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HEARING ON "YOU DON'T NEED PAPERS TO VOTE?" NON-CITIZEN VOTING AND ID REQUIREMENTS IN U.S. ELECTIONS

HEARING

BEFORE THE

COMMITTEE ON HOUSE ADMINISTRATION
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

HEARING HELD IN WASHINGTON, DC, JUNE 22, 2006

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"YOU DON'T NEED PAPERS TO VOTE?" NON-CITIZEN VOTING AND ID REQUIREMENTS IN U.S. ELECTIONS

THURSDAY, JUNE 22, 2006

HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOUSE ADMINISTRATION,
Washington, DC.

The committee met, pursuant to call, at 10:02 a.m., in Room 1310, Longworth House Office Building, Hon. Robert W. Ney [chairman of the committee] presiding.

Present: Representatives Ney, Ehlers, Doolittle, Miller, Millender-McDonald, Brady and Lofgren.

Staff Present: Paul Vinovich, Counsel; Audrey Perry, Counsel; Peter Sloan, Professional Staff Member; George Shevlin, Minority Staff Director; Thomas Hicks, Minority Professional Staff Member; Denise Mixon, Minority Communications Director; Matt Pinkus, Minority Professional Staff Member; Janelle Hu, Minority Professional Staff; Stacey Leavandosky, Executive Director, California Democratic Delegation; and Teri Morgan, Legislative Director for Mr. Brady.

The CHAIRMAN. Good morning, ladies and gentlemen. The Committee on House Administration will come to order. I would like to first remind members of our audience today to please silence all cellular phones, pagers and other electronic equipment to prevent interruption of the hearing. I thank you. Of course, I would also like you to silence your mouth if you feel an urge to scream out about something. We will try to maintain order at all times.

The purpose of today's hearing is to discuss the issue of non-citizen voting and identification requirements in federal elections. This is in the broad context of concerns I have about fraudulent voting within the United States, and the basic issue is fraud, of which non-citizen voting can be one part. Although it is a crime for non-citizens to vote in federal elections, most states have no procedures in place to prevent it from happening.

To demonstrate that non-citizen voting is a real and relevant threat to the elections process, I will offer for inclusion in the record a release from the Department of Justice that details multiple prosecutions they have brought against non-citizens who cast votes illegally, and it is a rather lengthy list.

While the successful prosecution is proof this type of election fraud is taking place, they represent a small fraction of a larger problem. Our criminal justice system is not well equipped to prevent election fraud.

Inadequate processes make fraud difficult to detect. Even when there is evidence of a problem, the cases can be difficult to prove. Investigations are met with resistance and recalcitrant witnesses. Faced with limited resources and competing demands, prosecutors often, in fact frequently, do not pursue cases even when evidence suggests there may be a violation. Consequently, enforcement of violations after the fact is problematic and infrequent.

Unfortunately, our current procedures also make it difficult to stop voting by non-citizens before it occurs. In most states the process amounts to an honor system, failing to recognize that we cannot rely on the honor of those among us who are inclined to commit fraud, especially in cases where the law has already been broken by individuals who choose to stay in the United States illegally.

The Help America Vote Act of 2002 required the federal registration form to include a box prospective registrants would have to check to certify that they are a citizen. If the person indicates they are not a citizen, they are not to complete the form. If the box is not checked, the form is supposed to be returned to the applicant for completion.

In practice, forms without the box checked are often processed, potentially registering non-citizens. Even when the box is checked, the election official is relying on the truthfulness of the certification and cannot verify it with any further documentation.

A few weeks ago, a candidate for federal office was recorded advising an audience that they did not need papers to vote. This remark may have been impolitic, but it was not totally inaccurate. The fact is that it is possible to register and vote in this country without ever having to provide proof of citizenship.

This is a problem, and it deserves thoughtful attention from this committee in order to explore possible solutions. Our first panel of witnesses today includes the Honorable Henry J. Hyde, Member of Congress, and the Honorable James R. Langevin, a Member of Congress.

Welcome, to our distinguished fellow Members of Congress, and thank you for being with us today.

Our second panel of witnesses today includes Ray Martinez, Vice Chairman, United States Election Assistance Commission; Patrick Rogers, attorney with Modrall Sperling, Roehl, Harris & Sisk in New Mexico; Paul Bettencourt, Tax Assessor-Collector and Voter Registrar, Harris County, Texas; and Wendy Noren, County Clerk, Boone County, Missouri. Welcome to our second panel of witnesses.

Finally, on our third panel today, we have Dan Stein, president, Federation for American Immigration Reform; Daniel Calingaert, associate director, Center for Democracy and Election Management; Spencer Overton, professor at the George Washington University Law School, and Christine Chen, executive director, Asian Pacific Islander American Vote. Welcome to our third panel, and I thank each of you for being with us today.

I might comment that we have tried to make this panel of witnesses as balanced as possible. This is the first time in memory that I ever participated in a hearing where we had an equal number of Democrats and Republicans, and that includes my years here when the Democrats were in control. But we are trying to be fair with this and granted an equal number on all sides.

At this time, I would like to recognize the Ranking Member, Ms. Millender-McDonald, for any opening remarks she may have.

Ms. MILLENDER-MCDONALD. Thank you, Mr. Chairman, and good morning to you, to our colleagues, to the witnesses and to our guests.

Mr. Chairman, let me just first say, thank you so much for having the requisite numbers that are parallel to the majority as well as the minority. I do think that you were fair, and that is why you have the title of honorable.

Although the 2004 elections have passed into history, many questions are still unanswered, and important electoral issues need to be addressed. Our country's electoral process is not perfect. Improvements to elections administration still need to be made, and I think the focus of this hearing is not at the top of the list of issues that we should be discussing.

With all the problems that plagued the 2004 election, why are we focusing on an issue that has only been discussed through a few anecdotal cases at best. Of course, anyone who breaks the law by attempting to register to vote illegally should be prosecuted, but this policy of burdening our Nation with troublesome proof of citizenship requirements is not the direction our committee or the country should be heading. Instead, we should be looking at the real fraudulent acts of past Federal elections.

Voting intimidation, threats and other forms of voter suppression are still disenfranchising citizens of this country. If we are to discuss voter fraud, we should include these issues which are paramount to many Americans, especially people of color.

Shortly after the 2004 elections, this committee held a hearing in Ohio which was at the epicenter of the 2004 Presidential Election. We heard testimony from witnesses on many of the problems associated with that election. Among the extensive list of problems were long lines at polling stations, with the elderly sometimes fainting and having to leave, a shortage of machines, malfunctioning voter machines, misinformed poll workers and over 100,000 provisional ballots going uncounted. These are the issues which we should be focusing on in our hearings.

The committee also held a hearing in Wisconsin where we addressed many of the same issues being raised today. Witnesses testified that an estimated 23 percent of elderly persons do not have a Wisconsin drivers license or photo ID. Are we to deny these citizens their right to vote, a right that they have exercised for decades merely because they lack a photo ID?

It has also been suggested that the populace would use a passport as proof of citizenship. However, according to the State Department, only 23 percent of Americans possess a passport and the cost of obtaining one is nearly a hundred dollars. This amount may not sound much for those of us who are in Congress but my constituents in Watts and other places that are impoverished continually struggle to pay just for housing, medicine and gas to drive to work.

My constituents do not need this additional expense but what they do need, Mr. Chairman, is an increase in the minimum wage, a bill that the majority in Congress will not pass out and have the President sign, which is such an important bill. But requiring a

government-issued photo ID to register and vote is not the answer to this perceived problem.

I believe the Help American Vote Act, HAVA, strikes the correct balance between voter access and voter integrity. This committee worked tirelessly to enact HAVA as a solution to the problems associated with the 2000 election. As a result of HAVA, $3 billion was appropriated to States to improve the voting process. HAVA, in my opinion, is one of the greatest bipartisan efforts this Congress has produced.

The question of citizenship was addressed head on in HAVA whereby Congress mandated that the mail-in registration form include a box and ask the question, are you a citizen of the United States of America? If your answer is no, your form is rejected. If your answer is yes and you are discovered not to be a citizen, you are subject to Federal prosecution.

There are laws already on the books to prosecute those who knowingly and willfully sign the affidavit that they are citizens of the United States and yet they are not. And so penalties are stiff and have successfully served as a deterrent to misrepresentation.

We must say, though, as in the State of Ohio, 2 or 3 weeks out, they brought in State law that trumped Federal law, and States must follow Federal law in conducting Federal elections.

There are other aspects of the Federal law in place to prevent fraud. As the clearinghouse of all matters relating to election administration, the Election Assistance Commission, EAC and its commissioners have researched the issues of voting fraud and voting intimidation and believe that the establishment of statewide voter registration lists will curb several voting irregularities that occurred during the 2000 and 2004 Presidential Elections. Such requirements went into effect this January of 2006, calling on each State's chief election officer to implement a uniform and centralized statewide computerized voter registration list that is administered at the State level, contains the names and registration information of every legally registered voter in the State and which assigns a unique identifier to each legally registered voter in the State. This requirement is designed with the dual goal of improving the accuracy of voting lists while also producing the possibility and reducing the possibility of fraud.

We know, Mr. Chairman, about Kentucky and Michigan and how they have become models for the centralized voting registration data base. So I am very troubled by the increase in legislative initiatives that would require government-issued photo identifications at voting precincts.

The Federal Elections Commission noted that in 1997 and reported to Congress that photo identification entails major expenses both initially and maintenance. Such a requirement also presents an undue and potentially discriminatory burden on citizens in exercising their basic rights to vote.

Such legislation would impose an economic burden on the American voter. If you live in America's fortunate half, the half with the household income that is above the median of $44,000 a year, you may find it easier to get a passport. However, it is possibly inconceivable that some Americans are too poor, as in the case of my district, to even own an automobile, and there are some people that

are so disconnected from the mainstream that they have no drivers license or similar identifications to allow access to commercial air flights or checking accounts.

Nevertheless, the entire Nation witnessed this common phenomenon as thousands of people were not able to flee New Orleans in the face of Hurricane Katrina because they were too poor to leave. We should not erect more barriers for those who have lost everything when it comes to this piece of legislation. Let us not forget Hurricanes Katrina and Rita forced nearly 700,000 citizens from their Gulf Coast States last year.

What about the victims who not only lost houses and jobs, but the very documentation to prove who they are and their citizenship and their birth certificates all have been washed away? What about Americans not born in hospitals and by midwives such as the elderly African-Americans who might have not been issued birth certificates?

We must strengthen voting rights and work to get the 40 percent of registered voters who did not participate in the last election to become participants instead of erecting new barriers to reducing the number of voters. In fact, we should pass the Voting Rights Act that has been snatched from our schedule.

Our efforts should be spent on enfranchising voters and strengthening democracy. I believe that voter fraud is wrong, but we should not punish Americans, especially the elderly, the disabled or the poor with overly cumbersome requirements that will do nothing to increase civic participation. Instead, we should be devoting our resources to prosecute the rampant illegal intimidation tactics that continue to surface with each election cycle.

So, Mr. Chairman, as I have done in the past, I will continue to fight to make our voting system one that is free from flaws and defects. Even if one voter is disenfranchised, that is one voter too many.

I look forward to our colleagues' testimony, Mr. Chairman, and again, I thank you for allowing both the majority and the minority to have the requisite number of witnesses. Thank you so much.

[The information follows:]

CHA Oversight Hearing on Proof on Citizenship/Identification Requirements

June 22, 2006

10:00 AM
1310 Longworth House Office Building

OPENING STATEMENT OF
REP. JUANITA MILLENDER-MCDONALD, RANKING MEMBER

Good morning Mr. Chairman, our colleagues, witnesses and guests. Although the 2004 elections have passed into history, many questions are still unanswered and important electoral issues need to be discussed. Our country's electoral process is not perfect. Improvements to elections administration still need to be made, and I think the focus of this hearing is not at the top of the list of issues we should be discussing. With all the problems that plagued the 2004 election, why are we focusing on an issue that has only been discussed through a few anecdotal cases, at best? Of course, anyone who breaks the law by attempting to register to vote illegally should be prosecuted, but this policy of burdening our nation with troublesome proof of citizenship requirements is not the direction our Committee or the country should be heading.

Instead, we should be looking at the real fraudulent acts of past federal elections. Voter intimidation, threats and other forms of voter suppression are still disenfranchising citizens of this country. If we are to discuss voter fraud, we should include these issues which are paramount to people of color.

Shortly after the 2004 elections, this Committee held a hearing in Ohio which was at the epicenter of the 2004 presidential election. We heard testimony from witnesses on many of the problems associated with that election. Among the extensive list of problems were long lines at polling stations, a shortage of machines, malfunctioning voting machines, misinformed poll workers, and over 100,000 provisional ballots going uncounted. These are the issues on which we should be focusing our hearings.

The Committee also held a hearing in Wisconsin where we addressed many of the same issues being raised today. Witnesses testified that an estimated 23% of elderly persons do not have a Wisconsin drivers license or photo ID. Are we to deny these citizens their right to vote, a right they have exercised for decades, merely because they lack a photo ID?

It has also been suggested that the populace could use a passport as proof of citizenship. However, according to the State Department, only 23% of Americans possess a passport and the cost of obtaining one is nearly $100. This amount may not sound like much money to the folks in Congress but my constituents continually struggle to pay for housing, medicine, and gas to drive to work. My constituents do not need this additional

expense. Requiring a government-issued photo ID to register and vote is not the answer to this problem.

I believe the Help America Vote Act (HAVA) strikes the correct balance between voter access and voter integrity. This Committee worked tirelessly to enact HAVA as a solution to the problems associated with the 2000 election. As a result of HAVA, $3.1 billion were appropriated to the states to improve the voting process. HAVA, in my opinion, is one of the greatest bipartisan efforts this body has produced. The question of citizenship was addressed head on in HAVA, whereby Congress mandated that the mail-in registration form include a box that asks the question "Are you a citizen of the United States of America?" If your answer is no, your form is rejected. If your answer is yes, and you are discovered not to be a citizen, you are subject to federal prosecution. Penalties are stiff and have successfully served as a deterrent to misrepresentation. States must follow federal law in conducting federal elections.

There are other aspects of federal law in place to prevent fraud. As the clearinghouse for all matters relating to election administration, the Election Assistance Commission (EAC) Commissioners have researched the issues of voter fraud and voter intimidation and believe that the establishment of statewide voter registration lists will curb several voting irregularities that occurred during the 2000 and 2004 presidential elections. Requirements went into effect on January 1, 2006, calling on each state's chief election official to implement a uniform and centralized statewide computerized voter registration list that is administered at the state level, contains the name and registration information of every legally registered voter in the state, and which assigns a unique identifier to each legally registered voter in the state. This requirement is designed with the dual goals of improving the accuracy of voting lists while also reducing the possibility of fraud.

Kentucky and Michigan have served as the national models for the centralized voter registration database system. The Kentucky statewide voter registration database was established in 1973, making it the first state to have a centralized list. The Kentucky Board of Elections regularly purges voters who are deceased, convicted of felonies, or deemed mentally incompetent by a court judgment. The Michigan Qualified Voter File was created in 1998. Additionally, supplemented by funds from HAVA, the Department of State has reimbursed local election clerks more than $220,000 for the costs of mailing new voter ID cards to registered voters, the main method for verifying records in Michigan's Qualified Voter File. As the rest of the states come into compliance with this aspect of HAVA, our statewide voter registration databases will sufficiently cure many of the allegations we will presumably hear today.

I am very troubled by the increase in legislative initiatives that would require government-issued photo identification at voting precincts. The Federal Elections Commission noted in its 1997 report to Congress that photo identification entails major expenses, both initially and in maintenance. Such a requirement also presents an undue and potentially discriminatory burden on citizens in exercising their basic right to vote. Such legislation would impose an economic burden on the American voter.

If you live in America's fortunate half, the half with a household income that is above the median of $44,000, a year you many find it easier to get a passport. However, it is probably inconceivable that some Americans are too poor to possess an automobile or that some people are so disconnected from the mainstream that they have no driver's license or similar identification to allow access to commercial airline flights or checking accounts. Nevertheless, the entire nation witnessed this common phenomenon as thousands of people were not able to flee New Orleans in the face of Hurricane Katrina because they were too poor to leave. We should not erect more barriers for the poor.

Let us not forget, Hurricanes Katrina and Rita forced nearly 700,000 citizens from the Gulf Coast last year. What about these victims who not only lost houses and jobs, but the very documentation to prove who they are and their citizenship? What about the Americans not born in hospitals and by midwives who might not have issued birth certificates?

We must strengthen voters' rights and work to get the 40% of registered voters who did not participate in the last election to become participants instead of erecting new barriers to reduce the number of voters. Our efforts should be spent on enfranchising voters and strengthening democracy. I believe that voter fraud is wrong. But, we should not punish Americans, especially the elderly, the disabled, or the poor, with overly cumbersome requirements that will do nothing to increase civic participation. Instead, we should be devoting our resources to prosecute the rampant illegal intimidation tactics that continue to surface with each election cycle.

As I have done in the past, I will continue to fight to make our voting system one that is free from flaws and defects. Even if one voter is disenfranchised, that is one voter too many. I look forward to working with the Chairman and other Members to achieve this goal.

The CHAIRMAN. I thank the gentlewoman for her statement. This is not a debating society. I would love to respond to part of it.

Let me say that my ideal is that every person who is qualified to vote should be enabled to and encouraged to vote. Every person who casts a legal ballot also has a right to be assured that their vote counts, and it is not diluted by people who vote illegally. And so the goal is to ensure as many people as possible vote but also to ensure that they are voting legally.

I am pleased to recognize Mr. Doolittle for an opening statement.

Mr. DOOLITTLE. Mr. Chairman, in the interest of hearing from our witnesses, I will forego the opening statement.

The CHAIRMAN. I appreciate that, and thank you.

Next, we turn to Mr. Brady.

Mr. BRADY. No statement.

The CHAIRMAN. Mr. Brady passes.

Mr. Ney.

Mr. NEY. I don't, but I think it is good to have the hearing.

Also, when Congressman Hoyer and I put together HAVA, we debated these issues for about a year and a half about IDs or what works or what doesn't and some of the concerns have been since then to take a look at HAVA where it could be changed or altered, and there has always been the concern, too, of opening up to a hundred other issues, but that is the process.

Again, these are pretty thoroughly debated, but I think it is pretty important to air this out.

The CHAIRMAN. Thank you.

Ms. Lofgren, do you have a statement?

Ms. LOFGREN. I am anxious to get to our witnesses who have been patient and I know have many things to do today. I think that the ranking member's comments are well taken, and certainly today it is a felony to register to vote if you are not eligible. And I think I am hardpressed to see why making a felony that provides 5 years in prison is insufficient. As we proceed, we need also to balance the impact of this proposed law on Americans who want to vote and Americans who are really very poor and don't have the requirements. It is absolutely clear to me that those who would be—who would lose if this bill were to be enacted are Americans who lack the credentials, the paper credentials, and we can talk about some of the examples that have just come to our attention; elderly people, the first Americans, Native Americans who in many cases are not born in hospitals but at home and lack the requirements that you might find than if you were an affluent person.

I think we very carefully need to consider, while I am sure it is not intended by the author, the elitism, that assumptions that are made here are misplaced and the impact on those who want to participate and have a right to participate in their American Government. And this coming on our failure to proceed yesterday on the Voting Rights Act that was reported out of the Judiciary Committee by a wide bipartisan margin, the failure of the House to take up the Voting Rights Act that is so essential to protect the rights of Americans who are minorities and who tend to be poor and without power, that failure coupled with this hearing today that once again would ignore the situation of the impoverished is

very disturbing to me. And I hope we can touch on that as the hearing progresses.

And I thank the Chairman for allowing me to make that statement and pose those issues for our witnesses.

The CHAIRMAN. Thank you for your comments. I can assure you that I believe everyone in the Congress realizes and shares in the belief in the importance of the Voting Rights Act, and I also look forward to it coming to the floor some time in the near future.

With that, we turn to our first panel, Representative Hyde and Representative Langevin. We will begin with the senior statesman of the House of Representatives, Congressman Hyde.

STATEMENT OF THE HON. HENRY J. HYDE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. HYDE. Thank you, Mr. Chairman. I want to congratulate you——

The CHAIRMAN. Turn on your microphone.

Mr. HYDE. The more silent I am, the better I am.

Mr. Chairman, thank you very much, especially for your extraordinary balancing act, lead-off with two witnesses both in wheel chairs. How you arranged that, I don't know. Well done, I must say.

Years ago, there was an old saying: Louie Armstrong was a great musician out of New Orleans and someone said Louie, what is jazz? He said, if you have to ask, you'll never really know. And that answer holds true for this issue. If you don't think there is a problem with 12 million—and nobody knows how accurate that number is—illegal aliens roaming the country, if you don't think it presents a problem about non-citizens voting, then I guess nothing will convince you. To me, the potential and the reality is very real. The Constitution says a citizen shall vote, and we have an awful lot of non-citizens who are voting and who do vote.

I have a prepared statement which I will abbreviate and then make a couple of more comments on that subject. But since states have made it easy for ineligible persons to register to vote, voter registration forms require only an attestation of citizenship. No proof of citizenship is required under our current honor system.

There are many forms of vote fraud which I am sure you are all familiar with, including spoiled ballots, vote buying, illegitimate voters, both dead and alive, ballot boxes found after votes have been counted, ballot boxes never found and non-citizen voting.

In the last 3 years, the U.S. Department of Justice has prosecuted voter fraud cases in several States, including Alaska, Colorado, Florida, Illinois, Kansas, Kentucky, Louisiana, Missouri, New Hampshire, North Carolina, Pennsylvania, West Virginia and Wisconsin.

As an example, on July 15th, 2004, 15 non-citizens were charged by the Department of Justice with voting in various elections beginning in 1998 in south Florida, and four of these defendants were also charged with making false citizenship claims in violation of Federal law. Ten defendants were convicted. One defendant was acquitted, and charges against four defendants were dismissed upon the government's motion.

I have this bill, H.R. 4844, the Federal Election Integrity Act of 2006, that would help guard against such fraud. It would amend the motor voter bill to require States to demand proof of citizenship for voter registration or reregistration in Federal elections. My bill would also require current official photo ID when both registering and voting. No State would be exempt from these requirements. States that allow citizens to register to vote at the polls would be required to demand proof of citizenship when voting. States that do not require voter registration at all would still be required to ask for proof of citizenship and a current legal photo ID at the polls.

Last year I polled my district to see if voters are willing to produce proof of citizenship when registering and a current legal photo when voting. My constituents overwhelmingly supported legislation with these simple requirements. I think the country overwhelmingly supports fair and legal elections. Our voting rights were won by Americans who were willing to die for the freedom to elect our representatives, and we have a duty to safeguard that freedom. If we don't, our elections become meaningless.

Identity theft is a very popular crime these days, and it fits right in with fraudulent voting. A recent study by the Chicago Tribune—we all used to say, when I die, I want to be buried in Chicago, so I can stay active in politics. I say that with tongue in cheek because I think Mayor Daley has done a good job, and I don't mean to be too critical of him.

But the Chicago Tribune, December 4th of 2004, made a survey, and they found 186,000 dead people had registered to vote.

There is an article in the Texas Law Review, which I have, with a lot of statistics. I won't bore you with them, but it is a real problem. The law is that a citizen should vote. Most everybody has a drivers license. The law can also provide another photo ID of an official character at no cost to the registrant because the tradeoff for having elections of integrity as against fraudulent voting is worth whatever the cost would be.

So this bill simply addresses one aspect of the problem, but our elections are what democracy is all about, and we ought to do everything we can to avoid the abuse of the democratic process. So I thank you for listening and considering this important issue, and I am sure it will receive thorough consideration. So I will terminate my statement now with thanks.

The CHAIRMAN. I thank you for your comments and your statement, and without objection, the article you referred to from the Texas Law Review will be placed in the record without objection. So ordered.

[The information follows:]

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Texas Review of Law and Politics
Spring 2005

Article

*277 SECURING THE INTEGRITY OF AMERICAN ELECTIONS: THE NEED FOR CHANGE

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I. Introduction 278

II. Provisional Voting 282

III. Identification Requirement 287

IV. Citizenship of Voters 292

V. Statewide Voter Registration Lists and the NVRA .. 297

VI. State and Federal Legislative Recommendations 299

*278 I. Introduction

It is unfortunately true that in the great democracy in which we live, voter fraud has had a long and studied role in our elections. Maintaining the security of our voter registration and voting process, while at the same time protecting the voting rights of individuals and guaranteeing their access to the polls, must be our foremost objective. Unlike what certain advocates in the civil rights community believe, these goals are not mutually exclusive. Every vote that is stolen through fraud disenfranchises a voter who has cast a legitimate ballot in the same way that an individual who is eligible to vote is disenfranchised when he is kept out of a poll or is somehow otherwise prevented from casting a ballot. In other words, violations of criminal election crimes statutes are just as important as violations of federal voting rights statutes and both cause equal damage to our democracy.

Most importantly, putting security measures in place--such as requiring identification when voting--does not disenfranchise voters and there is no evidence to suggest otherwise. In fact, the most recent election in 2004, with its record turnout and increases in voter registration, shows that such identification requirements have no effect on turnout at all. The other problems encountered in this and prior elections, particularly the large number of fraudulent voter registration forms turned in to election officials by some third-party organizations engaged in voter registration drives, show the need to make further changes in federal and state law that will safeguard our elections and our right to vote. [FN1]

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The stealing of elections happens from the local level, such as in the mayor's race in Miami in 1997, to congressional races, ***279** such as Lyndon B. Johnson's famed theft of his 1948 U.S. Senate Democratic primary with Ballot Box 13, to the 1960 presidential race with Mayor Daley's long-rumored stuffing of ballots in Chicago on behalf of John Kennedy. Information about some of the better known incidents is documented by Larry Sabato and Glenn Simpson in "Dirty Little Secrets: The Persistence of Corruption in American Politics" [FN2] and by John Fund in "Stealing Elections: How Voter Fraud Threatens Our Democracy." [FN3] In 1984, a special federal grand jury in the Northern District of Illinois investigated the 1982 general election in Illinois and concluded that 100,000 fraudulent votes had been cast. [FN4] Its public report provides a textbook guide to how voter fraud is committed. It details false registration, fraudulent use of absentee ballots, vote buying, and altering of the vote count. In that case alone, fifty-eight precinct captains, election judges, poll watchers, and political party workers were convicted in the largest vote fraud case ever prosecuted by the United States Department of Justice. [FN5] The grand jury concluded "that similar fraudulent activities" had occurred prior to 1982. [FN6]

Most cases of voter fraud are prosecuted by state authorities, but anyone interested in looking at the scope of the problem, which most liberal advocacy groups wrongly insist is almost nonexistent and exaggerated, [FN7] need only look at the many cases ***280** prosecuted under the federal statutes prohibiting various election crimes such as vote buying and providing false information to register and vote, which are violations of 42 U.S.C. § 1973i(c). There are numerous reported cases listed after these statutes in an annotated volume of the United States Code. [FN8] While it may be true that most elections are conducted without being affected by voter fraud, the many past (and ongoing) prosecutions make it clear that voter fraud is a continuing problem.

