779 amending the election code to require voters to identify

⁵³ *Id.* at 169. The court also changed its mind on the issue of a poll tax, adopting the analysis of the Indiana decision and holding that providing identification cards without charge eliminated the claim that it was a poll tax despite the incidental costs involved. *Id.* at 177.

⁵⁴ "Demographic Analysis Shows that Registered Voters Lacking a Driver's License or State-Issued Georgia ID Card are Disproportionately Elderly and Minority," Press Release of Secretary of State Cathy Cox, June 23, 2006, available at <http://www.sos.state.ga.us/pressrel/062306.htm>.

⁵⁵ *Billups*, slip op. at 129.

⁵⁶ *Id.* at 127.

⁵⁷ 42 U.S.C. §1973ff. In fact, §703 of HAVA amended UOCAVA to require states to report to the EAC the number of absentee ballots sent to uniformed services and overseas voters.

⁵⁸ Carlos Campos, "No-Photo Voter List Criticized by GOP," *Atlanta Journal-Constitution*, August 5, 2006.

⁵⁹ *State and County Quick Facts: Louisiana*, U.S. Census Bureau, <http://quickfacts.census.gov/qfd/states/22000.html>.

⁶⁰ Federal Highway Administration, *Highway Statistics*, 2004.

themselves with a driver's license, other photo identification, or by completing an affidavit.⁶¹ It became effective on August 15, 1997.⁶²

During the 1984-2000 period, Louisiana's turnout was higher than the national turnout. Turnout ranged from a low of 1.17 percentage points greater than the national turnout in 1988 to a high of 7.9 points greater in 1996. It was 2.9 points greater in 2000, after identification requirements became effective. Of the five elections, the 2.9 point increase was the third largest. Two other elections (1984 and 1988) had smaller increases. A Census survey reveals that in the 2000 election, 66.4% of the white VAP reported voting and 63.2% of the black VAP reported voting.⁶³ This compares to a Census report for the 1996 election that shows 62.6% of the white VAP voted and 60.9% of the black VAP voted.⁶⁴ Thus, reported turnout of black voters in comparison to the black VAP increased by 2.3 points *after* the identification requirement became effective.⁶⁵ Although Louisiana's turnout in the 2004 election as 2.6 points below the total national turnout rate, the 62.1% turnout reported by black voters was 5.8 points *above* the reported national rate of black turnout of 56.3%. One can conclude that black voters in Louisiana have not been detrimentally affected by the state's identification requirements.

Census Survey of Turnout of VAP by Race
Louisiana

<i>Year</i>	<i>White</i>	<i>Black</i>
1996	62.6%	60.9%
2000	66.4%	63.2%
2004	64%	62.1%

Other States – Alabama and Florida

⁶¹LA. REV. STAT. ANN. §18:562.

⁶²Louisiana Office of the Attorney General, Op. No. 97-0458, October 24, 1997.

⁶³ Census Bureau reports.

⁶⁴ Census Bureau reports.

⁶⁵With a black voting rate of 60.9% in 1996, Louisiana was 10.3 points above the national black participation rate of 50.6% of black VAP as reported by the Census Bureau.

Although it has experienced only one presidential election since implementing a new identification requirement, the experience of Alabama, another Southern state with a large minority population covered under the special provisions of Section 5 of the Voting Rights Act, should be mentioned. Alabama implemented a new voter identification requirement in 2003 similar to HAVA.⁶⁶ According to Department of Transportation statistics, 105.5% of the VAP in Alabama hold driver's licenses.⁶⁷ In the 2000 election, the Census Bureau reports that 57.2% of blacks voted; in 2004, after the new identification requirement was effective, 63.9% of blacks reported voting, an increase of 6.7 percentage points. Florida, which implemented an identification requirement in 1998 with a variety of acceptable identification documents, also experienced a steady increase in black voter turnout after the effective date of the statute.⁶⁸ It went from a reported black voter turnout of 40.5% in 1996 before the identification requirement, to a black turnout of 42.3% in 2000 and 44.5% in 2004 after the identification requirement was effective. Florida also has a very high rate of driver's licenses being held by the VAP in 2004 – almost 99%.