The fastest and most uniform way of making needed changes in election administration would be to amend the Help America Vote Act of 2002 ("HAVA"). [FN9] HAVA was signed into law by President Bush on October 29, 2002, and was the first statute passed by Congress affecting federal elections since the passage of the National Voter Registration Act in 1993 ("NVRA"). [FN10] HAVA's provisions were intended to correct the perceived problems with the conduct of the 2000 presidential election. Organizations involved in election administration such as the National Association of Secretaries of State ("NASS") and the National Association of State Election Directors formed task forces that made various recommendations for reforming the election process.

The final bill was full of compromises between Republicans and Democrats (and election officials and civil rights leaders) who did not always agree on what needed to be fixed or how. In some instances the provisions were so controversial that the bill almost died, particularly the identification provisions that were added at the behest of Senator Kit Bond of Missouri. Congress, ***281** for the first time ever, also appropriated funding for election administration for the states to help them comply with HAVA. Administering elections is probably the oldest unfunded mandate in the history of the federal government since federal elections have always been run by mostly county (and in some states like Michigan) even municipal governments. As of February 9, 2005, however, the new Election Assistance Commission had distributed more than $2.2 billion to the states to help them meet HAVA's requirements. [FN11] These requirements for federal elections apply to all fifty states, American Samoa, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. Most of them became effective during 2004 election cycle.

HAVA presents an interesting contrast between federal and state responsibilities. Federal mandates imposed in Title III require the states to implement certain requirements for federal elections, yet at the same time the statute leaves the "specific choices on the methods of complying with the requirements" to the states. [FN12] HAVA created a new federal agency, the U.S. Election Assistance Commission ("EAC"), to oversee the funding to states and to provide guidance on the best methods for states to implement these HAVA requirements. But the EAC's guidance is only voluntary and states can completely disregard it. Obviously fearing a new federal agency would take over election administration through the regulatory process, Congress prohibited the EAC from having "any authority to issue any rule, promulgate any regulation, or take any other action which imposes any requirement on any State or unit of local government." [FN13] However, the nation's secretaries of state, who are the chief election official in nearly every state, are obviously fearful of Congress amending HAVA to provide the EAC with regulatory authority that would result in a federal takeover of the states' authority to administer elections. NASS ***282** recently overwhelmingly passed a resolution calling on Congress to dissolve the EAC after the 2006 election. [FN14]

Under Title III of HAVA, states were required by 2004 to implement provisional ballots, identification for new voters

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who registered by mail, and statewide voter registration lists, although the registration list requirement could be delayed until 2006. Changes were also made in the federal mail-in voter registration form that all states are required to accept by the NVRA. Before discussing what changes should be made to HAVA or state election laws to improve the integrity of our elections and to deter voter fraud, it is important to understand these HAVA mandates and how they were implemented in 2004, as well as the problems that exist in our election process. Although HAVA only applies to federal elections, [FN15] HAVA's requirements for federal elections are being applied by the states to all elections due to the difficulty and expense of applying separate registration and election procedures to local versus federal elections.

II. Provisional Voting

Section 15482(a) of HAVA requires states to implement provisional balloting. If a voter appears at his polling place to vote and his name is not on the list of registered voters or an election official challenges his eligibility to vote, the voter has to be given a provisional ballot as long as the voter declares that he is registered and eligible to vote in the jurisdiction in which he desires to vote. The provisional ballot is counted if election officials are able to verify that the individual is a registered and eligible voter under applicable state law. [FN16] The states were required to establish a toll-free telephone number or website where the voter could find out if his vote was counted or the reason it was not.

***283** Additionally, under HAVA voters who vote after the statutory time for polls to close due to a court order extending that time must vote by provisional ballot. [FN17] This is designed to avoid the kinds of problems that occurred in St. Louis in the 2000 election when Democrats convinced a lower court to extend polling hours based on specious claims. [FN18] This allowed hundreds of invalid ballots to be cast before the decision was overturned the same evening by a higher court. The invalid ballots cast disappeared into the anonymity of the ballot box before the original court order could be overturned. [FN19] As a result, the ballots could not be separated from other ballots and were counted in the election. This HAVA requirement essentially puts a stop to this campaign tactic as evidenced by the very few times it occurred in the November 2004 election.

The purpose of HAVA's provisional balloting requirement is to allow an individual to vote who has duly registered as required under state laws but whose name is not on the registered voter list in the voter's precinct due to some type of administrative error. An example is someone who registered to vote when she renewed her driver's license but the state's motor vehicle department did not send her voter registration form to election officials. Contrary to the desires of some, this provision was not meant to void state voter registration deadlines and to institute election day registration or to force states to count the provisional ballots of individuals who did not attempt to actually register to vote, even if they would otherwise be eligible to vote if they had registered.

HAVA's provisional balloting requirement was not intended by Congress to preempt the long tradition of precinct-based voting. However, the Democratic Party and its alter ego organizations like the Association of Community Organizations for Reform Now ("ACORN"), the NAACP, People for the American Way, and the League of Women Voters, tried to use ***284** HAVA to do just that prior to the November 2, 2004 election. [FN20] They filed numerous lawsuits in battleground states, including Michigan, Ohio, Florida, and Missouri. In these suits, the plaintiffs mistakenly argued that 42 U.S.C. § 15482 of HAVA invalidates state laws and required those states to count the provisional ballots of voters that were cast outside of the precincts where the voters would normally vote. Most of these suits used 42 U.S.C. § 1983 to assert claims under HAVA as well as making claims under the Equal Protection Clause of the Fourteenth Amendment. It was an obvious effort to institute "precinct-shopping" by using federal law to preempt state law requirements.

Federal judges at the district court level issued opinions dismissing the plaintiffs' claims in Florida and Missouri, recognizing from the statutory language and the legislative history that Congress had not intended to override traditional precinct-based voting by the states when it passed HAVA; [FN21] the plaintiffs won in the district courts in Michigan and Ohio in poorly reasoned decisions that appear to be attempts by the judges to legislate from the bench. [FN22] Fortunately, the Sixth Circuit Court of Appeals issued a decision just a week before the election that overruled the Ohio decision, holding that HAVA does not require a state to count a provisional ballot "if it is cast outside the precinct in which the voter resides." [FN23] The court did confirm that if a voter declares that he is registered and eligible to vote in the jurisdiction, the state must give him a provisional ballot even if the election official is able to determine that the voter is registered in a different precinct, but the ballot does not have to be counted outside of his assigned precinct. In its opinion, the court summarized succinctly the sound public ***285** policy reasons behind the traditional precinct-based voting process of the states:

> [I]t caps the number of voters attempting to vote in the same place on election day; it allows each precinct ballot to list all of the votes a citizen may cast for all pertinent federal, state, and local elections, referenda, initiatives, and levies;

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it allows each precinct ballot to list only those votes a citizen may cast, making ballots less confusing; it makes it easier for election officials to monitor votes and prevent election fraud; and it generally puts polling places in closer proximity to voter residences. [FN24]

Unfortunately, despite the lack of statutory language authorizing a private right of action in HAVA [FN25] and the clear legislative history showing Congress's intent to the contrary, the Sixth Circuit also recognized a private right of action under 42 U.S.C. § 1983, at least with respect to the right to cast a provisional ballot. [FN26] The court determined that the provisional ballot requirement in HAVA is rights-creating language and that individual enforcement under § 1983 is not precluded by the explicit language of HAVA or by a comprehensive enforcement scheme incompatible with individual enforcement. [FN27]

The problem with this decision is its failure to recognize that the standards established by HAVA focus on the administration of federal elections by state officials, not the individuals who may benefit from the administration of well-run elections. The provisional ballot requirements of § 15482 are all directed at election officials, not individual voters, and it is a mistake to read private remedies into a statute where Congress is regulating an area of traditional state functions and when the statute itself does not unambiguously provide for such remedies. [FN28] In fact, Congressional statements at the time of its passage show that Congress did not intend to create a private right of action. Democratic Senator Christopher Dodd of Connecticut, one of the chief sponsors of HAVA and a member of the conference committee, lamented that HAVA created no private remedy, ***286** stating "[w]hile I would have preferred that we extend [a] private right of action . . ., the House simply would not entertain such an enforcement provision." [FN29]

The Sixth Circuit also failed to recognize that Congress had, in fact, crafted a comprehensive enforcement scheme that ensured compliance with federal law while respecting traditional state authority in running elections. While the Attorney General was given the authority to seek enforcement in federal court, the states were required to establish an administrative complaint procedure for voters who met specified standards and provide appropriate remedies for violations. [FN30] Congress designed a comprehensive dual state/federal enforcement scheme that was deferential to the states' traditional role in administering elections while providing for uniform national standards in discrete areas by vesting enforcement authority in the Attorney General. As the Attorney General said in an amicus curiae brief filed in Sandusky:

Allowing individual voters to judicially enforce HAVA's requirements would undermine each of these important purposes. Indeed it is implausible to suppose that the same Congress that sought to obtain uniformity, stability, and certainty in voting procedures for federal elections simultaneously intended to consign control over HAVA's interpretation to thousands of federal and state court judges and juries across the country. [FN31]

What is clear from the statute, the legislative history, and these decisions is that the conditions under which a provisional ballot will be counted is a matter that Congress properly left up to the states to determine. Twenty-eight states decided to only count ballots cast in the correct precinct, while seventeen states decided to count provisional ballots cast outside a voter's residential precinct. [FN32] Neither the courts nor Congress should ***287** interfere with the states' prerogative to decide the circumstances under which such ballots will be counted.

The provisional balloting process proved successful, with the EAC reporting that one-and-one-half million provisional ballots were cast and over one million were counted. However, the effort to force states to count ballots not cast in the proper precincts will no doubt continue with more lawsuits in the future outside the ambit of the Sixth Circuit's jurisdiction.

III. Identification Requirement

Persons who register to vote by mail for the first time who have not previously voted in a federal election in a state now have to provide a copy of certain specified identification documents when they register or show such identification the first time they vote. [FN33] The list of acceptable identification under HAVA includes photo identification as well as a utility bill, a bank statement, a paycheck, or a government document that shows the name and address of the voter. [FN34] Individuals who do not comply with this requirement can cast a provisional ballot. [FN35] An exception to the provision is provided to voters who are entitled to vote under the Uniformed and Overseas Citizens Absentee Voting Act [FN36] and the Voting Accessibility for the Elderly and Handicapped Act. [FN37] These requirements also do not apply to a voter who supplies a driver's license number or the last four digits of his social security number when registering if election officials are able to match the registration with an existing state identification record bearing the same number, name, and date of birth as provided in the registration application. [FN38]

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There are two problems with this identification requirement: it applies to only a small percentage of the electorate, one made even smaller by some states' interpretation, and the types of documents that meet the identification requirements are too broad. Under HAVA's statutory language, this identification requirement applies only to an individual who "registered to ***288** vote in a jurisdiction by mail." [FN39] The point of this provision was to require identification from individuals who use the federal mail-in voter registration form that the NVRA requires states to accept since no election official ever sees the individual registrant or does any verification of the registrant's identity. This rationale applies whether the individual actually uses the mail to send back the complete form to election officials or the form is personally delivered in a large batch by some third-party organization that conducted a voter registration drive. In both situations, no verification of any kind is conducted on the identity and actual existence of the applicant.

Unfortunately, a number of states such as New Mexico interpreted this provision to apply only to voter registration forms actually received through the mail--if an individual or an organization dropped it off, the identification requirement did not apply. [FN40] And it was these third-party voter registration drives that resulted in thousands of fraudulent voter registrations in places like Florida and Georgia prior to the November election, showing a clear need to apply such requirements to all registrations using the mail-in form. [FN41]

Proving or verifying the voter's identity should also apply across the board to all voters when they register to vote and when they vote at the polling place, not just to new voters. We have had an honor system for too long in most states, with only seventeen states requiring that all voters show identification before voting. [FN42]

Furthermore, a photo identification should be required as proof of identity. Anyone who has ever moved into a new house or apartment and received bank statements and other government documents (all of which would satisfy the HAVA requirement) in the mail intended for the former occupants knows how easy it is to obtain such documents. When combined with the huge rise in identity theft, it is obvious that allowing documents without photographs is not an acceptable security ***289** measure for our voter registration and voting process. The federal government has already imposed such a requirement for rail and air travel because of its understanding of these limitations. The same standards should be applied to voting.

Contrary to the argument raised by civil rights organizations that such requirements will reduce voter turnout by minority voters, [FN43] there are no valid studies presenting any objective data supporting such claims. The objections are merely anecdotal and based on the unproven perception that minority groups such as African-Americans do not posses identification documents to the same degree as Caucasians (although there are no claims that minorities do not have the same opportunity to obtain such identification from state authorities). Although driver's licenses are not the only form of photo identification available (since many employers and universities now routinely issue photo identification), it is useful to examine the available statistics on driver's licenses. According to an Federal Election Commission ("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, in lieu of a driver's license, an identification card issued by the State motor vehicle agency." [FN44]

More recently, in 2000, the Federal Highway Administration reported that the number of licensed drivers age eighteen and over is 186,797,586. [FN45] Since the total population of the United States age eighteen and over according to the 2000 Census is 209,128,094, the percentage of the U.S. voting age population with a driver's license is 89.32%. [FN46] Using the FEC's 3% to 4% figure for additional non-driver's license identification cards, approximately 93% to 94% of the voting age population has, at ***290** a minimum, photo identification documents issued by state authorities.

Advocacy groups further claim that identification requirements will adversely affect the elderly. However, a surprisingly large number of individuals over the age of sixty-five have driver's licenses. According to the Federal Highway Administration, the number of older Americans who hold driver's licenses as a percentage of their age group is as follows: [FN47]

Licensed Drivers as a Percentage of Age Group

Age	Lic. Drivers
65-69	90.1%

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70-74	85.7%
75-79	81.4%
80-84	73.1%

Given these statistics, it is obvious that even elderly Americans have driver's licenses with photo identification in large numbers, without even taking into account the number of passports, employer identification cards, and other such documents.

A second objection is that voters will be intimidated by identification requirements and therefore will not vote. The 2004 election certainly does not bear that out. For the first time, voter identification requirements (although limited) were applied nationwide because of HAVA. Yet turnout in the 2004 presidential election was 60.7% of those eligible to vote, the highest turnout since 1968 when 61.9% voted. [FN48] In fact, turnout increased by 6.4%, or nearly seventeen million votes, from the 2000 election, the largest percentage point increase since the ***291** 1948 to 1952 election when it increased 10.1%. [FN49] The HAVA identification requirement also did not appear to affect voter registration. The EAC estimated that there were thirteen million new voters, an increase of 8%, while the Committee for the Study of the American Electorate estimated that the number of newly registered voters in 2004 as compared to 2000 was "an increase of nearly three million more than the increase in the eligible population" and an increase of more than six million if "registration rates remained constant." [FN50] In other words, even with these new requirements, voter registration and turnout increased substantially.

The increase in turnout in the 2004 election despite the imposition of HAVA's nationwide identification requirements is also in accord with the turnout in individual states that imposed identification requirements prior to the passage of HAVA. While there is not space in this article to go into detail, a study by the author of the turnout in presidential elections in four states with large minority populations (Georgia, South Carolina, Virginia, and Louisiana) prior to HAVA showed no affect on minority voters from the implementation of state identification requirements by their legislatures. [FN51] By reviewing turnout in presidential elections, the possible effects of such a requirement can be gauged. Since turnout in presidential elections has fluctuated since 1960 in the midst of a general long-term decline, the effects of identification requirements must be analyzed in terms of whether turnout in a particular state has increased or decreased in comparison to the national average increase or decrease in turnout as well as the state's turnout history. In conducting such an analysis, it must also be noted that according to numerous published studies, many other factors may influence turnout, including early voting, state laws on absentee balloting, and local races of interest to voters. In any event, however, an examination of turnout statistics in these four representative states with significant minority populations ***292** showed no reduction in turnout due to the implementation of identification requirements.

Virginia provides just one example. According to the 2000 Census, Virginia's population is 72.3% white and 19.6% black. [FN52] The percentage of the driving age population with driver's licenses in 2000 was 87.5%. [FN53] Virginia passed an identification requirement in 1999 that became effective for the 2000 presidential election. [FN54] 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 subject to felony penalties that he is the named registered voter. Yet from the 1996 to the 2000 presidential election, when Virginia's identification requirement became effective, Virginia's turnout increased 5.46 points--from 47.54% to 53%. [FN55] During that same time period, the national turnout increased 2.22 points from 49.08% to 51.3%. Thus, even after imposing a new identification requirement, Virginia's turnout increased at twice the rate of increase of the national turnout.

IV. Citizenship of Voters

Two changes to the national mail-in voter registration form that states are required to accept by section 6 of the NVRA [FN56] are required by 42 U.S.C. § 15483. Two questions with yes/no check boxes had to be added: "Are you a citizen of the United States of America?" and "Will you be 18 years of age on or before election day?" [FN57] The form also has to state that "[i]f you checked 'no' in response to either of these questions, do not complete this form." [FN58] If the citizenship question is not answered, the registrar "shall notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a timely ***293** manner to allow for the completion of the registration form prior to the next election for Federal office (subject to State law)." [FN59]

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Despite the clear language in this provision that requires individuals to answer the citizenship question before their voter registration can be accepted by election officials, many states have ignored the law, pressured by groups such as the League of Women Voters and the American Civil Liberties Union, and continue to register individuals who do not answer the citizenship question. For example, on September 7, 2004, Ohio's Secretary of State ordered county election officials to accept voter registration applications "even if the applicants did not checked[sic] the 'yes' boxes." [FN60] The South Dakota Secretary of State also ordered his county election officials to do the same and the Iowa Attorney General issued an opinion telling his Secretary of State that he could ignore state law to the contrary and accept voter registrations of applicants who did not answer this question. [FN61]

Florida was actually sued to stop the state from complying with this requirement. A number of unions including the AFL-CIO and the AFSCME filed suit prior to the November 2004 election claiming that Florida's refusal to register individuals who did not answer the citizenship question violated the Voting Rights Act as well as state law. The case was dismissed for lack of standing. [FN62]

The addition of this citizenship question to the voter registration form was prompted by Congress's concern over the ability of noncitizens, both legal and illegal, to register to vote without detection. Even the addition of this question, however, still leaves an honor system in place on the issue of the citizenship status of voters. Harris County, Texas has already reported finding at least thirty-five foreign citizens who either applied for or received voter cards in 2004 after checking the box on the application saying they were U.S. citizens and is ***294** investigating another seventy. [FN63] The presence of noncitizens on our voter rolls is certainly a problem as evidenced by various reported cases where noncitizens were found to be registered and, in some cases, to have voted in elections. However, because of the lack of verification of citizenship status by election officials and the reported refusal of the Immigration and Naturalization Service to cooperate with election officials, it is difficult to know how significant a problem this is.

Some examples show the possible extent of the problem. In 1985, the district director of the INS testified before a task force in Illinois that 25,000 to 40,000 illegal and legal aliens in Chicago were registered voters. [FN64] Before officials in Washington stopped the probe, a random check by the Dallas INS office in 1997 of only 400 registered voters found ten noncitizens. If this percentage (2.5%) had held true for the entire county, it would represent thousands of illegally registered voters. [FN65] Random checks by the Honolulu city clerk's office in 2000 with the state identification card registry maintained by Hawaii showed over 550 registered voters who had admitted they were not U.S. citizens when applying for a state identification card. [FN66] In 2002, eight illegal immigrants testified in court that they had registered to vote, and six testified that they had voted in a June 5, 2001 city council and mayoral election in Compton, California. [FN67]

On the federal level, voting by noncitizens was found by the Committee on House Oversight in the Dornan-Sanchez election dispute in California in 1997. After a limited comparison of Orange County voter registration files with INS databases, the Committee found 784 invalid votes due to individuals who had ***295** registered illegally. [FN68] The Committee's Report stated that the question of how many aliens were registered and voting in the 46th Congressional District was not resolved by its investigation. The Committee concluded:

> [T]here is a significant number of aliens who appear within the INS databases and are on the voter registration rolls of Orange County. This fact leads logically to a serious question and a troubling hypothesis: if there is a significant number of "documented aliens," aliens in INS records, on the Orange County voter registration rolls, how many illegal or undocumented aliens may be registered to vote in Orange County? [FN69]

In a report released in 1998, California Secretary of State Bill Jones reported that in just one five-month period from September 1, 1996, to February 1, 1997, the Orange County Jury Commissioner had 455 potential jurors who had been summoned from the county voter file claim an exemption from jury service because they were not U.S. citizens. [FN70]

Finally, shortly before the 2004 general election, the chairman of the Maryland State Board of Election was quoted as saying he was "shocked" to learn that noncitizens were on the voting rolls. [FN71] What was most interesting about this story was the refusal of the Citizenship and Immigration Service at the Department of Homeland Security (formerly the INS) to cooperate with the Maryland election board, with a spokesman citing the federal Privacy Act and the Immigration and Nationality Act. [FN72] The problem with this refusal is that CIS is violating federal law and apparently doing so without repercussions. Section 642 of the Illegal Immigration and Immigrant Responsibility Act of 1996 obligates the INS to respond to such inquiries notwithstanding any other provision of federal law (including the Privacy Act):

> Notwithstanding any other provision of Federal, State, or local laws, a Federal, State, or local government entity or

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> ***296** official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual . . . . The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information. [FN73]

What is clear from these reports is that the lack of verification of citizenship in the voter registration process is a serious problem that can affect the integrity of our elections, particularly when we have an estimated eight to ten million illegal aliens in the country. [FN74] Having an "honor" system with no verification or requirement that voter registration applicants document their citizenship status is unacceptable, as is the refusal of a federal agency to comply with federal law. In November 2004, Arizona voters passed a requirement that individuals registering to vote provide "satisfactory evidence of United States citizenship"; it is a good model for other states to follow, particularly in regard to the list of documents that will satisfy the requirement. [FN75] Arizona is also covered by section 5 of the Voting Rights Act, which requires all changes affecting voting to be submitted to the Attorney General or a federal district court in the District of Columbia for preclearance. The Attorney General precleared the citizenship proposition without objection on January 24, 2005, indicating that the Department of Justice concluded that this requirement would not have any discriminatory impact on minority voters. [FN76]

***297** V. Statewide Voter Registration Lists and the NVRA

HAVA requires states to implement a single, uniform, official, centralized, interactive computerized statewide voter registration list for use in all federal elections. [FN77] Each state must maintain and administer this database, which must list the name and registration information of every legally registered voter. Specific standards are set out for maintaining the list, including cross-referencing the list with state drivers license records, felony and death records, and federal social security records. These lists were supposed to be implemented by 2004 but the majority of states received a waiver until 2006 from the EAC as allowed under section 15483(d). [FN78]

The computerized statewide database is intended to solve existing problems with, for the most part, county voter registration lists. Many of these lists are full of duplicate names, [FN79] individuals who have died, and voters who are no longer eligible because they have moved, not to mention the fraudulent and nonexistent individuals that are registered, such as the 1,200 voters under investigation in Wisconsin because of nonexistent or invalid addresses. A recent study by the Chicago Tribune found 181,000 dead people on voter rolls in six swing states after the November election. [FN80]

Unfortunately, the National Voter Registration Act imposed onerous and unreasonable restrictions on the ability of states to purge voters who are ineligible because they have moved and that was not changed by the requirement of HAVA. Before the NVRA, if a jurisdiction received information that a voter had moved, it could send a letter notifying the voter that he would be deleted from the registration roll unless he confirmed that he had not moved. Under NVRA, however, a voter can be dropped only if he confirms in writing to the election officials that he has moved, or if he does not vote in two federal elections after failing to respond to a written notice. [FN81] NVRA's assumption ***298** that an individual who has moved will receive a written notice sent to him at his new address or will take the time to respond in writing to his former jurisdiction is naive and ignores the huge volume of junk mail most people receive these days (and promptly ignore and throw out).

It also does not take into account that the Postal Service will only forward a person's mail to a new address for a limited amount of time. A voter may never receive his notice and thus will not be able to confirm that he has moved and should be dropped from the registration list. These NVRA restrictions have resulted in large numbers of ineligible persons remaining on voter registration lists--increasing the possibility that fraudulent ballots will be cast in their names. There are numerous jurisdictions across the United States (such as Alaska) that have more registered voters than the voting age population, a clear indication that the jurisdiction is not properly maintaining its registration list by purging individuals who have moved or died. [FN82]

A statewide database, while solving the problem of duplicate registrations within a state, will, of course, not be a bar to individuals registering and voting in more than one state. This is a significant problem. In two separate investigations, the Charlotte Observer found as many as 60,000 voters registered in both North Carolina and South Carolina and the New York Daily News found 46,000 voters registered in both New York and Florida, with at least 1,000 voters who cast ballots in both states in at least one election. [FN83] Given that the 2000 presidential election was decided by less than 1,000 votes cast in

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Florida, these investigations reveal a serious security problem that must be remedied. Interestingly, in these cases these problems were not discovered by election officials running database comparisons--they were found by newspapers using existing ***299** database technology. Unfortunately, this is the type of investigation that election officials have shown no interest or initiative in doing on their own.

VI. State and Federal Legislative Recommendations

While many of the changes made by these new HAVA requirements are an improvement over existing election requirements and administration, they are not sufficient to protect the security of our voter registration and election process. Some of the provisions, such as the identification requirement, do not go far enough. Some groups have already exploited ambiguities in the statutory language of some of the provisions to avoid the statute's mandates. Additionally, some of HAVA's provisions should be clarified to quash the attempts to use litigation that forces substantive election administrative changes on the states that would imperil the integrity of our elections, were not intended by Congress, and intrude on the constitutional prerogative of the states to control "[t]he Times, Places, and Manner" of holding federal elections. [FN84] As discussed, but for the Sixth Circuit overturning the wrongly decided opinions of two federal district court judges just days before the November 2, 2004 election, HAVA would have been used to force states to implement the same kind of "precinct shopping" for voting that tort lawyers have successfully used in forum-shopping for favorable venues. [FN85]

In order to fix the problems outlined in this article and improve the security of the voter registration and election process, the Help America Vote Act should be amended. A number of bills have already been introduced in Congress to amend HAVA, but most experts who follow these issues in Washington doubt whether any effort to amend HAVA will succeed. The statute as currently passed was the result of compromise and hard negotiations between the House and Senate and Republicans and Democrats. Both sides fear opening the statute to amendment because of possible changes the other ***300** side would also want. For example, most Republicans would like to improve the identification requirements, but most Democrats would like to delete them entirely.

The other solution is for states to pass laws amending their election laws, thereby putting in place stricter requirements than those imposed by HAVA, as they are allowed to do by § 15484. [FN86] All of the changes noted below could be implemented by states at the local level through state legislative or regulatory changes or at the federal level by amending HAVA:

• Require all voters to present photo identification at their precinct polling locations and to send copies of such identification when submitting an absentee ballot. Although, as discussed, the claim that minority voters cannot meet such requirements is unsubstantiated, that problem can be easily resolved. For any individual who does not have a driver's license or other photo identification and who needs to obtain one to meet this requirement, states should waive the fee their motor vehicle departments charge for the nondriver's license identification cards they issue.

• Require an individual who registers by mail to vote in person the first time. A small number of states such as Virginia [FN87] have such a legal requirement, but all states should implement such a statute. [FN88]

• Require all individuals who register to vote through the use of mail-in forms, whether they are mailed back to election officials or hand-delivered by the individual or third-party organizations, to comply with the HAVA or stricter state identification requirements. This requirement should apply to all individuals who do not appear before election officials who verify their identification, particularly large voter registration drives organized by third-party organizations.

***301** • Require all individuals who register to vote to provide documentation establishing that they are United States citizens, similar to Arizona's Proposition 200. [FN89] At a minimum, individuals who do not answer the citizenship question that HAVA requires on the federal voter registration form should not be registered unless they confirm that they are U.S. citizens. In addition, all state voter registration forms should be changed to add the same citizenship question that is now on the federal voter registration form.

• Prohibit any third-parties (other than a voter's family), such as campaign workers, from delivering absentee ballots to voters or voted absentee ballots from voters to election officials. Absentee ballots represent the biggest source of potential voter fraud because they are obtained and voted away from official oversight. Prohibiting third-parties from delivering ballots would prevent alteration of ballots and intimidation of voters or fraud by campaign organizations and other parties.

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• When third-party organizations request large numbers of voter registration forms for voter registration drives, require all such forms to have individual serial numbers and require election officials to keep track of which forms are assigned to the organizations. This will allow election officials to identify which organization handled voter registration forms that are found to be fraudulent and help in the investigation and prosecution of voter registration fraud.

• Require all state courts to notify election officials when individuals whose names are drawn from the registration rolls are excused from jury duty because they claim they are not U.S. citizens.

• Require states to enter into regional agreements to compare their new computerized voter registration lists to find voters who are registered in more than one state.

In addition to the changes noted above that could be implemented either by states or at the federal level through changes in HAVA, there are several recommended changes that can only be done at the federal level. HAVA should also be amended to:

***302** • State unequivocally that there is no private right of action under HAVA or any other federal statute such as § 1983. As discussed, HAVA required states to implement comprehensive administrative complaint procedures and it gave enforcement authority to the U.S. Department of Justice. [FN90] The debates in Congress during HAVA's passage make it clear that Congress did not intend to create a private right of action to enforce HAVA. HAVA should be clarified by Congress to make it explicit that the administrative complaint procedures are the exclusive venue for individuals who have complaints about a state's compliance with its provisions.

• State unambiguously that the provisional balloting requirements of § 15482 do not require states to count the ballots of individuals who cast votes in any precinct other than the precinct to which they are assigned based on their residence address. Additionally, it should be made clear that individuals who are provided provisional ballots as required under HAVA when they do not present identification either at the time of registration or when they vote cannot have their provisional ballot counted for any federal candidates unless the voter complies with the identification requirement prior to some period of time after the election.

• Make clear that if an individual does not answer the citizenship question on the federal voter registration form mandated by § 15483(b), he cannot be registered to vote for a federal election.

• Require all federal courts to notify state election officials when individuals whose names are drawn from their registration rolls are excused from jury duty because they claim they are not U.S. citizens. This would be similar to a provision that already exists in section 6(g) of the NVRA [FN91] that requires all U.S. Attorneys to notify state election officials when they obtain a conviction of an individual for a felony in a federal district court. This is intended to provide election officials with the opportunity to remove a felon from the voting rolls if their state provides such a disqualification.

***303** • Amend the NVRA to allow states to purge individuals who have not voted in two federal elections as long as they have been sent a written notice warning them that they will be removed unless they contact election officials within a certain period of time. This would change an unworkable and impractical provision in the NVRA that has single-handedly been responsible for padding voter registration rolls with huge numbers of ineligible voters and preventing states from properly purging their registration lists. It should also be clear in this change that, unlike the current requirements of the NVRA, this notice does not have to be sent out prior to the individual not voting twice; as long as the individual has not voted in two federal elections, the states should be able to remove the voter once they have sent out the written notice and there has been no response from the individual by the deadline.

All of these changes would improve the security of our election process and would prevent fraud. They would ensure that every citizen's vote counts and that the value of his vote is not stolen by wrongdoing and sloppy procedures. Even if Congress fails to act by correcting some of the problems in HAVA and the ambiguities caused by unclear language (as well as the problems with the NVRA), there is nothing to stop the states from implementing many of these changes on their own. Under the Constitution, the states retain a great deal of constitutional authority to define the requirements for voting. Despite claims to the contrary, requiring proof of citizenship and identity as well requiring voting in a precinct where a citizen resides

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does not violate the explicit language, the spirit, or the intent of the Voting Rights Act or other federal voting rights statutes. It was not the intent of Congress to prevent reasonable measures to authenticate the eligibility of voters. Ensuring that elections are fraud free and that all voters are actually eligible to vote is the key to assuring citizens that the election process is legitimate and that election results accurately reflect the will of the voters. The proposed changes discussed here would be important steps in achieving that goal.

[FNa1]. Publius is an attorney who specializes in election issues. The opinions expressed here are the attorney's own and not that of the attorney's employer.

[FN1]. See Employment Policies Institute, The Real ACORN: Anti-Employee, Anti-Union, Big Business (May 2003), available at http:// www.EPIonline.org/studies/epi_acorn_05-2003.pdf (a description of one organization's pattern of turning in false registration forms). See also Robert Patrick, Jury finds Montgomery guilty in vote fraud case, St. Louis Post-Dispatch, Feb. 10, 2005, at B1 (thousands of fraudulent voter registration forms were turned in by an organization called Operation Big Vote); Juliet Williams, Federal investigators join probe into Milwaukee voting problems, Duluth News Trib., Feb. 16, 2005 (city voting records showed that more than 1,200 people voted from invalid addresses); 'Mary Poppins' admits phony voter registrations, Star Tribune, Feb. 19, 2005; Mark Brunswick, Voter card stash brings guilty plea, Star Tribune, Dec. 7, 2004, at 8B.

[FN2]. Larry J. Sabato & Glenn R. Simpson, Dirty Little Secrets: The Persistence of Corruption in American Politics (1996).

[FN3]. John Fund, Stealing Elections: How Voter Fraud Threatens Our Democracy (2004).

[FN4]. See Northern District of Illinois, Eastern Division Special Grand Jury Report, No. 82 GJ 1909, Dec. 14, 1984. What is clear from reading the grand jury report and some of the reported cases on these convictions is that the election officials learned these techniques from their predecessors and that there was a long tradition of these types of practices in Chicago. See also Mark Eissman, U.S. to Probe Primary: Vote Fraud Federal Laws May Have Been Broken, Chi. Trib., Mar. 11, 1987, at 1C. A detailed account of extensive voter fraud in Miami is contained in the Miami-Dade County Grand Jury, Interim Report, Inquiry into Absentee Ballot Voting, Feb. 2, 1998. In 1984, Brooklyn District Attorney Elizabeth Holtzman disclosed the results of another grand jury investigation that found "serious and repeated fraud in primary elections held in Brooklyn" for fourteen years, including the use of fictitious names to create large numbers of voter registration cards that were then used to cast fraudulent votes. Press Release, Brooklyn, New York District Attorney's Office, D.A. Holtzman Announces Grand Jury Report Disclosing Systematic Voting Fraud in Brooklyn (Sept. 5, 1984).

[FN5]. Id.

[FN6]. Id.

[FN7]. See, e.g., Lori Minnite & David Callahan, Securing the Vote: An Analysis of Election Fraud, Demos, 2003, available at http://www.demos-usa.org/pubs/EDR-Securing_the_Vote.pdf. The problem with this report is that it does not recognize that so many security holes exist in our current voter registration and election process, and that is it very hard to detect voter fraud unless a victim or perpetrator bring it to the attention of authorities. In the past, for example, election officials never verified any of the information received on voter registration forms, resulting in an honor system for voter registration. Many studies have shown numerous false names and even animals registered to vote in jurisdictions all over the country. As another example, this study asserts that "vigorous" signature matching is sufficient to prevent voter fraud with balloting by mail. Any criminal prosecutor with experience in handwriting analysis knows that it takes extensive training to do such analysis accurately, something that the election clerks who conduct signature comparisons do not receive. Furthermore, if someone sends in 100 false voter registration forms under different names, but signs each form in their normal signature, a signature comparison of each absentee or mail-in ballot with the original registration card will not result in any detection of the fraud because the signatures will match.

[FN8]. See also, e.g., the many election cases under 42 U.S.C. § 241 (2005) (conspiracy against rights).

[FN9]. 42 U.S.C. § § 15301-15545 (2005).

[FN10]. See 42 U.S.C. § 1973gg (2005).

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[FN11]. Press Release, United States Election Assistance Commission, U.S. Election Assistance Commission Reports to Congress on Election Reform Progress in 2004 (Feb. 9, 2005), available at http://www.eac.gov/news_020905.asp.

[FN12]. 42 U.S.C. § 15485 (2005). A copy of the statute and other information on its requirements may be found on the U.S. Department of Justice's website at http://www.usdoj.gov/crt/voting/hava/hava.html.

[FN13]. 42 U.S.C. § 15329 (2005). The only exception is for the regulations issued under section 9(a) of the NVRA on the use of the federal mail-in voter registration form. Responsibility for this form was transferred by HAVA from the Federal Election Commission to the EAC. See 42 U.S.C. § 15531 (2005).

[FN14]. Letter from Meredith Imwalle, Director of Communications, NASS, to Members of Congress (Feb. 6, 2005), available at http://www.nass.org/EAC% 20Position%20Cover%20Ltr.pdf. This is a legitimate concern given the content of some of the new bills introduced in Congress to amend HAVA. See, e.g., S. 17, 109th Cong. § 15 (2005).

[FN15]. The preamble to the statute states that it is an Act "[t]o establish the Election Assistance Commission to assist in the administration of Federal elections and to otherwise provide assistance with administration of certain Federal election laws and programs, to establish minimum election administration standards for States ... with responsibility for the administration of Federal elections." Help America Vote Act of 2002, Pub. L. No. 107-252 (codified as 42 U.S.C. § § 15301 et seq. (2005)) (emphasis added).

[FN16]. 42 U.S.C. § 15482(a).

[FN17]. 42 U.S.C. § 15482(c) (stating that such provisional ballots must also be "separated and held apart from other provisional ballots" cast at the polling place).

[FN18]. It turned out that the lead plaintiff in the lawsuit, Robert D. Odum, who supposedly had not been able to vote because of long-lines at polling locations, had been dead since 1999. The Democrats then claimed the plaintiff was actually Robert M. Odum, a staffer for Democrat Congressman William Clay; however, Mr. "M" Odum had voted prior to the filing of the lawsuit. Beverly Lumpkin, Beverly Lumpkin: Halls of Justice (Apr. 20, 2004), at http:// abcnews.go.com/US/story?id=93445&page=1.

[FN19]. State ex rel. Bush-Cheney 2000, Inc. v. Baker, 34 S.W.3d 410 (Mo. Ct. App. 2000).

[FN20]. While these organizations are all independent of each other legally, the positions they assert in election litigation are usually virtually identical.

[FN21]. Florida Democratic Party v. Hood, 342 F. Supp. 2d 1073 (N.D. Fla. 2004) (holding that federal law does not invalidate the long-standing requirement in the State of Florida that a voter must vote on election day only at the voter's assigned polling place); Hawkins v. Blunt, No. 04-4177, U.S. Dist. LEXIS 21512 (W.D. Mo. Oct. 12, 2004).

[FN22]. Bay County Democratic Party v. Land, 347 F. Supp. 2d 404 (E.D. Mich. 2004); Sandusky County Democratic Party v. Blackwell, 339 F. Supp. 2d 975 (N.D. Ohio 2004).

[FN23]. Sandusky County Democratic Party v. Blackwell, 386 F.3d 815 (6th Cir. 2004). A full written opinion was issued three days later. Sandusky County Democratic Party v. Blackwell, 387 F.3d 565 (6th Cir. 2004). Since Michigan is also in the Sixth Circuit, this decision effectively overruled Bay County Democratic Party v. Land, 347 F. Supp. 2d 404 (E.D. Mich. 2004).

[FN24]. Blackwell, 387 F.3d at 569.

[FN25]. See 42 U.S.C. § 15511 (2005). Only the Attorney General is given authority to bring a civil action against a state or jurisdiction violating 42 U.S.C. § § 15481-15483 of HAVA. Id.

[FN26]. Blackwell, 387 F.3d at 572.

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[FN27]. Id. at 572-73.

[FN28]. See Gonzaga Univ. v. Doe, 536 U.S. 273, 286 n.5 (2002).

[FN29]. 148 Cong. Rec. S10488-02, S10512 (daily ed. Oct. 16, 2002). The Conference Report confirmed that the enforcement provision only allowed for civil actions filed by the Attorney General. H.R. Conf. Rep. No. 107-730, at 76 (2002).

[FN30]. 42 U.S.C. § 15512 (2005).

[FN31]. "Brief of Amicus Curiae United States at 22-23, Sandusky County Democratic Party v. Blackwell, 386 F.3d 815 (6th Cir. 2004) (No. 04-4265), available at http://www.usdoj.gov/crt/voting/hava/oh_brief.pdf.

[FN32]. Electionline.org, The 2004 Election, Dec. 2004, at 5, available at http://electionline.org/site/docs/pdf/ERIP%20Brief9%20Final.pdf. Other states offer election day registration while North Dakota has no registration, obviating the need for provisional ballots.

[FN33]. 42 U.S.C. § 15483(b) (2005).

[FN34]. 42 U.S.C. § 15483(b)(2)(A)(i)(II).

[FN35]. 42 U.S.C. § 15483(b)(2)(B)(ii).

[FN36]. 42 U.S.C. § 1973gg-4 (2005).

[FN37]. 42 U.S.C. § 1973ee-1(b)(2)(B)(ii).

[FN38]. 42 U.S.C. § 15483(b)(3)(B)(ii).

[FN39]. 42 U.S.C. § 15483(b)(1)(A).

[FN40]. Electononline.org, Election Preview 2004: What's Changed, What Hasn't and Why, Oct. 2004, at 45, available at http:// www.electionline.org/site/docs/pdf/2004.Election.Preview.Final.Report.Updat [hereinafter Election Preview 2004].

[FN41]. Bill Cotterell, FDLE looks into vote fraud; Registration irregularities emerge across state, Tallahassee Democrat, Oct. 22, 2004, at A1; Carlos Campos, Election 2004: bogus voter forms pop up in Fulton, Atlanta Journal-Constitution, Oct. 21, 2004, at A1.

[FN42]. Election Preview 2004, supra note 40, at 24.

[FN43]. See, e.g., Robert Pear, Rights Groups Say Voter Bill Erects Hurdles, N.Y. Times, Oct. 7, 2002, at H1.

[FN44]. Fed. Elections Comm'n, The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, at 5-6 (1995-96).

[FN45]. Fed. Highway Admin., Distribution of Licensed Drivers by Sex and Percentage in Each Age Group and Relation to Population: 2000, tbl. DL-20 (Oct. 2001), available at http://www.fhwa.dot.gov/ohim/hs00/dl20.htm. Neither the FEC nor the FHA has driver's license statistics by race.

[FN46]. U.S. Census Bureau, Profile of General Demographic Characteristics: 2000, tbl. DP-1 (July 2002), available at http:// www.census.gov/prod/2002pubs/c2kprof00-us.pdf. If one compares 2003 driver's license statistics to the Census Bureau's 2003 population estimate, the voting age population with a driver's license rises to over 92%.

[FN47]. Fed. Highway Admin., Distribution of Licensed Drivers by Sex and Percentage in Each Age Group and Relation to

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Population: 2003 (Oct. 2004), available at http://www.fhwa.dot.gov/policy/ohim/hs03/pdf/dl20.pdf.

[FN48]. Committee for the Study of the American Electorate, Turnout Exceeds Optimistic Predictions: More Than 122 Million Vote, Highest Turnout in 38 Years, Jan. 14, 2005, at 1, available at http:// election04.ssrc.org/research/csae_2004_final_report.pdf.

[FN49]. Id.

[FN50]. Press Release, U.S. Election Assistance Commission, U.S. Reports to Congress on Election Reform Progress in 2004, Feb. 9, 2005, available at http://www.civilrights.org/issues/voting/details.cfm?id=28137; Turnout Exceeds Optimistic Predictions, supra note 48, at 2.

[FN51]. Ga. Code Ann. § 21-2-417 (2004); S.C. Code Ann. § 7-13-710 (Law. Co-op. 2004); Va. Code Ann. § 24.2-643 (Michie 2002); La. Rev. Stat. Ann. § 18:562 (West 2004).

[FN52]. U.S. Census Bureau, State and County Quick Facts: Virginia, available at http://quickfacts.census.gov/qfd/states/51000.html (last visited March 26, 2005).

[FN53]. U.S. Census Bureau, Licensed Drivers by Sex and Ratio to Population: 2000, tbl. DL-1C (Oct. 2001), available at http:// www.fhwa.dot.gov/ohim/hs00/dl1c.htm.

[FN54]. Va. Code Ann. § 24.2-643 (Mitchie 2002).

[FN55]. Information in this paragraph about voter turnout is available on the Election Assistance Commission website at http://www.eac.gov/election_ resources.asp?format=none.

[FN56]. 42 U.S.C. 1973gg-4(c) (2005).

[FN57]. 42 U.S.C. 15483(b)(4)(A) (2005).

[FN58]. Id.

[FN59]. 42 U.S.C. 15483(b)(4)(A).

[FN60]. Directive No. 2004-31, Ohio Secretary of State, Sept. 7, 2004.

[FN61]. Letter from Chris Nelson, South Dakota Secretary of State, to County Auditors (Oct. 25, 2004), available at http:// www.votelaw.com/blog/blogdocs/Response%20Letter%20from%20Chris%20Nelson.pdf; Letter from Thomas J. Miller, Iowa Attorney General, to Chester J. Culver, Iowa Secretary of State (Oct. 20, 2004), available at http:// www.votelaw.com/blog/blogdocs/AG%20Opinion%20-%20Check%20the%20Box%20%20%2010- 20-041.pdf.

[FN62]. Diaz v. Hood, 342 F. Supp. 2d 1111 (S.D. Fla. 2004).

[FN63]. Joe Stinebaker, Loophole lets foreigners illegally vote, Hous. Chron., Jan. 16, 2005, at B1. The story estimated that dozens if not hundreds of foreign citizens had been allowed to vote, including a Brazilian woman who voted at least four times and reregistered (and voted) after her first registration was cancelled when she acknowledged on a jury summons that she was not a citizen. A Norwegian was discovered to have voted in a state legislative race decided by only thirty-three votes.

[FN64]. Desiree F. Hicks, Foreigners landing on voter rolls, Chi. Trib., Oct. 2, 1985, at 4D.

[FN65]. Ruth Larson, INS workers forced to halt check of voters, Wash. Times, June 4, 1997, at A1; Ruth Larson, Dallas voter-fraud probe taken out of control of INS, Wash. Times, June 10, 1997, at A3. It should be noted that such a check would turn up only the names of aliens in the INS system, i.e., lawful aliens who have been issued visas to be in the United States or illegal aliens who have been arrested and released pending further legal proceedings.

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[FN66]. Scott Ishikawa & Kevin Dayton, Non-U.S. citizens found on voter rolls, The Honolulu Advertiser, Sept. 6, 2000, at 1A.

[FN67]. Daren Briscoe, Noncitizens testify they voted in Compton election, L.A. Times, Jan. 23, 2002, at B5.

[FN68]. Comm. on House Oversight, Dismissing the Election Contest Against Loretta Sanchez, H.R. Doc. No. 105-416, Feb. 12, 1998, p. 15. Since the winning margin was 979 votes, the election challenge was dismissed.

[FN69]. Id.

[FN70]. Press Release, California Secretary of State Bill Jones, Press Release and Official Status Report on Orange County Voter Fraud Investigation (Feb. 3, 1998).

[FN71]. Robert Redding, Jr., Purging illegal aliens from voter rolls not easy; Maryland thwarted in tries so far, Wash. Times, Aug. 23, 2004, at A1.

[FN72]. Id.

[FN73]. 8 U.S.C. § 1373(a), (c) (2005). Since you must be a citizen to register and vote in federal (and all state) elections, verifying citizenship status is obviously "within the jurisdiction" of election officials.

[FN74]. Redding, supra note 71.

[FN75]. Arizona Proposition 200, available at http:// www.azsos.gov/election/2004/info/PubPamphlet/english/prop200.htm.

[FN76]. Howard Fischer, DOJ: Voter-approved law not detrimental to minority voting rights, Ariz. Daily Sun, Jan. 25, 2005; Yvonne Wingett & Robbie Sherwood, Voting provisions get clearance, Ariz. Republic, Jan. 25, 2005, at 1B.

[FN77]. 42 U.S.C. § 15483(a) (2005).

[FN78]. 42 U.S.C. § 15483(d).

[FN79]. See Susan Greene & Erin Cox, Election becomes a test of trust, Denv. Post, Oct. 31, 2004, at A1 (reporting that 68,000 duplicate names were found on registration rolls prior to the November election).

[FN80]. Geoff Dougherty, Dead voters on rolls, other glitches found in 6 key states, Chi. Trib., Dec. 4, 2004, at C13.

[FN81]. See generally section 8 of the NVRA. 42 U.S.C. § 1973gg-6 (2005).

[FN82]. As other examples, the City of East St. Louis has 20% more registered voters than it has voting age population. Mike Fitzgerald, Dual registration: a recipe for fraud, Belleville News-Democrat, Nov. 28, 2004. Thirty-four of Mississippi's 82 counties have more registered voters than voting age population. Emily Wagster Pettus, Official seeks bid for computerized statewide voter roll, Com. Appeal, Sept. 1, 2004, at DS4.

[FN83]. John Strauss & Mark Nichols, 11,214 on rolls in 2 counties, Indianapolis Star, Oct. 28, 2004, at 1A; Russ Buettner, City mulls action against two-timing voters, N.Y. Daily News, Aug. 24, 2004; 60,000 could be on file to vote in both Carolinas, The State, Oct. 25, 2004, at A1; Double Voting Demands State Action, Tampa Trib., Aug. 26, 2004, at 10; James Gordon Meek & Lisa L. Colangelo, The News Rocks the Vote: Fla. officials say fraud will be probed, N.Y. Daily News, Aug. 23, 2004, at 10.

[FN84]. U.S. Const. art. I, § 4, cl. 1.

[FN85]. This would have also led to these groups attempting to influence election outcomes by pressuring local election officials to count provisional ballots despite problems with the voter's eligibility, similar to the examination and argument over individual punch card ballots in Florida in 2000, especially given the short time frames after elections that officials have

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to make determinations and the constant threat of litigation over every decision.

[FN86]. "The requirements established by this title are minimum requirements and nothing in this title shall be construed to prevent a State from establishing ... requirements that are more strict than the requirements established under this title so long as such State requirements are not inconsistent with the Federal requirements under this title or any law described in section 906 [federal voting rights statutes]." 42 U.S.C. § 15484 (2005).

[FN87]. Va. Code Ann. § 24.2-416.1(B) (Mitchie 2004).

[FN88]. States are specifically allowed to have such a requirement by section 6 of the NVRA. 42 U.S.C. § 1973gg-6 (2005).

[FN89]. Ariz. Rev. Stat. § 46-140.01 (2005).

[FN90]. See 42 U.S.C. § § 15511-15512.

[FN91]. 42 U.S.C. § 1973gg-6(g)(1).

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The CHAIRMAN. Next, we are pleased to recognize Representative Langevin.

STATEMENT OF THE HON. JAMES R. LANGEVIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF RHODE ISLAND

Mr. LANGEVIN. Thank you, Mr. Chairman and Ranking Member Millender-McDonald. I first want to begin by thanking you——

The CHAIRMAN. Could someone move the microphone closer?

Mr. LANGEVIN. I want to thank you first of all for holding this hearing and for going to extraordinary lengths to make sure that the panels are balanced, and I echo the comments of my friend and colleague Chairman Hyde. You went to the extraordinary effort to make sure you had two members in chairs testifying. That is what I call going above and beyond the call.

Mr. Chairman, Ranking Member Millender-McDonald and esteemed colleagues on the House Administration Committee. I do appreciate your invitation to testify today. I have been proud to work with members of the committee on matters of great significance, from election reform to continuity of Congress, accessibility of the Capitol complex, and I am pleased to join you today as both a member of Congress and as a former Secretary of State to share my experiences about our Nation's election system.