Recently Adopted Laws

Indiana

Indiana passed a photo identification requirement in 2005 as Senate Enrolled Act No. 483. It requires all voters to present a valid photo identification issued either by Indiana or the United States that has a picture of the voter, his name, and an expiration date that is either current or expires after the date of the most recent general election.⁶⁹ The law does not apply to absentee voters who send their ballot through the mail or to voters who reside in nursing homes. A voter without identification can vote a provisional ballot and has until the second Monday following election day to appear before county officials either with a photo identification or with an affidavit stating that he is indigent or has a religious objection to being photographed.⁷⁰ The Indiana Democratic Party filed suit against the state, claiming the identification requirement violated the 1st and 14th Amendments, 42 U.S.C. §1971, and the portions of the Indiana Constitution.

In a ruling on April 14, 2006, a federal judge denied the plaintiffs' motions for summary judgment and granted judgment for the state, holding that the identification requirement is "a constitutionally-valid, reasonable time, place, and manner restriction on voting and on voters."⁷¹ The judge's characterization of the plaintiffs' case was caustic. She stated that they had "not introduced evidence of a single, individual Indiana resident who will be unable to vote...or who

⁶⁶ ALA. CODE § 17-10A-1.

⁶⁷ This may be due to Alabama residents who hold both a personal and commercial driver's license.

⁶⁸ FLA. STAT. §101.043.

⁶⁹ IND. CODE §3-11-8-25.1 and §3-5-2-40.5.

⁷⁰ IND. CODE §§3-11.7-5-1; 3-11-7.5-2.5

⁷¹ *Indiana Democratic Party v. Rokita*, No. 1:05-0634 (S.D. Ind. April 14, 2006), slip op. at 5.

will have his or her right to vote unduly burdened.”⁷² The plaintiffs moved a political debate in the Indiana General Assembly into a judicial forum, having “failed to adapt their arguments to the legal arena” and basing their case “on little more than their own personal and political preferences.”⁷³

The judge did not even allow the expert report prepared for the plaintiffs into evidence because she viewed “the analysis and conclusions set out in it as utterly incredible and unreliable.”⁷⁴ The report attempted to compare the voter registration list with driver’s license files, but the court held it failed to account for voter roll inflation, compared demographic data from different years without qualification or analysis, drew obviously inaccurate and illogical conclusions, and failed to qualify the statistical estimates based on socioeconomic data. To the extent any parts of the report could be considered reliable, they actually strengthened the state’s case since, for example, the report showed “an estimated 99% of Indiana’s voting age population already possesses the necessary photo identification to vote.”⁷⁵ That perhaps explains why, when Indiana held its federal primary in May after the court’s ruling, “[a]cross Indiana, there were no reports of problems caused by the new requirement, with most areas reporting they did not have to turn away a single voter.”⁷⁶

The court also noted that the supposedly “common sense” claim that persons from lower socioeconomic levels will have a harder time obtaining photo identification because they do not drive or own cars, or have limited financial ability, is not true. To the extent the expert’s socioeconomic analysis was accurate, it actually indicated “that voters without photo identification are not significantly more likely to come from low income segments of society.”⁷⁷

Arizona

Arizona passed Proposition 200 in the 2004 general election. Because Arizona is covered by Section 5 of the Voting Rights Act, the law was also subject to review by DOJ as the Georgia identification law was - DOJ precleared the law without objection. In addition to requiring a voter to show either one identification card with his name, address and photo, or two identification documents with his name and address, Proposition 200 also amended Arizona Revised Statutes §16-166 to require anyone registering to vote to prove U.S. citizenship by providing certain documentation such as a driver’s license, birth certificate, passport, naturalization documents or any other “documents or methods of proof that are established pursuant to the Immigration Reform and Control Act of 1986.” This last standard is particularly

⁷² *Id.* at 3.

⁷³ *Id.*

⁷⁴ *Id.* at 43. The report did not meet the reliability standard for expert opinions set out in Federal Rule of Evidence 702. As just one example of how flawed the report was, the expert claimed there were 989,000 registered voters in Indiana without driver’s licenses. When that number was added to the number of issued licenses (4,569,265), the total of 5,558,265 represents an “incredible 123% of Indiana’s entire voting age population as determined by the Census.” This was obviously wrong. *Id.* at 48.

⁷⁵ *Id.* at 51.

⁷⁶ Dan Stockman, “Election Day Calm as Voters Comply With Photo ID rule,” *Journal Gazette*, May 3, 2006.

⁷⁷ *Rokita* at 53.

noteworthy, since the state will accept any document that the federal government accepts as proof of citizenship. This is a reference to the Employment Eligibility Verification form (Form I-9), prepared by the Department of Homeland Security, which every employer in the United States is responsible for completing on every new employee to verify their employment eligibility as either a citizen or a noncitizen legally present and able to work in the U.S.⁷⁸ This requirement makes it difficult for litigants to argue that the state is acting unreasonably or somehow violating federal voting rights laws since Arizona is imposing the same requirement on individuals registering to vote that the federal government imposes on individuals who want to become employed.