I think it might even be appropriate on this issue to invoke the words of another man in a chair, all we have to fear is fear itself.

When I was elected Secretary of State, Rhode Island had the oldest voting equipment in the Nation. Beginning in 1993 when I chaired a special legislative commission on election reform as a State representative, and then, as Secretary of State, I worked with my colleagues in the legislature, the State board of elections, local canvassing authorities and the public to investigate voter problems throughout the State and develop an effective solution.

We successfully upgraded our election equipment, significantly reducing our error rates and making our polling places and machines accessible to people with disabilities.

I also wrote the law which implemented and brought Rhode Island into compliance with the requirements of the National Voter Registration Act, popularly known as motor voter, which reduced certain longstanding obstacles to registration. These changes were significant, and we ultimately met our goal of increasing the number of registered voters in Rhode Island by nearly 60,000 between 1993 and 2000. That is significant given the facts that we only have just over 660,000 voters in Rhode Island.

Now our efforts made Rhode Island a model for electoral participation and accessibility, and I was pleased to help translate those successes to the national level by participating in the development of the Help America Vote Act, a great bipartisan effort of this committee and the most recent success story in Congress's long history of expanding voting opportunities to Americans.

Congress should be proud of its record of removing barriers and increasing the opportunity of all Americans to vote. Though it took us far too long, Congress guaranteed the right to vote to citizens whose only disqualification was the color of their skin. It opened polling places to the disabled. It extended the franchise to Ameri-

cans living overseas. It has enabled all citizens in our mobile society to register and reregister with ease. It did all of this on a bipartisan basis. It did this while maintaining the integrity of our elections.

Over the past five decades Congress has never seriously entertained legislation that would reduce participation. Regrettably, H.R. 4844 would have that effect and mark a dangerous departure from past efforts. Should this bill become law, fewer eligible citizens will be able to vote.

It is easy, Mr. Chairman, to imagine individuals who would be disenfranchised under this bill. It could be a lance corporal in Tikrit whose parents failed to include a birth certificate in her duffle bag. It could be the Mississippi sharecropper born in his family home in a county that had no interest in recording his birth.

It could be a fisherman in St. Bernard Parish unable to find a public record of his life in the wake of Katrina's destruction. And it could be a naturalized citizen who, because of a government clerk's error, cannot obtain a copy of his naturalization papers. And maybe it is an elderly Rhode Island resident who leaves her home of 50 years to enter an assisted-living facility, or maybe an 18-year-old student registering to vote for his first election who neglected to bring his birth certificate with him.

The list could go on and on, Mr. Chairman. However, all of these people have one thing in common, once they are turned away from registering because of lack of documentation, it is unlikely that they will ever return. They will drop out of the Nation's election system because it failed them.

Let us be very clear, passage of H.R. 4844 would have an adverse impact on how our elections are administered as well as a detrimental effect on voter participation. Not only would the bill make it harder for nearly every American citizen to register to vote, but it would also add massive compliance requirements for election officials.

How many other eligible citizens would not vote because of the barriers created by this bill? Is it hundreds of thousands? Is it millions? Do the sponsors know? How much fraud, if any, will this actually deter? From my experience in Rhode Island and other stories in the public record, the type of fraud that this bill is intended to deter is virtually nonexistent. Do the sponsors really have evidence to the contrary?

And if the means or justification of this bill is to prevent noncitizens from voting, it is unnecessarily duplicative since Federal and State penalties already exist in this area and should be enforced. Under the law, fraudulent voter registration is a felony punishable by 5 years in prison.

So as the committee considers this bill, one simple question matters, is Congress willing to disenfranchise possibly millions in an effort to address the elusive fraud that sponsors fear?

Mr. Chairman, there are real threats in the integrity of our election system, and this bill addresses none of them. There are new registrants who, through no fault of their own, will not appear on the voting rolls because the State is unable to properly match the registrations with other public records. There are millions of eligible voters whose votes will not be counted because of unduly re-

strictive provisional ballot rules, and there are thousands of voters who are not being given the opportunity as required by law to register at public assistance agencies, and similar numbers whose registrations are not transferred from the motor voter vehicle department in a timely manner. Why are those problems not being addressed?

In closing, Mr. Chairman, I would like to return to a point that I made earlier in my statement. This Congress has wisely never passed election legislation which did not have substantial bipartisan support or which restricted electoral freedoms. Unfortunately, this hearing suggests that this fine tradition may be endangered.

Our election laws should not be a matter of political calculation but a preservative of our most precious right, the right to vote.

Thank you, Mr. Chairman.

[The information follows:]

Testimony of The Honorable James R. Langevin
Committee on House Administration
June 22, 2006

Chairman Ehlers, Ranking Member Millender-McDonald, and esteemed colleagues on the House Administration Committee, I appreciate your invitation to testify today. I have been proud to work with members of the Committee on matters of great significance – from election reform to continuity of Congress to the accessibility of the Capitol Complex – and I am pleased to join you again today, as a both a Member of Congress and a former Secretary of State, to share my experiences about our nation's election system.

When I was elected Secretary of State, Rhode Island had the oldest voting equipment in the nation. Beginning in 1993, as a state Representative and then as Secretary of State, I worked with my colleagues in the legislature, the State Board of Elections, local canvassing authorities and the public to investigate voting problems throughout the state and develop an effective resolution. We successfully upgraded our election equipment, significantly reducing our error rates and making our polling places and machines accessible to people with disabilities. We also implemented the requirements of the National Voter Registration Act – popularly known as "Motor Voter" – which reduced certain longstanding obstacles to registration. These changes were significant, and we ultimately met our goal of increasing the number of registered voters in Rhode Island by nearly 60,000 between 1993 and 2000. Our efforts made Rhode Island a model for electoral participation and accessibility, and I was pleased to help translate those successes to the national level by participating in the development of the Help America Vote Act – a great bipartisan effort of this committee and the most recent success story in Congress's long history of expanding voting opportunities to Americans.

Congress should be proud of its record of removing barriers and increasing the opportunity of all Americans to vote. Though it took us far too long, Congress guaranteed the right to vote to citizens whose only disqualification was the color of their skin. It opened polling places to the disabled. It extended the franchise to Americans living overseas. It enabled all citizens in our mobile society to register and reregister with ease. It did all this on a bipartisan basis. It did this while maintaining the integrity of our elections.

Over the past five decades, Congress has never seriously entertained legislation that would reduce participation. Regrettably, H.R. 4844 would have that effect and mark a dangerous departure from past efforts. Should this bill become law, fewer eligible citizens will be able to vote. It is easy to imagine individuals who would be disenfranchised under this bill. It could be a lance corporal in Tikrit whose parents failed to include a birth certificate in her duffel bag. It could be the Mississippi sharecropper born in his family home in a county that had no interest in recording his birth. It could be a fisherman in Saint Bernard Parish unable to find the public records of his life in the wake of Katrina's destruction. It could be the naturalized citizen who, because of a government clerk's error, cannot obtain a copy of his naturalization papers. Maybe it is an elderly Rhode Island resident who leaves her home of fifty years to enter an assisted living facility. Maybe it's an eighteen year-old student, registering for his first election, who neglected to bring his birth certificate with him. The list could go on and on. However, all of

these people have one thing in common. Once they are turned away from registering because of a lack of documentation, it is unlikely that they will return. They will drop out of the nation's election system because it failed them.

Let us be very clear. Passage of H.R. 4844 would have an adverse impact on how our elections are administered, as well as a detrimental effect on voter participation. Not only would the bill make it harder for nearly every American citizen to register to vote, but it would also add massive new compliance requirements for election officials. How many eligible citizens will not vote because of the barriers created by this bill? Is it hundreds of thousands? Is it millions? Do the sponsors know? How much fraud, if any, will this bill deter? From my experiences in Rhode Island and other stories in the public record, the type of fraud that this bill is intended to deter is virtually non-existent. Do the sponsors have evidence to the contrary? And if the main justification for this bill is to prevent non-citizens from voting, it is unnecessarily duplicative, since federal and state penalties already exist in this area and should be enforced. Under federal law, fraudulent voter registration is a felony punishable by five years in prison. So as the Committee considers this bill, one simple question matters: is Congress willing to disenfranchise possibly millions in an effort to address the elusive fraud that the sponsors fear?

There are real threats to the integrity of our election system, and this bill addresses none of them. There are the new registrants who, through no fault of their own, will not appear on the voting rolls because the state is unable to properly match their registrations with other public records. There are the millions of eligible voters whose votes will not be counted because of unduly restrictive provisional ballot rules. There are the thousands of voters who are not being given the opportunity as required by law to register at public assistance agencies, and similar numbers whose registrations are not transferred from the motor vehicle department in a timely manner. Why are those problems not being addressed?

In closing, I would like to return to a point that I made earlier in my statement: this Congress has wisely never passed election legislation which did not have substantial bipartisan support or which restricted electoral freedoms. Unfortunately, this hearing suggests that this fine tradition may be endangered. Our election laws should not be a matter of political calculation but a preservative of our most precious right, the right to vote.

The CHAIRMAN. I thank both of you gentlemen for your statements. I very much appreciate your presence here and the wisdom you have shared with us. I will explain for the benefit of the audience that we normally do not have questions of Members of Congress who appear, because they are here all the time, and we can question them any time. But I am sure you will encounter many questions from not just this panel, from our colleagues about this issue.

Thank you both very much for being here, and I thank you for your testimony.

Ms. MILLENDER-MCDONALD. Thank you both so very much.

The CHAIRMAN. I invite our second panel of witnesses to come to the table.

Ms. LOFGREN. Mr. Chairman, do we have written testimony from the witnesses? I didn't get it?

The CHAIRMAN. Yes, we do. I am sorry if you did not.

Ms. LOFGREN. Maybe I can get it from the staff.

STATEMENTS OF RAY MARTINEZ, VICE CHAIRMAN, UNITED STATES ELECTION ASSISTANCE COMMISSION; PATRICK ROGERS, ATTORNEY, MODRALL, SPERLING, ROEHL, HARRIS & SISK, P.A. LAW FIRM, NEW MEXICO; PAUL BETTENCOURT, TAX ASSESSOR-COLLECTOR AND VOTER REGISTRAR FOR HARRIS COUNTY, TEXAS; AND WENDY NOREN, COUNTY CLERK, BOONE COUNTY, MISSOURI

The CHAIRMAN. Our second panel consists of Mr. Martinez, Vice Chairman of the Election Assistance Commission; Mr. Rogers, an attorney with Modrall Sperling, Roehl, Harris & Sisk in New Mexico; Paul Bettencourt, the Tax Assessor-Collector and Voter Registrar from Harris County, Texas; and Wendy Noren, the County Clerk from Boone County, Missouri.

We will hear your testimony in that order, and I call upon Mr. Martinez for his testimony.

STATEMENT OF RAY MARTINEZ

Mr. MARTINEZ. Thank you, Mr. Chairman.

Good morning, Madam Ranking Member.

I am honored to be before this distinguished committee once again, Mr. Chairman.

After the 2000 Presidential Election, several important national commissions and task forces were created to study the problems in election administration. One such commission whose recommendations greatly influenced congressional views on election administration was the Commission on Federal Election Reform of 2001, co-chaired by former Presidents Jimmy Carter and Gerald Ford. Like other similar entities, the Carter-Ford Commission recognized the essential role of State and local governments in the process of election administration.

Speaking on the balance of authority in the U.S. Constitution, the commission's final report stated, quote, The framers recognized the practical need to rely on local administration and State oversight, end quote.

In passing such important voting rights laws, such as the Uniform and Overseas Citizen Absenteeism Voting Act of 1996, the

National Voter Registration Act of 1993 and the Help America Vote Act of 2002, Congress carefully considered this balance of responsibility and appropriately gave significant discretion to State governments in implementing these important laws.

As an EAC commissioner, I have strived to fully support this carefully crafted balance of State, Federal responsibilities. Prior to joining the EAC, I operated a solo law practice in Austin, Texas, that focused almost exclusively on representation on administrative law matters of county and local governments. Indeed, most of my professional career throughout the past 15 years has been dedicated to serving the needs of State and local jurisdictions. That is especially true during my term on the EAC.

As an EAC commissioner, I have diligently worked to support this carefully crafted balance of Federal-State responsibilities. The EAC has made it a priority to build a genuine and lasting partnership with officials at the State and local level, and we have actively sought their essential input to guide the work of our agency.

Moreover, the EAC places great value in the productive working relationship we have developed with such influential organizations as the National Association of Secretaries of State.

In short, Mr. Chairman, I firmly believe that the key to success from my agency is to find ways to support and enhance this balance of responsibilities over election administration that Congress has so repeatedly endorsed when passing laws such as NVRA and HAVA. However, immediately after my confirmation by the United States Senate to the EAC, I took an important oath to uphold the Constitution and the laws of the United States. While the responsibility to administer elections is appropriately reserved to State and local governments, it is a well-established matter of law that Congress possesses the constitutional authority to regulate elections for Federal offices.

By passing significant legislation like HAVA, NVRA, Congress has exercised this authority. My obligation as an EAC commissioner, Mr. Chairman, is to implement these laws in the most deliberative and reasonable manner and with no regard to any partisan or political agenda.

When any matter is brought before the EAC which in my view would significantly alter this carefully crafted balance of State-Federal authority, I believe I have not only a responsibility but an obligation to consider the interest not only of that particular State that requests such a change but the implication of that change to the entire country.

In the important matter pertaining to Arizona's recent request that the EAC amend its State-specific instructions to require documentary proof of citizenship for any applicant using the NVRA Federal form, the EAC was presented with just such a scenario. In other words, in carefully considering Arizona's request to condition acceptance of the Federal form upon documentary proof of citizenship, we considered relevant statutory language, such as the requirement contained in NVRA that each State shall accept and use the national mail-in voter registration application as prescribed by the EAC.

To the extent that there may have been any ambiguity in the statutory language, such as what Congress meant by specifically

disallowing any notarization or other formal authentication with the Federal form, we as an agency turned to legislative history and congressional intent.

And yet, Mr. Chairman, aside from statutory language, aside from legislative intent, it is also true that the EAC must also consider the practical effect of granting Arizona's change and the impact that decision would have upon the express findings put forth by Congress in passing NVRA. That is, if Arizona is allowed to condition the Federal form upon documentary proof of citizenship, what is to prevent other States from doing the same with other eligibility qualifications?

For example, if hypothetically 15 States were to follow Arizona's lead in requiring documentary proof of citizenship, another 10 States requiring documentary proof of age, and yet another handful of States requiring affirmative documentary proof of non-felon status, would this not result in a new patchwork of legislation for Federal elections? And if so, would this not defeat one of the central and most important purposes of NVRA, to make it easier for eligible citizens to participate in our great democracy.

In closing, Mr. Chairman, I realize that it is my duty in carrying out my responsibilities as an EAC commissioner to keep my personal hat separate from my professional one, and yet at times this is difficult to do. Right now, living in a small rural town in Texas, there is an 86-year-old World War II veteran who was born on a ranch in south Texas, far away from hospitals, far away from birth certificates and far away from documentary proof of citizenship.

He dutifully and proudly served his country, his community and his family with honor. He has voted in every election that I can remember, and I know this because he often took me with him to vote as a young boy. This person is my father.

By conditioning the fundamental to right upon government documents that many citizens may not readily have available or in some cases that may be impossible or difficult to obtain is to fundamentally alter the delicate balance of Federal-State responsibility that has been so carefully crafted through important laws like NVRA.

I have nothing but the highest regard for election officials such as Secretary Jan Brewer and my friend and fellow Texan, Paul Bettencourt, who worked tirelessly to implement the laws passed by the good people of their respective jurisdictions. However, when such significant matters as this come into play, the EAC must consider the implication of its decisions not just in regard to one important State or jurisdiction but in the full context of the entire country.

Moreover, since NVRA represents the only regulatory authority that has been granted to the EAC, we ought to exercise this authority with extreme caution in a fully deliberative and measured fashion and with no regard to political and partisan agendas today. And I pledge to you and this committee, Mr. Chairman, I will continue to do just that as a commissioner. I thank you for the time, and I look forward to your questions.

[The statement of Mr. Martinez follows:]

WRITTEN TESTIMONY OF COMMISSIONER RAY MARTINEZ III

HOUSE ADMINISTRATION COMMITTEE HEARING

JUNE 22, 2006

Good morning Chairman Ehlers, Ranking Member Millender-McDonald, and members of the Committee. My name is Ray Martinez III and I currently serve as vice chair of the U.S. Election Assistance Commission (EAC). I appreciate the invitation to testify this morning at this important hearing.

I will limit my testimony to a brief summation of actions taken by the EAC regarding a request by the State of Arizona to amend its state-specific instructions on the Federal Mail Voter Registration Form (Federal Form). As you know, the EAC is the Federal agency charged with regulating the development and substance of the Federal Form as mandated by the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg *et seq.*, (NVRA). Following the Help America Vote Act of 2002 (HAVA), the Federal Voter Registration Form requires applicants to answer a specific question regarding their citizenship and to sign a statement attesting to the fact that they are citizens of the United States.

On December 12, 2005, in response to a routine request by EAC staff,[1] the EAC received a request from the Arizona Secretary of State's office to amend the Arizona instructions as they pertain to the Federal Form. Specifically, the inquiry sought to apply documentary proof of citizenship requirements for Arizona voter registration (derived from the passage of Proposition 200) to the Federal Form registration process.

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[1] HAVA makes EAC responsible for coordinating with states to develop and publish specific instructions on how to complete the Federal Voter Registration Form. EAC staff ensures that all state-specific instructions to the Federal Form are in accordance with the law of each respective State covered by NVRA. EAC staff routinely reviews the registration requirements for each State and compares such requirements to the state-specific instructions affixed to the Federal Form. When inconsistencies are found, EAC staff contacts the State to ensure that the instructions contained in the Federal Form accurately reflect that state's requirements for voter registration.

Following such a routine inquiry, the EAC was contacted by the Arizona Secretary of State's office requesting that Arizona's instructions on the Federal Form be changed to reflect its requirement for documentary proof of citizenship as created by the passage of Proposition 200.

After careful consideration of Arizona's request to amend its state-specific instructions, the EAC responded on March 6, 2006, stating that EAC would not alter Arizona's instructions to include information regarding documentary evidence of citizenship as a condition of registration on the Federal Form. Among other things, the letter stated that NVRA mandates that States "shall accept and use the mail voter registration application proscribed by the U.S. Election Assistance Commission pursuant to section 9(a)(2) for the registration of voters in elections for Federal office."[2]

On March 13, 2006, the EAC received a letter from Arizona Secretary of State Jan Brewer noting her disagreement with EAC's conclusion and stating that Arizona's proof of citizenship requirement was precleared by the Department of Justice (DOJ).

The EAC responded on March 23, 2006 informing Secretary Brewer that DOJ preclearance does not address NVRA compliance nor does it impact the specific requirements of the NVRA which mandate that each State shall use and accept the Federal Form. Moreover, the EAC informed Secretary Brewer that since she had instructed Arizona's county recorders to continue enforcing the requirement that voters using the Federal Form provide documentary evidence of citizenship when registering to vote the EAC considered such instructions as tantamount to rejection of the Federal Form and we forwarded this matter to the Department of Justice.

On June 19, 2006, U.S. District Judge Roslyn Silver issued an opinion denying a temporary restraining order which would have required Arizona to accept and process the Federal Form without documentary proof of citizenship. Judge Silver set a preliminary injunction hearing for July 19-20, 2006. As a result of Judge Silver's opinion, the State of Arizona has renewed its request that the EAC amend its instructions on the Federal Form to reflect the state's documentary proof of citizenship requirement.[3]

Despite the fact that the EAC is not a party to this litigation, the EAC is considering Judge Silver's opinion and its impact upon the Federal Form. Additionally, the EAC will also carefully consider Arizona's request to amend its state-specific instructions on the Federal Form.

Thank you, Chairman Ehlers and Ranking Member Millender-McDonald. I would be glad to address any specific questions you or any members of this Committee have.

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[2] 42 U.S.C. §1973gg-4(a).

[3] Via written correspondence from Arizona Secretary of State Jan Brewer to Paul S. DeGregorio, Chairman, U.S. Election Assistance Commission, dated June 20, 2006.

The CHAIRMAN. Thank you for your testimony.

I received a note that we are likely to have votes on the House floor 12:15 to 12:30, so we will do our best to conclude this hearing by that time, if we can. If we can't, we are going to ask you to stay around and come back after the votes.

But I do want to remind everyone, we would like to have you limit your testimony to 5 minutes if you can, and if your testimony is longer than that, it will be submitted for the record regardless. But please summarize it in that case.

Next, we are pleased to go to Mr. Rogers, an attorney with Modrall Sperling, Roehl, Harris & Sisk in the great State of New Mexico.

STATEMENT OF PATRICK ROGERS

Mr. ROGERS. My name is Pat Rogers, I am an attorney in private practice in Albuquerque, New Mexico, the Modrall law firm. I am also a member of the Board of Directors—I am also a member of the Board of Directors of the American Center for Voting Rights and Legislative Fund. I am here today because I am concerned about fraud in the registration and voting process, and I am concerned that legal voters have been disenfranchised by ballots illegally and fraudulently cast in our State and Federal elections.

I was involved in the battles in New Mexico in 2000, and I was also involved in a host of lawsuits in 2004 concerning the election process, including voter ID as well as ballot access issues.

Presently, I am counsel to three individuals in a pending Federal suit in which the ACLU has challenged the constitutionality of the City of Albuquerque's photo ID requirements. ACVR has requested amicus status, and I am counsel to ACVR in that capacity as well.

In New Mexico, the issue of non-citizens voting is not a new one. There was a Senate investigation concerning the Senate election of 1952. The conclusion from that report noted that illegal aliens had registered and voted. The subcommittee suggested that the registration system was so loose and ineffective that it was an invitation to fraud and dishonesty in elections.

The subcommittee concluded that the registration laws must be strictly enforced to encourage full participation by the citizens and to readily determine the qualifications of those who present themselves to vote on election day.

I am not here today and I am not in a position to quantify or even begin to quantify the magnitude of the problem. However, I am in a position to assure you in the strongest terms possible that fraudulent registration and fraudulent voting is a problem.

Attachment one to my written comments is a new voter identification card of a woman named Leticia Armijo. Ms. Armijo carries a valid Green Card, but she was pressured into signing a voter registration while she was in line for government assistance shortly before the 2004 election.

Ms. Armijo has not voted because it is not lawful to do so, but it is clear beyond a reasonable doubt that other persons who were also in line and have also been registered by these same people may not be so concerned about the fidelity to our Nation's election laws.

In the pending suit, I represent Dwight Adkins who applied to intervene in the suit because, in 2004, his vote was stolen. He was not allowed to vote because someone had appeared at the polling place in his place and voted fraudulently. He was allowed to cast a provisional ballot, but that was not allowed because they explained to him he had already voted. Rosemary McGee of Albuquerque suffered the same fate. An additional client in the proceeding is Glen Stout, who is an Albuquerque Police Department officer. His 13-year-old son was fraudulently registered to vote prior to the 2004 election by an ACORN employee.

In the past few days, as Mr. Martinez noted, a Federal judge in the pending Arizona lawsuit denied TRO and reaffirmed the critical nature of the right to vote and the need to assure eligibility to vote. The judge said: Determining whether an individual is a United States citizen is of paramount importance when determining his or her eligibility to vote.

In fact, the NVRA, motor voter, repeatedly mentions that its purpose is to increase registration of eligible citizens. Providing proof of citizenship undoubtedly assists Arizona in assessing the eligibility of applicants. Arizona's proof of citizenship requirement does not conflict with the plain language of NVRA.

I would like to speak very briefly to H.R. 4844. It appears to be a significant step forward to address the cynicism, skepticism and fraud that keep many American citizens out of the voting booth. Requiring a person to identify themselves with photo identification before casting a ballot is something that enjoys very broad public support.

I would submit to you that any steps Congress might take to ensure and assure voters and potential voters that only citizens and registered voters are allowed to vote is important, not just for the integrity of the vote itself but for the increasing numbers of voters who are skeptical or cynical about the honesty and fairness of our elections.

I believe that the increased confidence in the system will establish public confidence, and I believe that elections that are fair and honest will significantly increase participation.

Thank you.

[The statement of Mr. Rogers follows:]

Prepared Statement of Patrick J. Rogers
Director, American Center for Voting Rights Legislative Fund
Before the United States House of Representatives
Committee on House Administration
June 22, 2006

Thank you Mr. Chairman and members of the Committee for inviting me to testify today. I appreciate this opportunity to address the Committee about the important issues of voter identification and ensuring that only United States citizens can vote to elect our leaders in the elections of our country.

My name is Patrick J. Rogers, and I am an attorney in private practice in New Mexico with the Modrall, Sperling, Roehl, Harris & Sisk, P.A. law firm. I am also a member of the Board of Directors of the American Center for Voting Rights Legislative Fund ("ACVR-LF"). I have been personally involved in litigation to protect voters' rights in my home state of New Mexico. Through my involvement with ACVR-LF, I have also been involved in litigation and legislation to protect the right of all voters to participate in our election process and to make sure that every legal vote is fairly and honestly counted.

ACVR-LF is a national, non-partisan, non-profit organization that was founded on the belief that public confidence in our electoral system is the cornerstone of our democracy. ACVR-LF supports election reform that protects the right of all citizens to participate in the election process free of intimidation, discrimination or harassment. ACVR-LF's aim is for election reform that will make it easy to vote but tough to cheat. ACVR-LF supports election reforms such as those proposed by the nonpartisan Carter-Baker Commission.

I am here today because I am concerned about fraud in the registration and voting process, and that legal voters have been disenfranchised by ballots illegally and fraudulently cast in our state and federal elections. I was involved in litigation over the conduct of the election in New Mexico in 2000 when Senator Gore was credited with a 366 vote lead, when the county recounts, related suits, and investigations were halted. In 2004, I was involved in a host of lawsuits concerning the election process including voter identification requirements and ballot access issues. Presently, I am counsel to three individuals who seek to intervene in a federal suit in which the American Civil Liberties Union has challenged the constitutionality of the City of Albuquerque's photo identification requirements. ACVR-LF has requested Amicus status, and I represent ACVR-LF in that suit as well. *ACLU v. Santillanes*, Civ. 05-1136 MLA/WDS (D. N.M.).

Fraudulent voting and problems with registration in 2004 brought new attention to these topics in New Mexico, but these problems are not new problems for New Mexico. In 1952, the Senate Subcommittee on Privileges and Elections of the Committee on Rules and Administration investigated the New Mexico Senate election of November 4, 1952.

The Senate Committee Report suggests New Mexico has not made much progress in the ensuing fifty-four years:

> An election must authoritatively express the will of the people. This can be accomplished only by an electoral system which clearly identifies those who are qualified to vote, establishes conditions under which the voter can freely express his choice, and creates standards to accurately record the results of the election. Although the system is important, the exercise of the electoral franchise depends not alone upon procedures but equally upon its honest and efficient administration. *The investigation into the New Mexico senatorial election of 1952 revealed the deplorable spectacle of the exploitation and breakdown of an electoral system through irresponsible and ineffective administration.*

Report of the Subcommittee on Privileges and Elections of the Senate Committee on Rules and Administration, 83rd Congress, 2nd Session, *General Findings and Conclusions* at 1, U.S.G.P.O. Wash. 1954. The report noted that illegal aliens had registered and voted. The subcommittee suggested "the registration system is so loose and ineffective that it is an invitation to fraud and dishonesty in elections. Since the registration laws must be strictly enforced to encourage full participation by the citizens and to readily determine the qualifications of those who present themselves to vote on election day." *Id.* at 4.

Voting by non-citizens is not just a concern in New Mexico. In the wake of the 1996 election, as this committee is well aware, the contest of the Dornan-Sanchez election identified at least 784 illegally cast votes and this committee's report concluded that the exact number of illegal residents who were registered and cast ballots could not be conclusively determined.

I am not in a position today to quantify or even begin to quantify the magnitude of the problem. However, I am in a position to assure you in the strongest terms possible that fraudulent registration and fraudulent voting is a problem. Attachment 1 is the new voter identification card in the name of Leticia Armijo. Ms. Armijo carries a valid "green" card and she found herself in line to access government services just prior to the 2004 election. She was pressured into signing a voter registration despite her questions and concerns about whether it was lawful for her to do so. She was assured the registration was lawful. It is, of course, unlawful. Although Ms. Armijo has not voted, clearly other non-citizens may not be so concerned about fidelity to this nation's election laws.

Proof of Citizenship to Register to Vote

Voting by illegal immigrants is one of the toughest issues to study in the election and voting area. This is because there is no centralized or accessible list of illegal immigrants that can be compared to voter registration lists or lists of persons who actually cast ballots. The closest "list" I am aware of that could be used as a basis for systematic research is a list maintained by the Bureau of Immigration and Customs Enforcement ("ICE") at the Department of Homeland Security. This is a list of those illegal immigrants who have overstayed their Visas or are "deportable." But the list is not available to election officials to check or validate voter registration rolls.

New Mexico was truly plagued in 2004 by fraudulent voter registration by some employees of the Association of Community Organizations for Reform ("ACORN") and a few other 527 groups. The Bernalillo County Clerk reported more than three thousand fraudulent registrations after media reports highlighted the registration of a thirteen year old, by an ACORN employee. In the 2004 New Mexico voter identification cases, the ACORN director responsible for the oversight of the registration drive invoked his Fifth Amendment right at the trial. Another 527 witness invoked her Fifth Amendment right to remain silent about the details of the registration process. The Albuquerque Police Department Special Gang Unit arrested a Cuban national for possession of crack cocaine paraphernalia, and the investigation disclosed the fellow was supplementing his income by gathering fraudulent voter registration forms for ACORN. This type of voter registration fraud seriously undermines the public confidence in the election process.

In a pending federal suit in the Federal District Court of New Mexico, *ACLU v. Santillanes*, Civ. 05-1136 MLA/WDS (D. N.M.), I represent Dwight Adkins who applied to intervene in the suit because in 2004 his vote was stolen. He was not allowed to vote when he appeared at his polling place because someone had voted fraudulently in his place. His "provisional ballot" was cast and denied on the basis, he was told, that he had already voted. Rosemary McGee of Albuquerque suffered the same fate.

While some advocates for illegal immigrants claim that illegals want nothing to do with the government and therefore won't register to vote or attempt to vote, there are other advocates for both legal and illegal immigrants who are actively pushing to legalize non-citizen voting. Whole organizations exist to advocate for "rights" of immigrants to vote include, for example, the Immigrant Voting Project at the New School in New York City.

Last spring, Tufts University funded a study on the "feasibility" of non-citizen voting in Massachusetts. That study opened with this summary: "...There is growing support for non-citizen voting nationwide, and action taken by lobbyists, activists, non-citizens, and other key stakeholders can lay the foundation for a more favorable outcome in the future."

And this sort of advocacy is not confined to academics in Massachusetts. The "UCLA Chicano Studies Research Center" issued a report in December of 2003 entitled "Political Apartheid in California: Consequences of Excluding a Growing Noncitizen Population." The press release announcing the report said the author concluded that "a de facto political apartheid will exist in California if steps are not taken to include more than 4.6 million non-citizen adults in the voting process."

Other legal journals are publishing similar articles, such as "Prospects for Democratic Change: Non-Citizen Suffrage in America" published in the Hamline Journal of Public Law & Policy and "Noncitizen Voting Rights: The History, the Law and Current Prospects for Change" published in the Law and Inequality Journal.

Several of these articles gloss over the issue of who may be in the United States lawfully and who may be in the United States in violation of our laws. In advance of the 2004 elections, the affirmation of U.S citizenship required by the National Voter Registration Act ("Motor Voter") law was at issue in several states. Despite the clear mandate of the Motor Voter law that any potential voter must affirm citizenship on the voter registration application, South Dakota and Iowa issued directives to voter registration officials that voters should be added to the roles even if their application did not affirmatively indicate they are United States citizens. One case even went to litigation (*Diaz v. Hood*) in Florida because Florida maintained that this citizenship box affirming citizenship needs to be affirmatively "checked" in order for the person to register to vote. And, I should note, this case was essentially re-filed in the last few months in Florida.

In Maryland, the state elections director reportedly told the Associated Press in August of 2004 that he was "shocked" to learn that non-citizens were on the state's voter registration rolls. ICE reportedly did not cooperate with the state's attempt to identify and remove non-citizens from the state's voting rolls. Maryland has at least six municipalities that affirmatively allow non-citizens to vote in local elections.

In 2005, Utah's legislative audit bureau attempted to undertake a systematic study of illegal immigrants who had obtained state identification cards – either driver's license or state identification cards. Utah determined that some 383 possibly illegal immigrants were registered to vote. Utah asked ICE to review these registered voters to determine if, in fact, they were U.S. citizens. ICE examined a sample consisting of 135 of these individuals and determined that 5 were naturalized citizens, 20 were "deportable," one was a permanent legal resident and the other 109 had no record and were likely in the United States illegally. Fourteen of these 383 individuals voted in a recent election in Utah, but ICE did not provide enough information to the state to allow it to determine whether these 14 individuals were in fact citizens.

The State of Arizona is currently embroiled in litigation over Proposition 200. The citizens of Arizona passed by popular initiative a requirement that before someone can register to vote, they must be a citizen of the state and United States. This passed in a

landslide and a CNN poll analyzing Proposition 200 found that nearly fifty percent of the Hispanic/Latino community supported Proposition 200. This is not a racial or ethnic issue.

The Federal Election Assistance Commission has issued an opinion claiming that states may not require more than is provided on the federal voter registration application while, at the same time, the Department of Defense is instructing its personnel to provide proof of citizenship as the state of Arizona requests when registering to vote in Arizona using the postcard application. The concept is simple. It is proper and appropriate for a state to request proof of citizenship before a person is added to the voter rolls. This is a simple commonsense measure to protect the right of all honest citizens of whatever partisan or ethnic background to participate in our elections without having their vote cancelled by a ballot cast by someone who is not legally entitled to vote.

In the past few days, the federal court in the pending Arizona lawsuit has denied a request for a temporary restraining order and reaffirmed the critical nature of the right to vote and the need to assure eligibility to vote: "Determining whether an individual is a United States citizen is of paramount importance when determining his or her eligibility to vote. In fact, the NVRA repeatedly mentions that its purpose is to increase registration of 'eligible citizens.' Proving proof of citizenship undoubtedly assists Arizona is assessing the eligibility of applicants. Arizona's proof of citizenship requirement does not conflict with the plain language of the NVRA." *Gonzales v. Arizona*, 06 Civ. 1268 (ROS) (D. Az. June 20, 2006).

A large number of individual cases of illegal immigrants registering to vote or voting have been reported in the news media. Here are just a few examples:

- In Maryland, a 2006 email from a member of the Montgomery County Board of Elections in Montgomery County, Maryland was made public indicating he was going to register people to vote "regardless of status." I've attached a copy of that email to this testimony.

- Donna Hope, a non-citizen immigrant from Barbados who resides in Philadelphia, was told by a representative of the voter registration group "Voting is Power," the voter mobilization arm of the Muslim American Society, that she could register to vote if she has been in the United States at least 7 years. Ms. Hope completed the registration form and was added to the voting rolls. In November of 2004, Ms. Hope did not vote because she was not a citizen, but someone illegally cast a ballot in her name. *See* Attachments 2-7.

- The Wall Street Journal reported that "[t]he man who in 1994 assassinated Mexican presidential candidate Luis Donaldo Colosino in Tijuana had registered to vote at least twice in the U.S. although he was not a citizen."

- In 1998, California Secretary of State Bill Jones referred to the INS claims by nearly 450 people called for jury duty in Orange County, California who claimed

they were exempt from jury duty because they were non-citizens. The jury duty lists are pulled from driver's license and registered voter files.

Let me close with this thought on the illegal immigration registration portion of H.R. 4844: A Congressional Research Service report from September of 2005 indicated that more than 25 states did not require proof of legal presence in the United States in order to apply for and obtain a driver's license. And, as a consequence of the Motor Voter law, every single person who applies for a driver's license is asked if they want to register to vote. Voter rolls in the United States, particularly in states that allow illegal immigrants to obtain driver's licenses, are inflated by non-citizens who are registered to vote. The only question is the number.

Voter Identification Requirements

I would like to briefly address the voter identification portion of H.R. 4844. H.R. 4844 appears to be a significant step forward to address the cynicism, skepticism and fraud that keep many American citizens on the sidelines and out of the voting booth. Requiring a person to identify themselves with photo identification before casting a ballot enjoys broad public support. The American Center for Voting Rights – Legislative Fund's polling in Pennsylvania and Missouri found that more than 80% of the population favors photo ID requirement in order to vote. Other state specific polls in Wisconsin and Washington have found similar levels of public support for voter identification requirements. Nationally, a Wall Street Journal/NBC poll conducted by on April 21-26, 2006 found that more than eighty percent of U.S. citizens support the requirement that a person show a photo ID before they are allowed to cast a ballot.

When the issue of voter photo ID is placed on the ballot, there is strong nonpartisan support for the measure. Albuquerque voters, with the support of Hispanic Democrat Mayor Chavez adopted a photo ID requirement for all Albuquerque elections. In Arizona, voters passed a popular state-wide initiative (Proposition 200) that, separate and apart from providing proof of citizenship to register, required voters to present identification before voting.

Voter photo identification requirements – including photo identification requirements – have emerged as a national consensus. More than twenty-four states currently require every voter to provide identification before casting a ballot and seven states currently require photo identification in order to vote.

Election reform legislation requiring photo identification before casting a ballot has been introduced this legislative session in at least four more states and a national photo ID requirement amendment introduced by Senator McConnell was part of the Senate debate on the immigration reform bill, although it was not included in the final version of the Senate bill.

New Mexico and Albuquerque voters support photo ID by a significant percentage. Prior to 2004, the polls indicated an overall margin of 77-17% support

including significant bipartisan support with sixty-six percent of Democrats supporting photo ID. (Dan McKay, "Voter picture ID has wide support." *Albuquerque Journal* 8/24/05). Polling showed photo ID with overwhelming support "among Republicans and Democrats, Anglos and Hispanics and across all income levels" in Albuquerque. (*Id.*) The Albuquerque City photo identification requirements currently in affect are the subject of the federal suit. However, the press reported broad support for the measure and the implementation of the change. Albuquerque City Clerk Judy Chavez and other election officials said the rule change did not cause any problems. ("New ID Rule Passes Test," *Albuquerque Journal*, 11/16/05.) Shirley Bartel, an election clerk at Chelwood Elementary School, said many voters had their IDs out already when approaching the polls. "They said, 'It should have been done a long time ago. It makes for a more honest election,' Bartel said." ("New ID Rule Passes Test," *Albuquerque Journal*, 11/16/05). "Herbert Gutierrez, a retiree who voted Tuesday, said producing an ID was no problem. 'I wish they would make it mandatory for everything,' he said." (*Id.*)

In connection with the 2004 New Mexico Voter ID lawsuits, a poll that was conducted established that first time voters, those people who had registered, but not in person before a clerk, were more concerned about fraudulent voting and fraudulent registrations than people who have been voting for years. I submit to you that any steps Congress might take to ensure and assure voters and potential voters that only citizens and registered voters are allowed to vote is important, not just for the integrity of the vote itself, but for the increasing numbers of voters who are skeptical or cynical about the honesty and fairness of our elections.

As it often happens, John Trever, an award winning political cartoonist from my hometown paper, *The Albuquerque Journal*, captured the sentiments of most New Mexicans in the days before and shortly after the 2004 election. Attachment 8.

Conclusion

As to need for effective identification requirements before voting, it is impossible to come to any conclusion other than the obvious. If the 2008 Presidential Election in New Mexico matters, if the count is close, I absolutely guarantee this Committee that without effective voter identification requirements, real limitations and real safeguards to prevent fraud and ineligible persons from voting, then any New Mexico result certainly will be subject to challenge for fraud and ineligible persons voting. My preliminary view of HR 4844 is that it is a significant and important step forward in the effort to restore and honor the right to vote. Increased confidence in the system that our elections are fair and honest will increase participation.

I would be happy to take questions from the Committee.

VOTER IDENTIFICATION
IDENTIFICACIÓN DE VOTANTE

ISSUED BY THE SECRETARY OF STATE
PUBLICADO POR LA SECRETARIA DE ESTADO
REBECCA VIGIL-GIRON

MS LETICIA GUILLENARMIJO
4408 CIBRS RD SW
ALBUQUERQUE NM 87105

STATE OF NEW MEXICO
ESTADO DE NUEVO MEXICO
BERNALILLO COUNTY
CONDADO DE BERNALILLO
ISSUED: MAY 2006
PUBLICADO: MAYO 2006

PRECINCT
RECINTO
091

VOLUNTARY PRIMARY & GENERAL ELECTION
VOTO VOLUNTARIO PARA PRIMARIA Y GENERAL

PAJARITO E S - PCT 091

032144

[redacted]

IDENTIFICATION NO / NO. DE IDENTIFICACIÓN	DATE OF BIRTH / FECHA DE NACIMIENTO	GENDER / GENERO	PRC DIST / DIST DE PRC
2844	04/15/1964	F	4
US CONGRESS / DIST. DE CONGRESO DE E.U.	STATE SENATE / SENADO DEL ESTADO	LOCAL SCHOOL / ESCUELA LOCAL	PUB EDU / PUB EDU
1	11	01	1
STATE REPRESENTATIVE / REPRESENTANTE DE ESTADO	COUNTY COMM / COM. DE CONDADO	CITY COUNCIL / CONCILIO DE LA CIUDAD	PARTY / PARTIDO
12	2		DTG

ATTACHMENT 1

48

Will Budd

1 Are you a citizen of the United States of America? ☐ Yes ☐ No GREEN If you checked "No" in response to either of these
Will you be 18 years of age on or before election day? ☐ Yes ☐ No CARD questions, do not complete this form.

2 ☐ New Registration ☐ Change of Name ☐ Change of Address ☐ Change of Party ☐ I am a Federal or State employee and wish to retain my voting residence in the county where I last resided.

Place either Driver's License # or Social Security # here
DL # OR SS# (last 4 digits) 7 5 0 0

3 Mr Mrs Miss Last Name H. First Name DONNA Middle Name/Initial Jr Sr II III IV

4a Address of residence, include street and city (Use map above if no street number or name) (If only P.O. box, see above) Apt # State PA Zip Code 1531 4b Telephone Number (Optional)

4c Municipality where you live Phila. County where you live PA 5 Mailing address (if different than address of residence) City State Zip Code

6 Date of Birth 10 12 79 7 Race (Optional) 8a Name on previous registration

9 In which party do you wish to register?
☐ Democratic ☐ Other (Please Specify):
☐ Republican
☐ Libertarian
☐ Green ☐ No affiliation

8b Address of previous registration County of previous registration Year of previous registration

10 Voter Identification Number ☐☐☐☐☐☐☐☐☐-☐☐

Place signature with full name (or mark) below.
(Please see Penalty for Falsifying Declaration.)

11 I HEREBY DECLARE THAT:
(1) On the day of the next election I will have been a **United States citizen** for at least one month, I will be **at least 18 years of age**, and I will have **resided in Pennsylvania** and in my election district for at least 30 days;
(2) I am legally qualified to vote.
AND I HEREBY AFFIRM THAT the information I have provided in this registration declaration is true. I understand that this registration declaration will be accepted for all purposes as the equivalent of an affidavit; and if the registration contains a materially false statement, I will be subject to penalties for perjury.

X Donna H
Donna H
Print Your Name Below
Date 5/25/04

12 Name of person who assisted in the completion of this application Telephone No
Address
DATE OF REGISTRATION REGISTRAR YEAR PARTY AFFILIATION

OFFICIAL USE ONLY

.H , DONNA DOR. 06/09/04 WARD 04 DIV 10 DEMOCR

ATTACHMENT 2

PERSONAL AND DESCRIPTIVE INFORMATION HAS BEEN REDACTED

5/10/05

Philadelphia, Pa

I Donna H live at , Philadelphia Pennsylvania with Jose Garcia. I was born 10/2/79 in the Barbados, W.I. - I came to the US 9/10/95 my status is resident Alien. I have a Pennsylvania non-CDL drivers license number . My Social security number is . My passport was issued in Barbados number . I showed all my documentation to private Investigator Cameron C. ; Rufus C. . Prove

In September of 2004 2 woman came to the house working from the polls at 15 and Market. One of the woman asked me if I can vote. I stated no. The woman said How long have I been in the United States? I told her nine years. She said if you have been here for 7 years or more you can register to vote. She gave me application to fill out called a registration which I filled out and signed I gave the form back to the woman. She said it would take 3-4 weeks a registration card would come in the mail. The card arrived in 3-4 weeks. on date I went to the polls on Aiken St. in Philadelphia, I waited in line with my girl friend Maria Jameson and I showed my card. The poll worker said open the book and sign next to your name. I found my name in the book and signed the book. A worker asked me if was a citizen or not. I said not and he helped me scratch my name off. He said stand on and City Hall and was told I couldn't vote. A lady told me (DNF) several other foreigner were not allowed to vote also. The Poll worker asked how I registered and I described the

ATTACHMENT
3

[redacted]

-2-

the registration process. I then left the poll. My girl friend Maria is a citizen and voted. A man poll worker said we was sorry I couldn't vote.

The women who came to the house are described as follows:

Lady #1 did most of the talking 5'7", 145/150 lbs 33-35. B/F short hair, w/cap wearing a shirt from the poll Black w/ Red writing T shirt & jeans. She didn't give a card. The lettering on the shirt was for Kerry

Lady #2 5'2" tall, 170-185 33-35 years Black female, brown hair, she T-shirt w/ pants Black shirt w/ Red lettering for Kerry. The 2nd lady talked to the kids. The women went to — one next door which is abandoned. I didn't see them talk to any other neighbors.

Both of the ladies carried a tablet with names and addresses when I called voter Registration on 5/10/05 in city Hall I was told and asked why didn't I register? She indicated I did something wrong. She said I was in the system as registered but not eligible to vote.

I have read this statement which consists of this page and 1 other. It is true to the best of my knowledge.

Donna M

X Donna M 5-10-05

witness

Charlie Cly 5/10/05

Cameron N.C

DN #

5/10/05

Philadelphia, Pa.

I, Donna Hope live at Philadelphia, Pennsylvania, with Jose G . I was born 10/2/79 in the Barbados WI. I came to the U.S. in 9/10/95. My status is resident alien. I have a **Pennsylvania non drivers license number** . **My Social Security number is** My Passport was issued in Barbados number . I showed all my documentation to Private Investigator Cameron C & Rufus C . **Phone number (is)**

In **September of 2004**, 2 women came to this house working from the polls at 15 and Market. One of the women asked me if I could vote. I said no. The woman said, how long have I been in the United States? I told her nine years. She said if you have been here for 7 years or more you can register to vote. She gave the application to fill out, called a registration, which I filled out and signed. I gave the form back to the woman. She said it would take 3-4 weeks (and) a registration card would come in the mail. The card arrived in 3-4 weeks. On election I went to the polls on Alden St. in Philadelphia, I waited in line with my girl friend Marva J and I showed my (voter registration) card. The poll worker said, open the book and sign next to your name. I found my name in the book and signed the book. A worker asked me if (I) was a citizen or not. I said not and he helped me scratch my name off. He (Poll Worker) said hold on and (called) City Hall and was told I couldn't vote. A lady told me several other foreigners were not allowed to vote also. The poll worker asked how I registered and I described the the application process. I then left the poll. My girl friend Marva is a citizen and voted. A man poll worker said he was sorry I couldn't vote.

The women who came to the house was described as follows:

Lady #1 did most of the talking 5"7", 145-150 lbs 33-35, B/F, short hair w/cap, wearing a shirt from the poll black w/ red writing, T shirt & jeans. She didn't have a card. The lettering on the shirt was for Kerry

Lady #2 (was) 5'2" tall, 170-185, 33-35 years. Black female, woven hair, T-Shirt w/ pants, Black shirt w/ red lettering for Kerry. The 2nd lady talked to the kids.
The women went to and next door which is abandoned. I didn't see them talk to any other neighbors.
Both the ladies carried a tablet with names and address.

When I called voter registration on 5/10/05 in City Hall I was told and asked why did I register? She (City Hall) indicated I did something wrong. She said I was in the system as registered but not eligible to vote.

I have read this statement, which consists of this page and 1 (one) other. It is true to the best of my knowledge.

ATTACHMENT 4

Donna H		witness	
		/s/	
/s/	5/10/05	Cameron H. C.	5/10/05

5/27/05
Philadelphia, Pa.

I Jocelyn L. Budd DOB 4/27/62 SS Reside
at
I started working for VIP (Voting is Power) starting April 2004 my supervisor was a [illegible] and later Mr. Sabir VIP was from WDC and opened an office in the City Bldg in Philadelphia which is at 4th and Spring Garden. My job was a canvasser going door to door with a computer list of names and addresses to contact. We got picked up in a van by VIP and transported to each neighborhood. I remember doing St but don't remember St. I don't remember a Donna H or her husband Jose S.

My instructions were to be non-partisan wearing VIP clothing - hats, T-shirts and book bags. The shirts were navy Blue with white & Red lettering. We would not register people under 18 years old or non-citizens. I worked with different people each day and I don't remember who I was with on Allison St.

I am described as 5 feet 3 inches and I weigh 135 lbs.

I viewed Donna H registration card and noted that my signature is not mine. The card was dated 5/25/04 and was marked Green card which I knew would not be processed. The card was checked non-citizen. Also I would have filled in the old address. Also the age block was not checked.

At the end of each day all the forms are

ATTACHMENT
5

turned in and checked by "checkers" at VIP. Additionally VIP would normally have called each registrant to verify information. This card would have been rejected due to incompleteness and inaccuracies.

I heard that people were forging cards to meet goals but I never falsified any information.

I don't know why anyone would forge my signature.

I provided to the investigator a copy of my signature.

I have read this statement which consists of this page and one other page. It is true to the best of my knowledge.

Jocelyn L. Budd

Witness

Jocelyn L. Budd 5/28th/05 Grant 5/27/05
27th

5/27/05
Phildelphia, Pennsylvania

I Jocelyn L, B d DOB 4/27/62 SSN reside at
Philadelphia, Pennsylvania.
[illegible] VIP [illegible] 2004 [illegible]
Philadelphia which is at 4th and Spring Garden. My job was a canvasser going door to door with a computer list of names and addresses to contact. We got picked up in a van by VIP and transported to each neighborhood. I remember doing .. but don't remember . I don't remember a Donna H or her husband Jose G
My instructions were to be non-partisan wearing VIP clothing – hats, T-shirts and book bags. The shirts were navy blue with white & red lettering. We would not register people under 18 years old or non-citizens. I worked with different people each day and I don't remember who I was with on
I am described as 5 feet 3 inches and I weigh 125 lbs.
I viewed Donna Hong's registration card and noted that my signature is not mine. The
Also the age block was not checked.
At the end of each day all the forms are turned in and checked by "checkers" at VIP. Additionally VIP would normally have called each registrant to verify information. This card would have been rejected due to incompleteness and inaccuracies.
I heard that people were forging cards to meet goals but I never falsified any information.
I don't know why anyone would forge my signature.
I provided the investigator a copy of my signature.
I have read this statement which consists of this page. It is true to the best of my knowledge.