However, a lawsuit was filed claiming the Arizona law violates the National Voter Registration Act. On June 19, 2006, a federal judge issued an order refusing to grant a preliminary injunction, correctly holding that “Arizona’s proof of citizenship requirement does not conflict with the plain language of the NVRA” and that “the NVRA does not act as a ceiling preventing states from enforcing their own laws regarding voter qualifications.”⁷⁹

Missouri

The Missouri Voter Protection Act, Senate bills 1014 & 730, requires voters to show photo identification issued by the state or the U.S. government, including the military. Voters with disabilities, sincerely held religious beliefs, and those born before January 1, 1941, are exempt if they execute an affidavit. All nondriver’s license identification cards are issued by the state for free and mobile units will go to nursing homes and other places accessible to the elderly and disabled. Two lawsuits that have been consolidated have been filed against the law in state court claiming violations of state law, but no significant rulings have occurred as this paper goes to print. *Weinschenk and Jackson County v. Missouri*, No. 06AC-00656 and 587 (Cir. Ct. of Cole County, Mo.).

In a very interesting analysis filed in the lawsuit in support of two intervenors, Jeffrey Milyo and Marvin Overby of the University of Missouri evaluated the number of eligible voters in Missouri who may not have photo identification. They estimate that the number of eligible voters out of a VAP of 4.5 million who do not have photo identification issued by Missouri’s motor vehicles department and who are not residents of a nursing home (and thus exempt) was only about 19,000 persons. Comparing the voting age population with the number of identification cards issued by the state yields an estimate of only 51,064 voting age persons without such identification. However, after correcting the Census VAP estimate by taking out ineligible voters such as felons, the mentally incompetent, and individuals who do not meet residency requirements, as well as applying Missouri’s statewide average voter turnout rate, they concluded that the “upperbound estimate for the number of persons who are eligible and may

⁷⁸ The I-9 Form and information about its use is available at <http://www.uscis.gov/graphics/formsfee/forms/i-9.htm>.

⁷⁹ *Gonzalez v. Arizona*, No. 06-1268 (D. Ariz. June 19, 2006), slip op. at 9, 12. When Arizona held its election in March, “[t]here were no widespread reports of problems Tuesday in the first elections held under the voter identification requirements of Proposition 200” Matthew Benson, “Proposition 200 Causes Few Headaches at Polls,” *Arizona Republic*, March 15, 2006

choose to obtain a new photo ID is 8,105 persons.”⁸⁰

Conclusion

The turnout of voters in presidential elections in South Carolina, Virginia, Georgia and Louisiana, states with significant African-American populations, as well as in Alabama and Florida, reveals no evidence substantiating the claim that the turnout of minority voters is negatively affected by identification requirements for voters. Available data indicates that the overwhelming percentage of the voting age population, black and white, already have a form of photo identification. It is, therefore, highly unlikely that new and stricter identification requirements for voters will adversely affect the turnout of minority voters, especially given the fail-safe provisional voting requirements in affect across the country as required by HAVA. Many critics of HAVA’s identification requirements made exactly the same claims, and the turnout in the first presidential election after those requirements became effective saw an upsurge in black voting.

Given the numerous prosecutions for voter fraud that have occurred across the United States in recent years, the thousands of fraudulent voter registration forms submitted to election officials, the types of problems cited in the Wisconsin fraud investigation after the 2004 election, and registration and voting by noncitizens, requiring proof of citizenship to register and photo identification to vote is an important means of ensuring the integrity of our election process.⁸¹ It is not a requirement that will prevent or deter minority voters from casting their ballots, but will help guarantee that their votes are not devalued by fraudulent or noncitizen voting.

The opinions expressed in this article are those of the author and not those of his employer.

⁸⁰ Affidavit of L. Marvin Overby, in Support of Intervenors, Dale L. Morris and Missouri Senator Delbert Scott, Exhibit B, “Report on Kathleen Weinschenk et al. v. State of Missouri et al. and Jackson County, Missouri v. State of Missouri (Consolidated),” p. 1, 3, and 5.

⁸¹ Driver’s licenses should only be acceptable as voter identification if they are issued by a state in compliance with the REAL ID Act that requires proof of citizenship or a notation on the face of the card that the holder is not a citizen.