Jocelyn L. B 5/27/05 witness Cameron H. C.
/s/
/s/

ATTACHMENT 6

PHILADELPHIA COUNTY VOTER INQUIRY 05/06/05
11:41:19

FUNCTION ==> VOTER ID ==>
LAST NAME FIRST NAME INITIAL SUFFIX

VOTER ID LAST UPDATE 07/01/04 BATCH 3359 AFFIDAVIT #

LAST NAME H FIRST NAME DONNA INITIAL SUFFIX

HOUSE NBR STREET ST ZIP CODE 191 31

APARTMENT APART NBR

DOR 06/09/2004 DOB 10/02/1979 LAST VOTED 2004 GEN INACTIVE DATE 00/00

STATUS A PARTY D SEX F RACE ASST N AB-TYPE AB-BAL N RESD CK N

PURGE N REINSTATEMENT YEAR 00 LAST JURY DATE 00 FLAG

SEC ADDRESS CODE UPDATED NEW DOR WDDV

HOUSE # STREET/PO BOX APART

CITY COUNTY STATE ZIP

ATTACHMENT
7

CMB3 03 PHILADELPHIA CITY COMMISSIONERS OFFICE VOTER RECORD 05/06/05 11:42:09

FUNCTION ==> VOTER-ID STATUS ACTIVE DATE 00/00

NAME DONNA H DOB 10/02/1979 PARTY DEMOCRAT

ADDR ST APT 191 31

DOR 06/09/2004 BATCH 3359 SOURCE REG DRIVE 3RD PT UPDATED 07/01/04

ABSENTEE BLDG/ACS NOT ACCES PARKING NO HAND/PARK

POLL/PLC RESIDENCE 1412 N FRAZIER ST

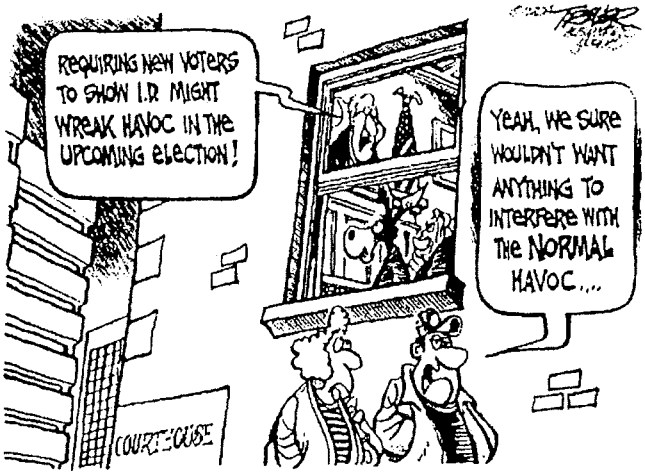
WD/DV 04 10 CURRENT - COUNCIL 04 PA HOUSE 192 PA SENATE 07 CONGRESS 01

PROPOSED- COUNCIL 04 PA HOUSE 192 PA SENATE 07 CONGRESS 01

VOTING HISTORY

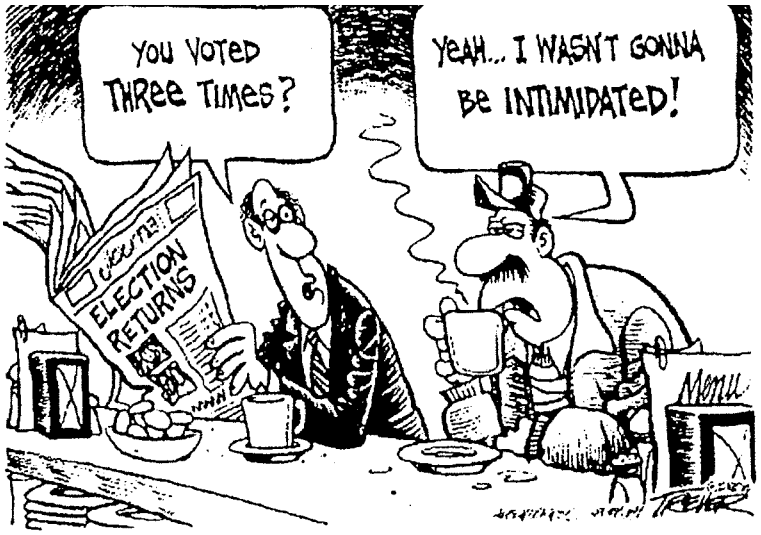
YEAR	PRI	GEN	SPL
2005	NO	NO	NO
2004	NO	YES	NO
2003	NO	NO	NO
2002	NO	NO	NO
2001	NO	NO	NO

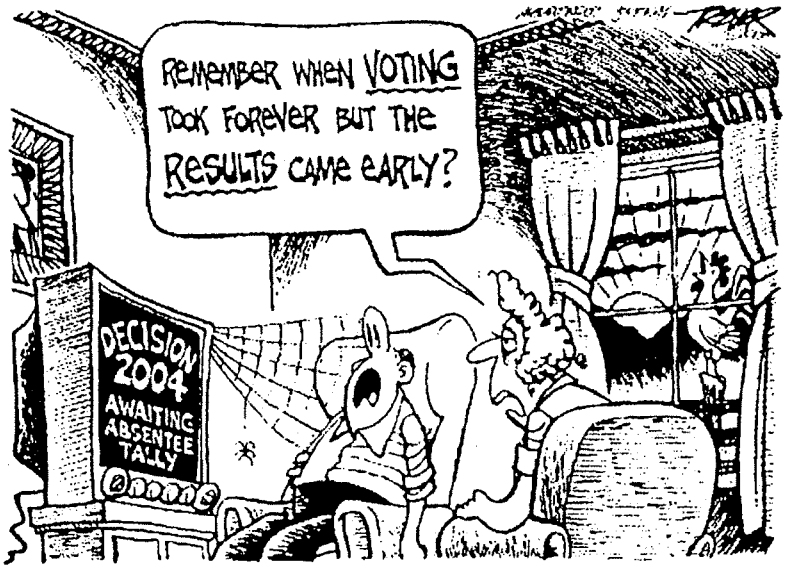
TO EXIT PRESS ==> ENTER KEY



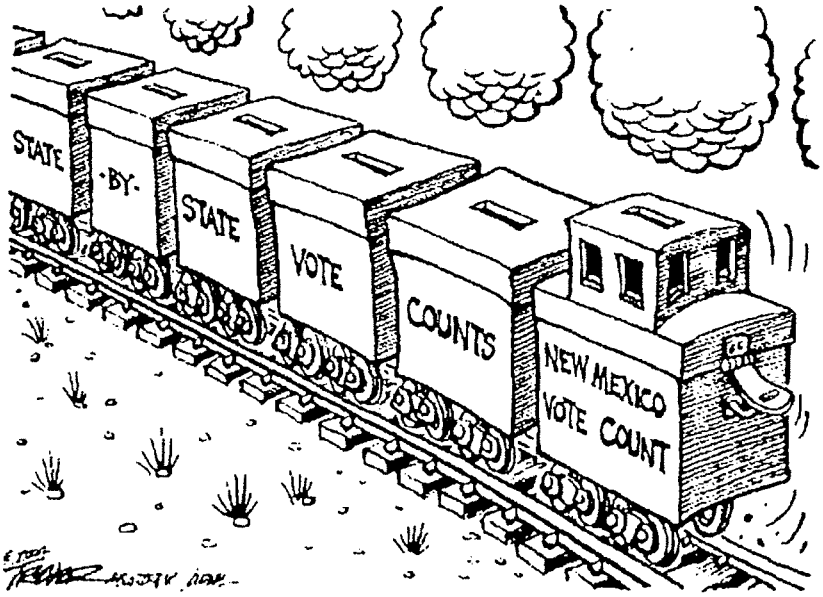
ATTACHMENT 8

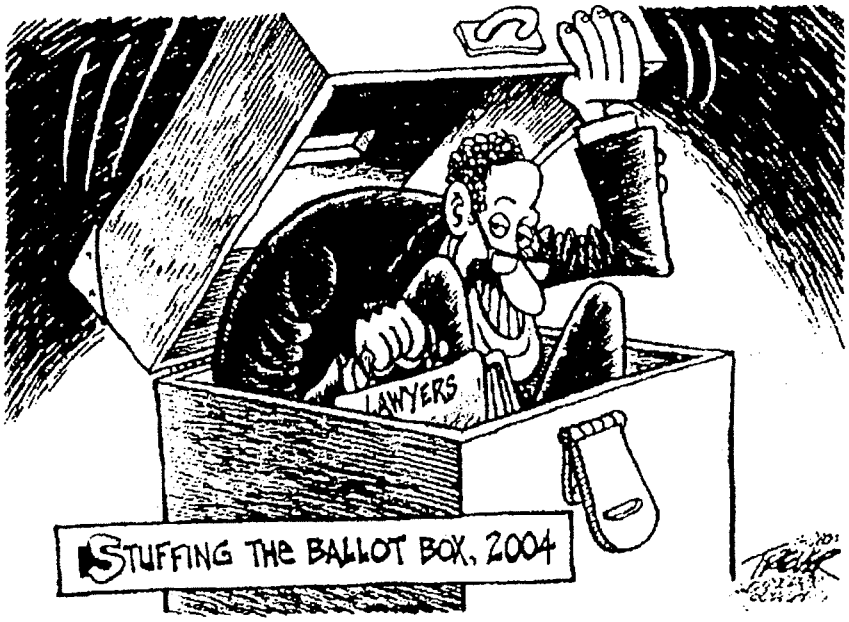
ONE MAN
ONE VOTE
one time
REGISTER HERE

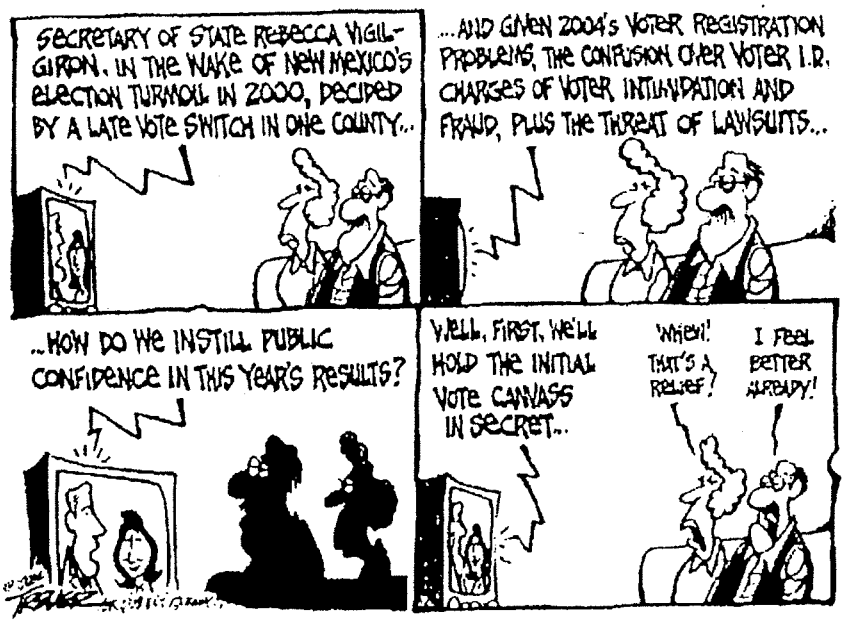

YOU VOTED THREE TIMES?
YEAH... I WASN'T GONNA BE INTIMIDATED!
ELECTION RETURNS
MENU


REMEMBER WHEN VOTING TOOK FOREVER BUT THE RESULTS CAME EARLY?
DECISION 2004
AWAITING ABSENTEE TALLY

...AND IT CAN GO UNDETECTED FOR WEEKS ON END!
WOW-JUST LIKE A DOÑA ANA COUNTY BALLOT BOX!
USS NEW MEXICO


STATE
·BY·
STATE
VOTE
COUNTS
NEW MEXICO VOTE COUNT


LAWYERS
STUFFING THE BALLOT BOX, 2004


SECRETARY OF STATE REBECCA VIGIL-GIRON, IN THE WAKE OF NEW MEXICO'S ELECTION TURMOIL IN 2000, DECIDED BY A LATE VOTE SWITCH IN ONE COUNTY...
...AND GIVEN 2004'S VOTER REGISTRATION PROBLEMS, THE CONFUSION OVER VOTER I.D. CHARGES OF VOTER INTIMIDATION AND FRAUD, PLUS THE THREAT OF LAWSUITS...
...HOW DO WE INSTILL PUBLIC CONFIDENCE IN THIS YEAR'S RESULTS?
WELL, FIRST, WE'LL HOLD THE INITIAL VOTE CANVASS IN SECRET...
WHEW! THAT'S A RELIEF!
I FEEL BETTER ALREADY!

The Chairman. Thank you very much. Thank you for keeping on time.

Next we call on Mr. Paul Bettencourt, the Tax Assessor-Collector and Voter Registrar from Harris County, Texas.

STATEMENT OF PAUL BETTENCOURT

Mr. BETTENCOURT. Thank you, Mr. Chairman.

The CHAIRMAN. You get to do two unpleasant things at one time.

Mr. BETTENCOURT. In Texas, we also register all the vehicles there, too, so we have all three. I appreciate the levity of that.

Again, for the members of the committee and the Chair, I am Paul Bettencourt, Harris County Tax Assessor and Voter Registrar. This is the same county that has the City of Houston in it, and I am honored to be here today because this is an important issue about citizenship requirements and also about photo ID that should be required for voter registration rolls.

In Harris County, that roll totals nearly 1.9 million. That would make us approximately the 23rd largest State in the Union. And as the Chairman has mentioned, I do collect about $3.8 billion in taxes, but even as much as property tax bills are up in Harris County, I can hear from 50,000 constituents in one day alone on voter registration requirements.

I was elected in 1998, and we have emphasized upgrading technology primarily due to the fact that this has been an area that at least in the Harris County Tax Office wasn't significantly put into effect before I got into the position I hold now. It is because the right to vote in my mind is sacrosanct.

When we looked at the problem of just starting off and looking at trying to clean up a voter roll, we found that by comparing to other known governmental data points, such as Texas Department of Public Safety, United States Postal Service, NCOA records, Social Security, death index as well as Secretary of State's Voter Registration Roll, we found that we could delete and change 50,000 registrations in our first attempt to clean up the roll, and that was due to the fact that it has not been common for governmental entities to use other technology resources to be able to look at a problem that really not only affects voter registration but affects many other databases.

We have been observed by organizations like NALEAO, Texas Secretary of State, and many others about these procedures, and we were happy to find that NALEO said that we had no public complaints about Harris County in the 2004 National Election.

We try to cross train our people in the Harris County Tax Office to handle calls because our theory is, if you can get your voter registrar on the phone, you don't have any voter disenfranchisement. We answered 51,000 live calls on the election in 2004. Our response time was 3 to 4 seconds. We did that by cross-training over 200 people in our office, and we also have an automated call system that is supported by our County Clerk, who ably conducts elections; that is Beverly Kaufman in Harris County.

We can't really tell you exactly the level of illegal voting and registration due to foreign nationals. We have three main checks that we have to rely on: First is the honor system. I think Chairman Hyde discussed that. Secondly, U.S. Immigration and Customs En-

forcement checks before naturalization hearings, and that is a most efficient process to find anyone that has voted prior to their hearing. Thirdly, on a local level, my county district clerk and I exchange information on the jury wheel, because I think you will find how many people want to declare themselves not a citizen for jury service and turn around and attempt to vote. We, however, find a lot of people that do end up on our jury wheel because it is half drivers license and half voter registration that needed to be eliminated from the rolls because they are clearly non-citizens and shouldn't have registered in the first place.

Clearly, part of the focus of the hearing is the Federal Election Integrity Act of 2006. We could have easy access from a local government with respect to a Federal citizenship list that we could use to confirm our voter registration rolls. In Texas, having that ability to vote was determined, in 1921, to require that the voters be U.S. citizens.

Harris County is a very diverse place. We have 3.7 million residents; about 1.9, half are on the voter registration roll at this point. And 22 percent of our county's residents, nearly one in four, were born outside of the United States, and we believe over half of a million, by estimates from our surveys in the local area, are non-U.S. citizens. We don't really have any way of checking that at this point.

The fact is that we have had as many as 35 people that, in a survey we did in 2005, were clearly foreign nationals that had applied to receive voter registration cards. And when you go through an election in a populous county like Harris—I will give you an example, we have a home rule city, Pasadena, it is our second largest. We have had several elections over the last 2 cycles that have been decided by one or two votes, therefore every vote does count.

We have gone through documented cases of Norwegian nationals voting, Brazilian citizens voting, et cetera, and what we believe the Federal Government could easily do is mount a project to combine 50 States' department of public safety records, many of which already include citizenship information. We can take that information that already has a photo ID and combine it with citizen records.

In my office, I maintain a database of 7.1 million records, so I know that this is technically and operationally feasible, something we have been doing in the Harris County Tax Office for some time. And when you combine these records, you can make it transparent to the end user, specifically the voter, that the check has occurred because you may not have to apply for a passport, but you know that the people that have applied for passports have citizenship documentation on file, therefore that would not have to be repeated.

Finally, just a quick comment on using photo ID. There is simply no reason, no supposition of fact that you shouldn't have a photo ID to vote. You have to do this to buy tobacco or alcohol in many States in the Union. You have to do it to board an airplane anywhere in this country, or, in most cases, using a credit card. People that do not have a photo ID can easily be afforded one for free by the government from many different points of contact; drivers license, voter registrar, et cetera.

Without the Federal Government doing something in this area to ask for photo ID or for citizenship to be—which I believe is a fundamental right which should be a right granted to citizens, the right to vote—local registrars won't have the ability to stop this type of documented fraud.

We are all aware of the argument that such a requirement will be a barrier or inconvenience to people that will attempt to vote, but with 21st Century technology, what we have proven at the Harris County Tax Office is that you can integrate this type of data and make it seamless to the voter, and this task can easily be done.

Additional information is available on my Web site at hcvoter.net. And again, Mr. Chairman, I want to thank you for the committee's invitation and their time and indulgence.

[The statement of Mr. Bettencourt follows:]

TESTIMONY OF PAUL BETTENCOURT BEFORE COMMITTEE ON HOUSE ADMINISTRATION

June 22, 2006

Mr. Chairman and members of the committee:

My name is Paul Bettencourt, and I am the elected Tax Assessor-Collector and Voter Registrar for Harris County, Texas, the county that includes the City of Houston. I am honored to have been asked to speak before you today on an issue of great importance to those of us charged with ensuring the accuracy and integrity of the nation's voter registration rolls, which totals 1,892,883 in Harris County alone.

My office collects approximately $3.8 billion in taxes from Harris County residents every year. Most of my constituents aren't happy about parting with their hard-earned money, but it is in my role as voter registrar that I can hear from over 50,000 constituents in just one day.

Since my election in 1998, the Tax Office has emphasized upgrading voter technology and the training of our staff because we know that the "right to vote" is sacrosanct. As voter registrar for Harris County, I work constantly with my staff to try to maintain the most accurate voter roll possible by employing the most up-to-date technology available. This includes comparing our voter registration list with other known good governmental services, such as the Texas Department of Public Safety, the United States Postal Service's National Change of Address List, the Social Security Department's Deceased List, and the Secretary of State's Statewide Voter Roll. Our original efforts in 2000 found more than 50,000 registrations that had to be deleted or suspended under law just by comparing the voter roll to these other governmental databases.

The Harris County Voter Registration Office has been recognized by various groups for our efforts to guarantee an accurate voter roll, including the

National Association of Latino Elected and Appointed Officials, the Texas Secretary of State's Office and other organizations. We work extremely hard to avoid even minor problems with the voter roll by staffing a large "cross-trained" Call Center on election days to answer questions from precinct judges and county voters. On Election Day 2004 alone, our Call Center answered more than 51,000 live calls, in addition to an automated call system ably supported by our County Clerk, Beverly Kaufman, who conducts elections in Harris County.

Illegal voting and registration by foreign nationals is difficult for my office to prevent without federal assistance. We have three main ways to try to identify illegal registrations; the first is reliance on the "honor system" from the public; secondly, U.S. Immigration and Customs Enforcement checks during the naturalization process; and thirdly, and most effectively, is through juror records maintained by Harris County District Clerk Charles Bacarisse. The District Clerk's office routinely submits lists of jurors who have been excused from jury duty for non-citizenship, and we compare that list against our records of registered voters and send written challenges to those individuals who have used this exemption from jury duty.

With the help of Congress, we can do far more. Passage of legislation such as the Federal Election Integrity Act of 2006 would help my office ensure that only U.S. citizens are allowed to vote in federal, state and local elections. I am aware that some municipalities allow foreign citizens to vote in local elections, but the State of Texas amended its Constitution in 1921 to require that voters be U.S. citizens. Voting should be a right of citizenship in the United States.

The extent of illegal voting by foreign citizens in my home county is impossible to determine, but we know that it has and will continue to occur. Harris County is the third most populous county in the United States, with nearly 3.7 million residents - nearly 1.9 million of whom are registered to vote. If you've ever been to Houston, you know it's a remarkably diverse city. More than 22 percent of our county residents – nearly 1 in 4 – were born outside the United States, and more than 500,000 of them are estimated to be non-U.S. citizens.

As it now stands, we have no real way to stop a foreign citizen from voting. If a foreign national sends in a voter registration application and checks off that he or she is a citizen of the United States, they will get a card – unless we have some prior knowledge that their information is false. There is no reliable database of which I am aware that we can check against for proof of citizenship, but there could be at the federal level.

Just last year, a reporter with the Houston Chronicle called me, asking how it was that a resident of suburban Houston, a Norwegian citizen, was able to vote in the November 2004 federal, state and local elections. The answer, of course, was that he was not legally allowed to vote.

Neither was the Brazilian citizen whose registration was canceled in 1996 after she acknowledged on a jury summons that she was not a U.S. citizen. She then reapplied in 1997, again claiming to be a U.S. citizen, and was again given a voter card, which was again canceled. Records show she was able to vote at least four times in general and primary elections. With the Harris County Tax Office's modern voter registration system, this type of fraud can easily be detected in 2006 but not in 1997.

A review by my office in early 2005 turned up at least 35 cases in which foreign nationals either applied for or received voter's cards. Even in the nation's third-largest county, 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. Therefore, every vote truly counts.

The federal government could combine the 50 states list from their Department of Public Safety driver's license records that maintain photo identification records, many with proof of citizenship. These records could be compared to federal data like passport lists, ICE records, or Social Security numbers to confirm these records electronically. In a county larger than 22 states, my office regularly maintains 7.1 million database records annually that can change on a yearly basis, so I know from real-world experience that this effort is feasible both technically and operationally.

Is voting taken so lightly that we cannot require so little an effort as the production of a photo ID? We require such identification from those buying tobacco or alcohol, boarding an aiplane or using a credit card. Those not having a photo ID can be provided one by government at no cost to the voter.

Without a federal remedy, local registrants can do little to stop foreign citizens from registering in any election. Requiring proof of citizenship at the time of registration or re-registration will stop this documented fraud. We are all aware of the argument that such a requirement is a barrier or an inconvenience to those attempting to vote, but with 21st century technology, the task can be easily done and almost transparent to the citizen voters of this nation.

Additional information on the Harris County Voter Registration department's efforts can be seen at our Web site, hcvoter.net. Thank you again for your time and attention.

The CHAIRMAN. And I thank you as well. The last person on the panel, Christine Chen, Executive Director with the Asian Pacific Islander American—wrong one, sorry.

Ms. NOREN. I am Wendy Noren.

The CHAIRMAN. Sorry. Flipped the wrong page. Let's try it again.

I am pleased to introduce Wendy Noren, the County Clerk from Boone County, Missouri.

STATEMENT OF WENDY NOREN

Ms. NOREN. I am glad you said Missouri. That is great. You must be from there because a lot of people say Missouri.

I want to thank the Chair, and I do believe you made great efforts to try and get a balanced view on this, and it is an honor to be here. I have had 28 years of experience as an election official, starting since 1978, and when I started we had absolutely no ID requirements, people just showed up and voted. And as of now, I am in one of those States that is trying to struggle with the implementation of a strict photo ID requirement. I really don't believe in either one of those extremes. In fact, I agree when someone said, I think you got it pretty well right when you wrote HAVA. The problem is in election administration, we are constantly performing a balancing act between trying to prevent fraud and trying to ensure access to the polls, and this is not an easy balancing act to do.

You know, if my only goal was to prevent fraud, if that was the only goal we had, we could do what we do with my dog, inject a microchip in them so we can identify everybody. My dog has got a microchip in him. Somebody steals him, you know, we have got it. It is registered. But that puts a chilling effect on people all over. I don't think anybody in this room wants us going that route. That would be a barrier to voting. So there is a balance we have to find.

I can also tell you from my long experience in a swing county, in a swing State that these kinds of obstacles to voting and efforts to open up the process help and hurt fairly equally across party lines. While I often hear certain groups are going to benefit from this, certain groups are going to be hurt by this, I come from an area where I find the barriers to voting are almost equal throughout classes, throughout groups that come in and out of my county. It is a very mobile area.

You know, I think we need to look at some of the people who are going to have access problems in getting a photo ID. We have mentioned the elderly. You know, it is very—it is not only expensive, it is time consuming. You can say we will give you a free photo ID but the underlying documents you have to pay for. I have provided a listing from you all's States, what it takes to get a birth certificate, what does it take to get a death certificate? How long does it take to get these items? I come from a county where 10 percent of the people who voted in the 2004 presidential election registered to vote in the last 3 days before the registration deadline. By the time I notify those people of their ID requirements, it is going to be too late to get that ID from most States.

We need a cheap quick access to photo IDs if we are going to put this in place.

I have so many people who move from other counties. Also when you review the requirements to get a photo ID, look at this in the State of Michigan, honorable Chair, you have to have a photo ID to get a birth certificate. So if I have a senior citizen in my county between now and November who has no photo ID and was born in your State, the person has got to get a photo to get a photo ID. We are putting up these kinds of barriers to people.

States are putting in the photo ID requirement to get birth certificates and divorce papers because of identity theft, but what that is doing is creating a barrier for people to get the photo ID they need for voting. Unless and until we are willing to have a national ID that everybody has access to across State lines, this is going to leave lots of people out.

Over 3,000 Missourians last year who applied for a birth certificate could not get it because it was either not registered with the Department of Health when they were born or they could not find it based on the information provided.

The most amount of time it took somebody was 90 days to get one that had been registered. Some of them they are still working on a year later. This is not acceptable in the timelines of elections that we are dealing with.

Finally, I want to talk about students. A lot of people forget about them, even in my county. I have a large student population. I think it is very important that I have over the years hundreds of thousands of students had their access to democracy through my office. What I do and how they view elections is based on that first experience the rest of their life. So I think it is important. I have lots of out-of-state students who will not be able to get access to their documents in time to vote.

I left more written—I left the information on how to get birth certificates, marriage license, divorce certificates. Sometimes you need three documents to prove who you are to get a photo ID. Sometimes it is cumulative. It may take 8, 12 weeks to get the supporting documents to get a photo ID in most of these States. So you need to think about our deadlines when you impose these things and how people will get them.

[The statement of Ms. Noren follows:]

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Testimony of Wendy S. Noren Boone County Clerk
ID Requirements in US Elections
Before the Committee on Administration, US House of Representatives
June 22, 2006

Chairman Ehlers and Members of the Committee

Introduction and Background

I appreciate the opportunity to address the Committee on identification requirements in US elections. As an election official for the past 28 years, I have seen ID requirements in my jurisdiction move from none when I started in 1978 to now planning the implementation of strict photo identification laws for this November's election. I will say at the outset I am not a fan of either of the extremes on this issue. I consider each case of fraudulent balloting a violation of my own voting rights through the dilution of my vote. I also strongly believe the erection of obstacles to voting under the color of law is a form of election fraud as serious as stuffing the ballot box.

Being one of a very small group of election administrators in this country who has "survived" 7 Presidential elections, I can assure you that the conflicting responsibilities of preventing fraud without creating administrative obstacles to the right to vote is a constant balancing act. I believe the strict photo ID requirements recently enacted in my state will eventually throw at least some of my elections out of balance.

If we are going to protect the fragile process of democracy then each law, regulation, process and procedure must be evaluated in terms of how it maintains that balance. If my only goal was to prevent the fraudulent casting of votes in a polling place we could inject a microchip in each voter - just as I've done for my dog to prove his identity in case of theft. I think most of us would agree that the chilling effect of this kind of government intrusion would cast a pall over our process.

I can also tell you from my long experience in a "swing" county in one of the principal "swing" states that both administrative obstacles to voting and efforts to open the process help and hurt fairly equally across the party lines.

Although I have spent my entire career working to open the process of voting through legislative, procedural and technological changes I have also been a leading advocate of enacting legislation that prevents and/or detects fraudulent voting. In 1983, I drafted the

statutory language, lobbied for and was the first implement a local option ID requirement in my state. Although I originally took some heat over that, the requirements were broad enough to provide the necessary protections and insure voters did not lose their right to vote. That same legislation targeted restrictions on absentee balloting procedures to prevent the kind of real fraud that was incurring in our state. These requirements were narrowly defined and designed to prevent actual methods of fraud without limiting the rights voters.

In 1993, I drafted the section Missouri's post card registration statute that required post card registrants to provide identification before receiving an absentee ballot by mail. As many election officials around the country worried about the implementation of HAVA's ID requirements 2 years ago, I was comfortable counseling them the HAVA ID requirements were broad enough to meet the needs of voters who did not have ready access to the most common forms of identification.

ISSUES RELATING TO NEW PHOTO ID REQUIREMENT IN MISSOURI

Although Missouri has had its share of fraud over the past twenty-eight years, we have followed the national pattern that the fraud comes from three areas – absentee ballot fraud, voter intimidation and vote buying schemes. The more sensational examples are duplicate registrations across jurisdiction lines. The famous examples of fraudulent registrations submitted in 2001 prior to a St Louis City municipal primary were actually caught by the election board before the election ever occurred. The implementation of a photo id requirement does not in fact address the areas where we have real fraud.

In short, the instances of people showing up in person at a polling place and either impersonating a legitimate voter or casting a ballot under a fictional name are at best extremely rare and at worst completely anecdotal. The institution of a photo id requirement will have little or no impact on my ability to detect or prevent fraud. If it did not provide an obstacle to any voter we would see that it neither helps nor hurt me keep my balance on the election high wire act.

The problem I have with the current crop of "voter id" legislation is that many groups of citizens do not have quick and free access to photo identification. These groups include students, women, senior citizens, disabled voters, adoptees, persons born overseas – including children of missionaries and military personnel. In addition, we will have a random selection of voters who are temporarily without a photo ID because their purse or wallet was stolen, lost, surrendered to law enforcement for traffic infractions, or destroyed in fires, floods, tornados or hurricanes.

In our increasingly mobile society many people are born, married, divorced and remarried in different states and the paper trail necessary to acquire photo identification becomes not only expensive but time consuming. While my state is offering to provide free nondrivers license and my local fee office is going the extra mile on this issue, the underlying documents required to get the "free" license are often costly and cannot always be quickly acquired. The problem is compounded when voters have short notice, as they will in jurisdictions where many register at the registration deadline.

I am from a jurisdiction that has an extremely high "turnover" rate. As the home of our state's main university as well as a regional medical and insurance center, we have a constant influx of new residents of all political persuasions. Between Presidential elections, almost 60% of my voters change address. In the last presidential election over 40% of the ballots cast were new registrants from other states and counties. As a college town we are a community that sees transitions each September and thousands of new registration applications come into my office at the registration deadline in October. In 2004, over 10% of the people who voted submitted their application within three days of the registration deadline. Over 600 of these voters moved directly from other states and countless others were born, married or divorced in other jurisdictions around the country. By the time I am able to process the registrations and notify these voters of the ID requirements they will have less than three weeks to acquire the supporting documentation to gain a photo ID..

A review of the requirements for birth, marriage and divorce certificates from the states the members of this committee represents will show that there are waiting periods of at least 10 days to 4 weeks, if you have access to the Internet, and far longer periods in some cases. The most extreme case being California's 2 to 3 year timeframe for marriage licenses from the state agency. The cost for each document is 10 to 20 dollars and some of these timeframes are cumulative – i.e. you can't get your birth certificate without your marriage license to document your name change.

Many voters only record of birth or marriage are filed in churches or village halls of foreign countries, some of which no longer exist. My own mother's marriage documents are an unrecognizable and convoluted series of paperwork from her proxy marriage during World War II when she was serving our country in the Pacific theater as a Captain in the US Army and while my father was also an officer serving in Europe. She outranked him by the way. Most motor vehicle personnel don't understand these kind of obscure documents and it has been a battle the two times she has had to get a driver's license.

If you look at the requirements for obtaining a birth certificate in Michigan, home to this committee's chair, some of his constituents who become my constituents will be caught in the circular bureaucratic nightmare of needing a photo id to get a photo id. To protect against identity theft more and more states require a photo id to get the underlying document required to get a photo id.

Many of our senior citizens also do not even have the documentation required because these documents do not exist. As keeper of historic school records in my county, I have many times certified to the Social Security administration the only record of age that exists for some seniors – an entry by a first grade teacher of a student's date of birth.

In the last year, almost 3,000 Missourians have been unable to receive birth certificates because the Vital Statistics division has been unable to locate a record of birth. In many cases the birth was never registered and in others the information an individual has does not match their records. I'm sure that Missouri is no different from other states in this regard. Although the longest time anyone has waited for an existing birth certificate is 90 days –

voters whose births were never registered can wait up to a year to pursue options to register a delayed birth record.

For many women, the task becomes even more convoluted as they navigate their way through various state and local vital statistics bureaus for birth certificates, local registrars for marriage records and courts for divorce decrees. Some areas charge over a dollar per page for an entire decree.

For many older citizens, poorly educated or people with learning disabilities the mere task of locating how to get these documents is overwhelming. In some cases, it took an eager staff member several hours to search the Internet, call the appropriate agencies and get the actual process to receive a supporting document defined. Many will give up in frustration and we will loose their voice in democracy.

As an election administrator in a college town, I have to also take into account the interests of the thousands of students who make this their home. They are the economic and cultural lifeblood of my community and I take seriously their right to participate in the election process at all levels. The vast majority of these students utilize student ID's as photo identification but the current versions of photo ID laws prohibit their use because they lack an expiration date. My university has 8,000 students whose families reside in other states and they generally need to keep the drivers license for that state for insurance purposes.

For almost 30 years, the laws I enforce and procedures I use have been the first impression of democracy for thousands of young people. As we are all aware, someone's first interaction with voting is often the guidepost to whether they will be a lifelong voter or a dropout. I know the statutes I had to enforce in the 1980's that denied students the right to vote because they had moved 2 blocks had a long term detrimental impact. Since passage of NVRA, I have been able to focus my efforts on making the first time our young people vote an efficient and meaningful event. That is how we create lifelong voters. Turning them away because we don't accept student ID's is the kind of event that will bring the exact opposite effect.

Some states are implementing phase in periods where voters without ID's can cast a provisional ballot. This November, I will need to spend the post election period trying to match the 50 year old signature to the present day signature of senior citizen. I do not cherish the prospect of control of the US Senate coming down to my ability to decide whether some of these signatures match.

As I stated originally, the fraud this is designed to protect, if it exists, is at best miniscule. The number of voters denied participation in my community will far exceed any possible fraudulent schemes. The incredible irony of Missouri's law is that because it covers only those who show up at a polling polling it will push many more voters to vote absentee – the method most susceptible to fraudulent voting, vote buying schemes and voter intimidation. Rather than protecting against fraud, it will expand the pool of targets for fraudulent balloting.

The CHAIRMAN. I thank you for your testimony, and I can see the headlines in the Boone County newspaper, County Clerk Wendy Noren advocates microchip.

Ms. NOREN. That is right.

Mr. BETTENCOURT. On dogs and humans.

Ms. NOREN. If only they could keep my dog from running away. I keep having to go to court because he runs all over.

The CHAIRMAN. In some states it might be advantageous just to help prevent dogs from voting, which has been known to happen.

Mr. BETTENCOURT. Hello.

Ms. NOREN. We have the random dog register, but you know what, the process has worked because they didn't vote. They got caught.

The CHAIRMAN. Okay. Let's get back to business here. And one thing I find very frustrating with this, you may or may not know, I am a scientist by background and training. I like to deal with facts and data. And what I have found frustrating on this topic is I hear lots of opinions, lots of anecdotal evidence but very little hard data. And I will ask each of you to help me out with this. Perhaps I just don't know about it.

But what concrete evidences are out there about fraud? I am not limiting this to citizenship. What concrete evidence is there about how difficult it might be to determine citizenship? How many people, for example, would have difficulty? Ms. Noren, you mention, for example, the difficulty of getting a photo ID. Well, photo ID in Michigan, you just ask for it and you get it, it is separate from the proof of citizenship. And so how many people would have trouble proving citizenship? What percentage? What procedures could be instituted to make it easier to verify whether or not someone is a citizen, whether or not someone is a legal resident of the jurisdiction where the vote is being held? Am I missing it? Are all these data out there and I just don't know about it or is it all such a conglomeration that no one has really sorted it out yet?

We will start with Mr. Bettencourt. He seems eager to respond. I will give you a chance.

Mr. BETTENCOURT. Okay, Mr. Chairman. The problem that you have had is that there hasn't been a definitive study that I know of. However, if you go with the philosophy of letting government do the work first, then you don't have the public having to chase all these records down. What we have done here is in the Harris County tax office, and I know Ray is familiar with this, is when we started cross-checking all these databases we did it so that the public didn't have to do the work. And if you started with some procedures that started with known, obviously good citizenship locations, I mean, locations of data like passport data, and you could build from that, obviously you have ICE data that can be used, and many, many of the Department of Public Safeties in the Nation ask for citizenship data to validate—effectively validate birth dates to begin with. So a lot of that data is out there.

To your point, I started in robotics and process control. So what gets measured gets fixed for me. And we do know that we have a problem with noncitizens voting, but it takes extraordinary efforts because there is no national database. If there would be—to go to Wendy's comments. I am sorry we know each other from—so I am

going to refer to her as Ms. Noren. When you get that database correct, then you take the exceptions to the public, not the rule, and, for example, to Ray's case and to others, to Wendy's case, if you get down to the bottom of it, effectively we take affidavits right now to vote. That is really what a HAVA provisional ballot is, is effectively an affidavit. So you could get down to the end where you will find people, their records are gone, etc., and you will just have to take an affidavit at that point. But that should be the exception and not the rule. We have done enough database analysis of other problems to realize that there are enough good known government sources to start with to get—my guess is 80 percent, 90 percent of the way to a good citizenship list to start with.

The CHAIRMAN. Thank you.

Mr. Martinez.

Mr. MARTINEZ. Thank you, Mr. Chairman. You know, it is a tremendously important question, and I don't know that I disagree with anything that my good friend Mr. Bettencourt has said. Quite frankly, I think that part of the reason that I now, speaking for myself obviously, taking off my agency hat, if you will speaking as one commissioner, I think part of my hesitation in moving forward saying anything about the voter ID registration, there is not a consensus that we have the empirical data available today to make such important policy judgments, and I think we are hearing that confirmed by local administrators like Mr. Bettencourt, who in my opinion is one of the best in the country at what he does. And I think we have to find that data and I think quite frankly, Mr. Chairman, the idea of creating the Election Assistance Commission was to try to get our arms around this issue.

In fact, if you look at section 241 of HAVA one of the issues that is mentioned in the laundry list of research projects is to get our arms around the issue of voter fraud and voter intimidation. And I think as Congressman Ney has said both today and previously, we have to give both the EAC and HAVA some time to work and some time to do its job but in the meantime we are seeing a lot of policy issues at the State level which I have nothing but respect for, but sometimes those policy issues bump up against our obligations to implement what are important Federal laws like the National Voter Registration Act and HAVA.

So again, I think that we need better data and a consensus that there exists a body of data that we can make those important public policy decisions upon, and I will let somebody else speak to the issue.

The CHAIRMAN. Let me follow up just a moment. Isn't a lack of an ID requirement—is part of the problem in getting the data? We just don't have any records of——

Mr. MARTINEZ. Well, I mean I think the latest count is something—I think is probably more than 15, perhaps 20 States that have instituted some form of identification requirement. Now there is only three States that have instituted a photo ID requirement, but we have—I mean we have a pretty good history of States that have had ID requirements for some time now. Over the past few years in part because of HAVA, many States have extended ID requirements to all voters because HAVA imposes ID requirements for a small population, a small segment of voters so I think we are

going to have a body of data to take a look at these issues, but again, the point is, you know from what Mr. Bettencourt said, it is just so important, the burden to verify citizenship, for example, the burden to ensure that only eligible citizens are voting, which I absolutely agree with. At first blush, Mr. Chairman, I think it ought to rest with the government. We ought to find ways that we can take on that burden so that we don't have to place that upon the voters by coming up with a piece of paper that may be difficult for them to attain, and we have to look for ways—I said this 2 weeks ago in testifying in front of this committee and our oversight hearing. We have to look for ways that offer the least burden upon the voters to ensure that we are not disenfranchising voters, and I respectfully submit those comments to you, Mr. Chairman.

The CHAIRMAN. Thank you, and I would just simply comment, the American paranoia about a national ID card is what gets in the way of much of this.

Quickly give Mr. Rogers and Ms. Noren time to respond.

Mr. ROGERS. Mr. Chairman, your question about the empirical data I think is I think very important. And I think that the district court judge in the Indiana case, which is going to be appealed to the Seventh Circuit, addressed those issues in detail and established I think a very solid foundation that there is really no suggestion that photo ID requirements, the ID requirements at issue in that Indiana case resulted in any single person becoming disenfranchised. And what I would recommend to this committee and to the Congress and just agree with Mr. Martinez, the time for study is over.

In New Mexico this is a serious problem. The presidential election was decided by 366 votes in 2000 and a very minor number in 2004. I can guarantee the committee—and this is going into detail in my written testimony—that unless Congress enacts effective voter ID requirements and addresses this issue, that the presidential results, if the count is close, is going to be subject to tremendous litigation in my State and I believe other States as well. But the judge in the Indiana case goes into extreme detail, eviscerating all of the suggestions that ID is difficult to obtain.

With regard to the flip side of that, what evidence do we have of fraud? As Chairman Hyde indicated this morning, there is a long list from the Public Integrity Section of the United States Department of Justice. There are examples from my home State, which I have provided. I guess my question is, how much fraud is tolerable? It is occurring now, and I would respectfully request Congress to act to do something to stop it because it is impacting elections now.

Thank you.

The CHAIRMAN. We will be certain to take a look at that decision from the Seventh Circuit. Ms. Noren, do you have any comments on the empirical data?

Ms. NOREN. Am I on? Okay. I am usually loud enough. Where does fraud occur? I can tell you where it has occurred in my State. It occurs in absentee ballot fraud, particularly mail absentee ballot frauds, and I think the Justice Department, if you look through their cases, you will find that is one of the largest sources of fraudulent ballots cast. We are going to have a photo ID with an absen-

tee ballot; that is, a mailed absentee ballot. If you want to get at fraud, that is one of the areas you might want to curb, but what are you going to give up? Again, you have your balancing act.

The second one are vote buying schemes, and this is something if you want to look at something—an area that a lot of election officials, we have been discussing in the last year. Think of the technology. A vote buying scheme requires someone to know how you voted. So when you go in that voting booth and you do that, you know, before they pay you, they want to know you did the right thing. What have we got right now, but technology, you can walk into a polling place and with a cell phone, put it down, and send off how you are voting to somebody. It doesn't take but a second. We may need to look at the technology being brought into a polling place.

These are areas that are the real areas of fraud, the efficient methods of fraud. And the final area is voter intimidation, and again, you see that on both sides. I think the more common form these days is the taking of applications now that that process is opened up and not turning them in to election officials.

The CHAIRMAN. Thank you very much for your response to that question. I am pleased to recognize the ranking member, Ms. Millender.

Ms. MILLENDER-MCDONALD. Thank you, Mr. Chairman. Mr. Martinez, I was touched by your comments with the reference to your father and how he really taught you the importance of democracy through the voting process. I am reminded of my father, Reverend Shelly Millender, Sr., who also fought and walked with Martin King to enable us to have the Voting Rights Act. Certainly we should be doing that and having that law put on the table, and the Congress get that law out. That should be the first thing we do before we do this Federal Electoral Integrity Act that has been placed before us. But when you got the Arizona notice that the Secretary of State had imposed that law, did all of the commissioners, albeit Republicans and Democrats who serve on the EAC, respond to that? And how did they respond to that issue?

Mr. MARTINEZ. Yes, Madam Ranking Member. From a procedural perspective, we handled that request in the same way we had handled a previous or similar type of request from a different State. And that is to allow our professional staff and, in particular, our general counsel and our executive director to study the issue to get a sense of the commission and to issue a response, and so what you saw from—in responding to the State of Arizona when they submitted their request was a response from our executive director, Tom Wilkie, which essentially reflects a consensus if you will or a sense of the commission in sending that particular response.

So I hope that is responsive to your question, but obviously the executive director would not be sending a letter stating the commission's position on a matter without getting again a sense of the commission itself.

Ms. MILLENDER-MCDONALD. So in other words, you guys were unanimous in the fact that the law or that proposition, I should say, 200 was not deemed constitutional.

Mr. MARTINEZ. Well, I think to be fair, there has not been a public voter deliberation of this specific issue by the full commission

in the context of a public hearing where we can take testimony and vote on the particular matter. So I am hesitant to want to put any words or any actions or attribute them to my colleagues without them being able to be here and speak to the issues themselves, but I am trying to give you as close to a factual representation as I can, Madam Ranking Member.

Ms. MILLENDER-MCDONALD. Thank you so much.

Mr. Rogers, in your testimony, you indicated that you do not have quantitative numbers with reference to the fraud or the voter fraud that goes on with nonvoting persons. It has been identified through the question of the chairman that there is not empirical data that really suggests this, and I have many comments from various folks who really have not had a large percentage of this type of illegal voting of noncitizens. But let me ask you the question of the Federal Election Integrity Act that is before us by Chairman Hyde. He says that this would help guard against voter fraud.

How would this law help guard against voter fraud when there are laws already on the books that have not guarded against that?

Mr. ROGERS. Mr. Chairman, Representative, I believe this law would be a significant safeguard because requiring photo ID in all Federal elections would allow us to begin to assess the numbers and the problems that cannot be effectively assessed at this time. I think it would go directly to the problems of my client in the ongoing City of Albuquerque suit. Had there been photo ID his vote would not have been stolen.

But the real problem I believe is not really quantifying the numbers, but recognizing that while no one can state it is 3 percent, it is 10 percent, whatever it may be or even 0.3 percent, when the presidential election in New Mexico was decided by 366 votes, I can guarantee you without any doubt that this issue, the number of noncitizens voting had an impact on that. And more than that, more than that——

Ms. MILLENDER-MCDONALD. How can you guarantee that, sir?

Mr. ROGERS. Because of the number of voters in New Mexico, because of the 3,000 fraudulent registrations that were supplied in 2004 that allowed 3,000 people potentially to vote. There has to be a connection between registration and voting, and I believe without a doubt that the numbers would have been different had there been this law in effect and certainly in 2000.

Ms. MILLENDER-MCDONALD. Well, you believe that, but you do not have empirical data. One thing for sure, it seems to me we have the cart before the horse. We should get some empirical data to justify why there should be another law, another law placed on the books. We already have Title 18 that speaks to citizens of the United States. Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined on this title or imprisoned for not more than 5 years.

Why is it that we need to get another law, sir? It appears to me like there needs to be some enforcement, not other laws put on the books.

Mr. ROGERS. Mr. Chairman, Representative, the reason is that there is no mechanism, no procedure to begin to require people to identify themselves that would eliminate this problem. In other

words, in New Mexico as well as most spots, it is simply too easy to present yourself and vote presently. This law would not only address what I believe to be our real votes and real numbers, but I think it is important because the public is cynical. The public is skeptical of the numbers and the process. And in New Mexico we have lots of reasons why that would be so because of registration problems and because of the occasional prosecution or the occasional instance where someone voluntarily comes forward and says, I am a green card alien, I was improperly registered. I asked the person if I could register. They assured me I could. I didn't want to register, and yet they pressured me into registering. That same person who registered, this green card alien was registering other people who are simply not going to have the respect for our laws that Ms. Armejo does. So I would respectfully submit to the committee that not only is it a real issue in the number of votes but beyond that, it is public confidence in the process. Thank you.

Ms. MILLENDER-MCDONALD. And we understand that, but outside of that, Mr. Hyde himself said that we have 12 million undocumented immigrants. He assumed or presumed that—and he said himself, and the record will show, certainly some of those are voting illegally. We cannot assume that type of thing. We have to have some type of empirical data, sir. And outside of that, we cannot just say, I believe or I think. How would you do the citizens of the State of Oregon who have only an absentee ballot voting process?

Mr. ROGERS. Well, Mr. Chairman, Representative, I believe that there are samples out there, as an example, in New Mexico there is a suggestion that people mail in identification with their registration, that they provide that safeguard there.

Ms. MILLENDER-MCDONALD. And you will presume that the picture that is there is that of the person who submits that affidavit?

Mr. ROGERS. Well, I wouldn't presume anything, but what I would suggest is that no system is absolutely fail proof, but a system is absolutely necessary at this point in our history to address the lack of confidence in the process. And I believe that a lot of the concerns today that have been identified and a lot of the concerns that have been identified in the Indiana case that weren't very ably managed by the judge can be addressed by reasonable procedures, and I think there is a process. The EAC or other entities could come up with processes that would allow a mail-in procedure, such as Oregon, to address it. And I think that the Chairman Hyde's bill does attempt to do that.

Ms. MILLENDER-MCDONALD. I don't think so. Mr. Chairman, the light went so quickly. I thought we had at least 5 minutes. It is inconceivable to me that 5 minutes had expired when before I got to Mr. Martinez it was yellow. So I do need to raise some more questions here because, Mr. Rogers, I would like to ask you about this piece of legislation that seems to be headed for the courts. Now, as the court found in Common Cause v. Billups requiring photo identification at the polls amounts to an unconstitutional poll tax. How are we going to deal with that, given the fact that we have already met with a court procedure here in terms of poll taxes and what this will amount to, a photo identification being that of a poll tax because what you are suggesting that everyone has to have a passport, and passports are upwards of $100.

Mr. ROGERS. Mr. Chairman, Representative, I couldn't improve on the analysis of the Indiana Federal District Court judge who said that the comparison to a poll tax was overheated rhetoric, and what I would suggest is that of course the poll tax was a disgraceful era in our country's history. I would suggest that the comparisons to this really do not apply, that the analogy is not correct, and the reason I would say that is because when a Federal District Court judge had that very claim before her and analyzed all of the evidence that these same parties, Common Cause, ACLU, League of Women Voters, wanted to present, she found that there was absolutely not a single person who could not provide that. And beyond that, I really think what you are looking at are the details of how it might be implemented, free photo ID, an affidavit situation for those that have religious problems with photo ID, but I believe that the analysis from Indiana and certainly the recent Arizona case establish that this poll tax argument is really not fair, and it really poisons the debate.

Ms. MILLENDER-MCDONALD. It is still a tax, no doubt.

The CHAIRMAN. Time has expired. Mr. Doolittle is recognized.

Ms. MILLENDER-MCDONALD. And is imposed on the citizens.

The CHAIRMAN. Come to order. Mr. Doolittle is recognized.

Ms. MILLENDER-MCDONALD. Mr. Chairman. Mr. Chairman, you do not have to gavel me!

Mr. DOOLITTLE. Thank you for being here today. I opposed the Motor Voter Act because of the problems I could foresee. Unfortunately, I was outvoted and President Clinton signed it into law. I do not view it as a positive piece of legislation. It had a partisan edge to it in my opinion, and that has been the effect. I think we need to be more concerned about fraudulent voting, and we have documented evidence that in a close election, in 1996 in the Dornan and Sanchez race, the State officials found—which was, by the way, the winner of that, declared winner, had 984 more votes, and of those the State officials found that at least 300 were cast illegally by non-citizens, 300. So I would continue to believe that that race had more than 300, but that is what was documented. And that can happen again, especially now that we have more and more and more illegal aliens here in this country, many, many more since 1996, millions more.

I would like to address a question to Mr. Martinez about this Arizona business, given the fact that they have done what they have done and the judge has declined to issue the TRO, doesn't the Election Assistance Commission feel compelled at this point to reference the proof of citizenship requirement in the instructions accompanying the Federal form?

Mr. MARTINEZ. I think, Congressman, that there is no question that it is our obligation to carefully consider Judge Silver's opinion that she issued a few days ago, and I can commit to you that that is happening at the Election Assistance Commission. Does it compel us to change our stated opinion? That remains to be seen. Obviously that could—that vote could be called for or something like that could perhaps occur, Congressman.

Now taking off my agency hat and putting on the hat of one commissioner, I would simply point out again that what we have in the context of this opinion is a nonevidentiary hearing for a TRO that

was delivered by this U.S. District Court judge who has already set a date, another month down the road for a hearing on the preliminary injunction. I would simply say that it is the responsibility of his agency to consider the context of this particular decision in its place in the adjudication procedure, if you will. So for the agency to act on this particular ruling, I think we have to look at where we are, and again, as I said in my statement, in my opening statement, Congressman, we have to act deliberatively, we have to act in a manner that considers all aspects of this particular case, and again, what I would emphasize is that we have to act in a manner that does not just consider the important matters that the good people of Arizona have decided through Prop 200. We have to decide how that particular request plays across the country with all other jurisdictions that are covered by MVRA because although I respectfully understand your opposition to MVRA, it was passed by a pretty healthy majority back in 1993 by the United States Congress.

My obligation as one of four commissioners over this Federal statute is to properly implement it, not just with regard to the interests of one State, though as valid as those interests are and as much respect as I give to those interests, I have to implement in the context of all the other jurisdictions that are had equally covered by MVRA.

Mr. DOOLITTLE. Thank you. To the panel at large, there seems to be agreement that there is vote fraud, however, disagreement over the scale and the extent of the problem. Existing procedures seem to make it difficult if not impossible to determine if and when fraudulent votes are being cast. And given these deficiencies, how do you quantify the problem? How do we know John Smith is John Smith if he is never required to show an ID? How do we know he is not voting as John Jones in the next county and John Bell somewhere else? Isn't it the very lack of an ID requirement that makes it so difficult to determine indeed the very scope of the problem?

Mr. BETTENCOURT. Well, there is no question, Congressman, that that is correct. The fact is that the studies I have seen, the photo ID is present and because the people have to use it for so many other things besides voting, I believe over 98 percent of the public could have some access to that already. And if you have photo ID, then you can crack down on what is clearly fraud at the polls and, as Ms. Noren has said, substantial mail fraud and absentee voting just by initiating the requirement, you will get the result. Again, what gets measured gets fixed. So from my point of view, in addition to that, you can back up those requirements with other known database sources that already exist and cross-check that information so you will know about Mr. Jones voting in multiple counties because it is probable that Mr. Jones doesn't have his cars registered in multiple counties and doesn't, you know, doesn't have other accoutrements that you could find and be able to identify that individual. So I believe with your premise, you are absolutely correct.

Mr. DOOLITTLE. Well, thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. I thank the gentleman. Mr. Brady is recognized for 5 minutes.

Mr. BRADY. Thank you, Mr. Chairman. Just for Mr. Hyde's knowledge, I polled my district in the City of Philadelphia. In my district we had a new law that said you had to show identification for a first-time voter. And it was overwhelmingly no. So we can counter his overwhelmingly yes with identification with my overwhelmingly no. I have heard about your dad. God bless him, I heard about your dad. I want to tell you about my mom. My mom is 84 years old. And for her to get a photo ID—and I keep hearing free photo ID. You may have a free photo ID in some places, but in the City of Philadelphia, in the State of Pennsylvania, to get any kind of photo ID, you need to show other ID, and to obtain that other ID, whether it be a birth certificate there is a charge, a passport there is a charge, or any other ID that is required to get your free photo ID, there is a charge for. And again, my mom would have to burden that charge. And her being 84 years old, she would have to go someplace, somewhere, get in line, as we all have our bureaucracies everywhere in every State, have to get in line and wait and have to wait just to get a photo ID so she can wait again just to vote. And I think that HAVA, Help America Vote Act, that passed and we are trying to implement, I think that flies in the face by having a senior or other people for that matter have to go through that hardship just to allow them to vote. Again, so the free photo ID I just—we keep hearing, keep hearing it. Maybe it is free in some States but it is not free in our State or our city. And it is another hazard they have—or another hurdle they have to jump over to get.

Mr. Bettencourt, I read your statement. I hear you say and I read what you wrote here that you need ID to buy tobacco, you need ID to buy alcohol, and you need alcohol to use your credit card. I don't. I will take you to lunch, buy you a drink.

Mr. BETTENCOURT. I will buy.

Mr. BRADY. Cigarettes. And I won't need to show any identification when I use my credit card or when I buy you a drink or when I go out and buy a pack of cigarettes. Some people do. Now, if you are young enough looking like my esteemed colleague, they may, but I would be honored that they would——

Ms. MILLENDER-MCDONALD. Don't go there.

Mr. BRADY. If they would tell me I need photo ID to buy a pack of cigarettes or to use my credit card or to buy alcohol. So I mean, that is not a fair statement. The airplane, maybe, but the three out of the four, when you give us a statement that says that, that is not accurate.

Mr. BETTENCOURT. Well, Congressman, I beg to differ. What the fact is is that there are photo ID requirements there for all those individual specific items that we talked about. And the fact that if there is photo ID for some, it can easily be expanded for others at that point. And I do have to agree, however, that hopefully the men in the audience are not subject to that request. But on a serious note, photo ID is so pervasive it leads from the societal use and the fact that driver's licenses have it.

To go to the chairman's comments, you could put a 2–d barcode on existing driver's license and have a national ID. There is so little technology barriers left in the 21st century to having a photo ID that is multi-use that you could use for tobacco or alcohol when

you happen to be at the right age for that, use for voting your entire life, and use it to board an airplane at any time in your life.

Mr. BRADY. All right. Now we have this photo ID we are going to now take with us and go vote. Who do we show it to?

Mr. BETTENCOURT. Excuse me?

Mr. BRADY. Who do you show it to when you go vote?

Mr. BETTENCOURT. Well, you would show the election officials in Ms. Noren's case because she conducts the elections and mine.

Mr. BRADY. She is not at every polling place.

Mr. BETTENCOURT. Well, obviously she has clerks.

Mr. BRADY. Forget about her. Let's go back to my town where I live. Who do you show it to in Philadelphia? Do you show it to the election board, everyday common ordinary people that I don't think have the qualifications to say whether or not you are that photo ID.

Mr. BETTENCOURT. Congressman, I would say I think any person that is trained in the election system can look at a photo ID and look at the person and decide if there is a reasonable chance that that is that person.

Mr. BRADY. Come back to my town. I only live in my town.

Mr. BETTENCOURT. I have visited once during a convention back in 2000. I have not had a chance to vote in your town, sir.

Mr. BRADY. Did you eat there? You didn't show an ID.

Mr. BETTENCOURT. That is right.

Mr. BRADY. Go back to my town. In my town we have election boards. We have 3,400 of them in the City of Philadelphia. And in my town, these people are not schooled nor would they want to be schooled for an extra problem. Another problem that they have to sit there for 13 hours, they are not schooled in saying whether or not the person showing you this ID is that person. Maybe they got a haircut, maybe they got heavier, maybe they haven't updated it, maybe they got heavier. There is a lot of problems with that, I just want to debate that point. It sounds good and I do want people—I don't want people that are not qualified or eligible to vote to vote. I want the right people to vote, and I just think there should be another way that we can maybe do this, and I want to point out some of the inadequacies or fallacies that we have heard here today.

Thank you, Mr. Chairman. I don't want to get gaveled down.

The CHAIRMAN. Ms. Lofgren is recognized for 5 minutes.

Ms. LOFGREN. Thank you, Mr. Chairman. There are some points of agreement here and then points of disagreement, and I think the first point of agreement is only Americans ought to register and vote. That is the starting point we all agree. From there I think how we accomplish that is very much a question, and it is important that whatever we do is fair to people, to Americans who are not as affluent and who are not as privileged as every person sitting at this dais and most of the people sitting at that table and in the audience, and I think we have talked about our parents.

I think about my late father who—I never saw his birth certificate. I think he was born at home. He was a World War II vet. Like most Americans he never had a passport, he never went outside the United States with a passport. He never had an airplane ride until he came to see me sworn into Congress. You know, most

Americans don't have the kind of stuff we have. So let's think about who gets to——

I think about my grandmother who was born at home in Brooklyn. She drove a car once and drove it into the side of a bus, and never drove again. She didn't have a driver's license, she didn't smoke or drink. She didn't have a photo ID, but she worked throughout the Depression and was a proud American and she would not be able to vote under Mr. Hyde's bill. And then when you think about who has—I mean it is fair—people can say well most people have an ID, most people just use their driver's license.

I would like to ask unanimous consent to put into the record a report that I have received from the University of Wisconsin Milwaukee outlining who has driver's licenses in Wisconsin, who doesn't. And——

The CHAIRMAN. Without objection, so ordered.

[The information follows:]

The Driver License Status of the Voting Age Population in Wisconsin

by John Pawasarat, Employment and Training Institute, University of Wisconsin-Milwaukee, June 2005.

Because one of the most important employment issues facing central city Milwaukee residents is access to a valid drivers license, the UWM Employment and Training Institute has conducted considerable research on drivers license suspension and revocation issues for Milwaukee adults and teenagers and explored the impacts of past and current state policies suspending licenses for failure to pay fines and forfeitures on residents of central city neighborhood. **This research report provides a first-time analysis of drivers license issues based on the racial/ethnicity of drivers and unlicensed adults in Wisconsin.** The importance of possessing a valid drivers license cannot be overstated in Milwaukee's labor market. Annual employer surveys conducted by the Employment and Training Institute for the Private Industry Council of Milwaukee County have found that three-fourths of Milwaukee area job openings are located in Milwaukee County suburbs and the exurban counties of Waukesha, Ozaukee, and Washington counties – usually not easily accessed by public transportation. Research on welfare recipients finding employment showed that possession of a drivers license and car was a stronger predictor of leaving public assistance than even a high school diploma.

For this report, new ETI research on interrelationships between race/ethnicity, income and geography for the drivers license issue is applied to proposals in the Wisconsin Legislature to require state drivers licenses or photo IDs as identification for voting in elections in the state. The report details the impact of the proposed voter identification legislation on the population of adults 18 and older in the State of Wisconsin compared to the population of adults with a current driver license and current address. The number of Wisconsin licensed drivers is taken from the Department of Transportation (DOT) computer database for licensed drivers current as of January 31, 2002 and analyzed by age, race/ethnicity, gender, and geography. The Census 2000 full count (Summary File 1) for Wisconsin and Milwaukee County is used as the base for comparison. Individuals who were 16 or older on April 1, 2000, the reference date of the Census, are compared to the population of drivers with a drivers license 2 years later when they reached legal voting age. Data on Wisconsin DOT photo ID utilization was only available at the state level by age and gender, and this data is incorporated in the analysis where possible.

Findings

1. Many adults do not have either a drivers license or a photo ID. An estimated 23 percent of persons aged 65 and over do not have a Wisconsin drivers license or a photo ID. **The population of elderly persons 65 and older without a drivers license or a state photo ID totals 177,399**, and of these 70 percent are women. While racial data was not available on the state population with photo IDs, 91 percent of the state's elderly without a Wisconsin drivers license are white. **An estimated 98,247 Wisconsin residents ages 35 through 64 also do not have either a drivers license or a photo ID.**

2. Minorities and poor populations are the most likely to have drivers license problems. Less than half (47 percent) of Milwaukee County African American adults and 43 percent of Hispanic adults have a valid drivers license compared to 85 percent of white adults in the Balance of State

(BOS, i.e., outside Milwaukee County). The situation for young adults ages 18-24 is even worse -- with only 26 percent of African Americans and 34 percent of Hispanics in Milwaukee County with a valid license compared to 71 percent of young white adults in the Balance of State.

3. A large number of licensed drivers have had their licenses suspended or revoked, many for failure to pay fines and forfeitures rather than traffic points violations. The drivers license file shows 39,685 individuals in Milwaukee County who have drivers licenses but also recent suspensions or revocations on their licenses. Another 49,804 Milwaukee County adults had a recent suspension/revocation but no license with the DOT. Only 65 percent of adults in Milwaukee County have a current and valid Wisconsin drivers license, compared to 83 percent of adults in the Balance of State.

4. A portion of the population with a drivers license and a recent suspension or revocation may retain their license as an ID for voting and others may secure a state photo ID. These licenses cannot be renewed, however, without clearing up the outstanding fines and fees.

5. Students without a Wisconsin drivers license or a Wisconsin photo ID would need to obtain either one to vote. Those students and young adults living away from home but retaining their permanent home address on their drivers license need to provide proof of residence to vote prior to registration under current laws. Because the drivers license is a valid ID, regardless of address, few if any in this population would have a photo ID with a current address. These individuals may have a Wisconsin or out-of-state drivers license but not one with a current address. At UWM, Marquette University, and the University of Wisconsin-Madison, a total of 12,624 students live in residence halls, but only 280 (2 percent) have drivers licenses with these dorms' addresses. All others require special handling to vote under proposed and current legislation.

6. The population that changes residence frequently is most likely to have a drivers license address that differs from their current residence. This would include lower-income residents who rent and students and young adults living away from home (who are likely to have a drivers license listing an incorrect address or their permanent home address). To illustrate this point, 16 Wisconsin ZIP codes were identified which have the highest concentration of undergraduate students (both in dorms and in apartments). These ZIP codes had 118,075 young voting age adults (ages 18-24) but 83,981 (or 71 percent) 18-24 year olds did <u>not</u> have a drivers license with this current ZIP code address. Over half of the adults of the 18-24 year old age group did not have a drivers license with an address in their current ZIP code for college neighborhoods in Eau Claire, LaCrosse, Madison, Milwaukee, Oshkosh, Platteville, River Falls, Stevens Point, Stout, and Whitewater. All of those without a current address on their drivers license or ID need to provide proof of residence.

I. Drivers License Status for Minorities

The number and percent of minorities who are Wisconsin residents has been increasing, particularly in Southeast Wisconsin. This population is also very young. Minorities are much less likely to have a drivers license and if they do, they are much more likely to have a recent license suspension or revocation. Having a suspension or revocation could result in a large number of licenses not having a current address and licenses not being renewed.

Statewide, the percent of Wisconsin residents with a valid drivers license is 80 percent for males and 81 percent for females. For African-Americans, only 45 percent of males and 51 percent of females have a valid drivers license. Hispanics show 54 percent of males and only 41 percent of females with a valid drivers license.

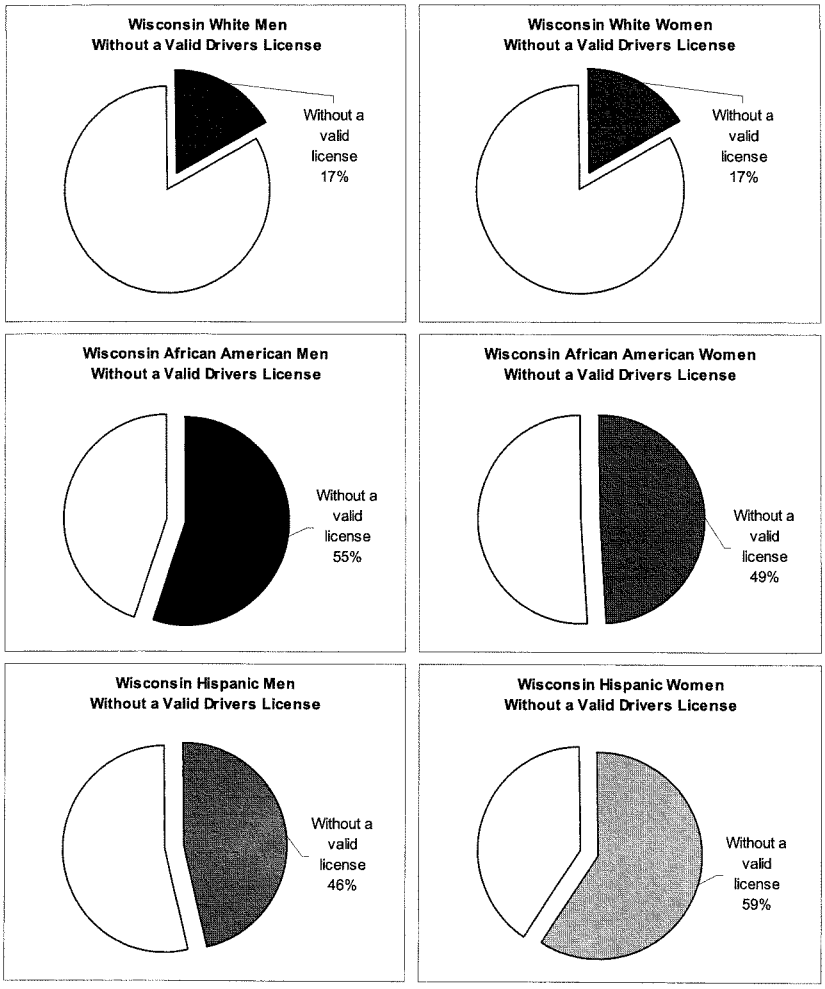
For young adults (ages 18 through 24) even fewer minorities have valid drivers licenses to use for voter identification under the proposed legislation. Statewide, only 22 percent of young African American males and 34 percent of young African American females have a valid license. For young Hispanics, 43 percent of males and only 37 percent of females have a valid license. For whites, 64 percent of males and 75 percent of females have valid licenses.

Many Wisconsin residents have a drivers license with a recent suspension or revocations, and minorities are twice as likely to be in this situation. If these individuals have retained their license, they will be able to use it as an ID for voting purposes. Statewide, an estimated 11 percent of African American adults and 8 percent of Hispanic adults have a license with a current revocation or suspension, compared to 4 percent of whites.

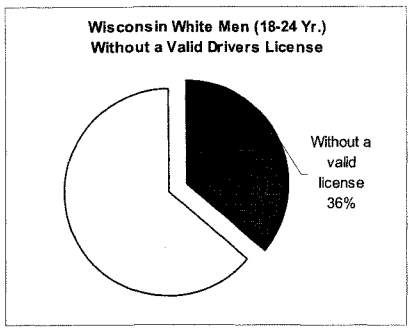
An even larger number have no license but a recent suspension or revocation. An estimated 17 percent of African American adults and 8 percent of Hispanic adults, compared to 1 percent of white adults, fall into this category.

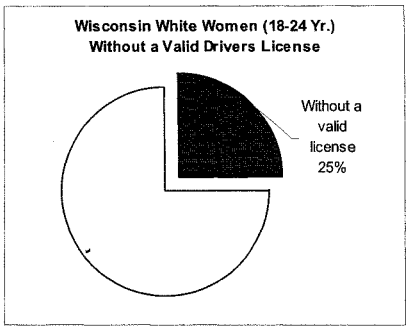
A portion of the population without a drivers license – whether valid or not – will have a photo ID, but without an analysis by race and location, it is not possible to estimate that population.

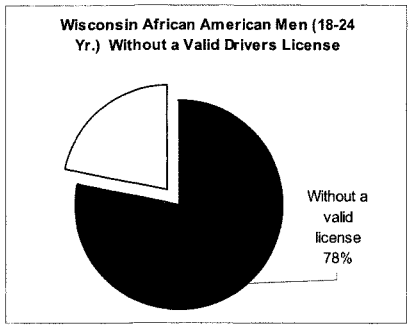
The graphs below show the percentages of adults of voting age (ages 18 and above) in Wisconsin with valid drivers licenses, without recent suspensions or revocations.

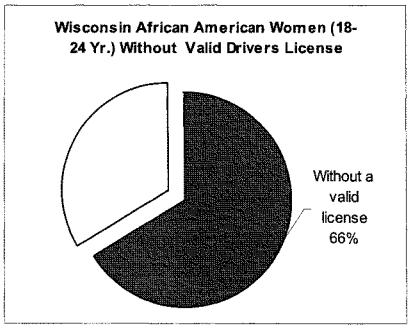


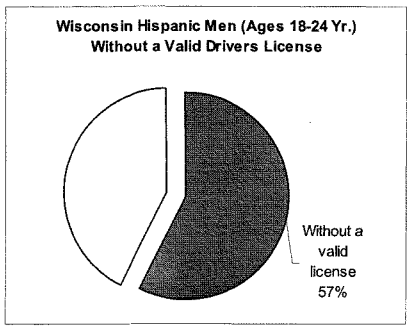
The graphs below show the percentages of **young adults (ages 18 through 24)** in Wisconsin with valid drivers licenses, without recent suspensions or revocations.

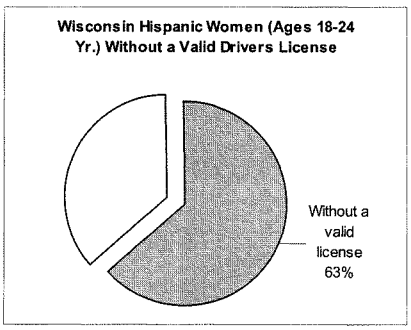








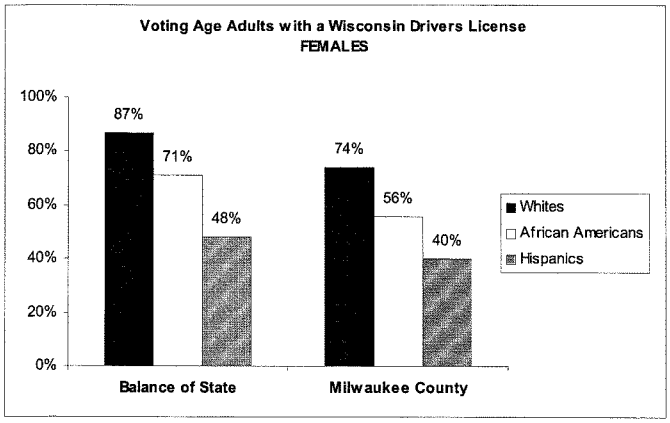


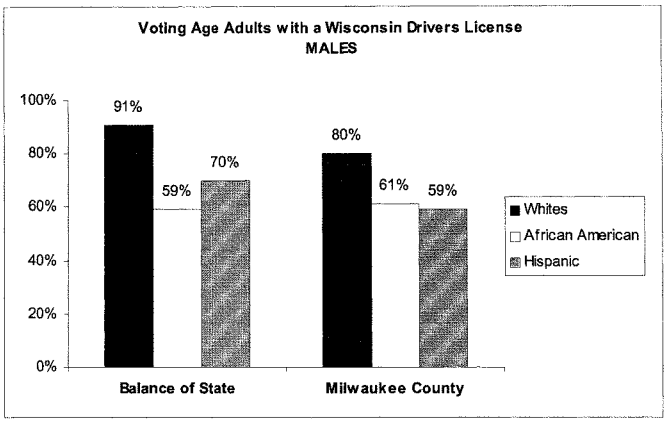


II. Drivers License Status of Milwaukee County Residents

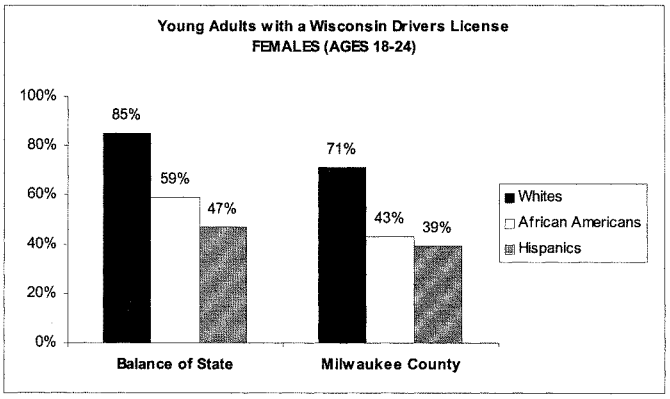
Milwaukee County residents are more than twice as likely to be without a drivers license as adults in the balance of the state. Almost a third (30 percent) of Milwaukee County voting age adults do not have a drivers license compared, to 12 percent of residents in the Balance of State. The county is home to much of the state's African American and Hispanic populations who have lower percentages with a current drivers license. Milwaukee is also home to Marquette University, UWM, and a number of other post-secondary institutions that house significant numbers of non-resident students. Dense urban neighborhoods and extensive mass transit systems may also account for more individuals without a drivers license in Milwaukee County.

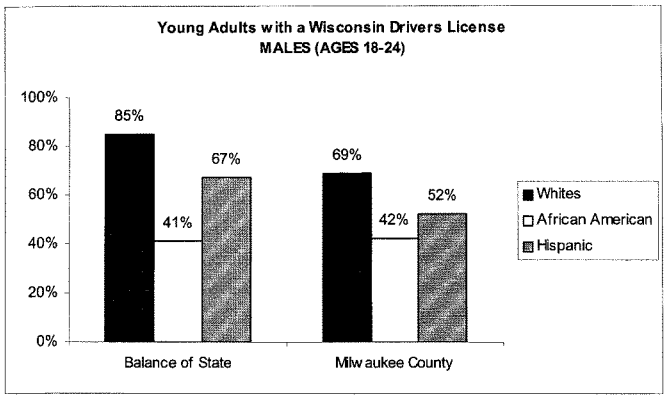
The graphs below (and the tables on pages 21-22) show the differing impacts by race/ethnicity and area of the state (i.e., Milwaukee County and the "balance of the state") that would result from using the drivers license as a voter ID. The combination of race and geography results in some populations having less than half of the percentage of eligible voters based on drivers license ID requirements. This analysis does not include photo ID utilization, as the published state photo ID data is only available by age and gender and at the state level. **In the graphs below all licensed drivers are included, including persons with suspensions and revocations.**





The percentages of young adults with drivers licenses for use as voter IDs is strikingly lower than for the voting age population as a whole. For some minority subpopulations, less than half of young voting age adults show a current drivers license. **In the graphs below all licensed drivers are included, including persons with suspensions and revocations.**





A ZIP code analysis of the percentages of adults of voter age holding drivers licenses shows wide differences within Milwaukee County as well. The tables below show the percentage of Milwaukee County adults with drivers licenses.

The first table shows adults with a valid license. In the 53217 "North Shore" communities of Bayside, Fox Point, Glendale and parts of River Hills, and Whitefish Bay, 92 percent of adult males and females had valid drivers licenses, compared to rates of 40 percent or below on the near northside of Milwaukee (ZIP codes 53205 and 53206) and around Marquette University (53233).

The second table shows adults with any Wisconsin drivers license, whether valid, suspended or revoked. Here, the percentages of males with licenses is 95 percent or above in the "North Shore" (ZIP code 53217), Hales Corners (ZIP code 53130), and Oak Creek (ZIP code 53154). Fewer than half of females in Milwaukee ZIP codes 53233, 53204, 53205, and 53206 had a license.

Voting Age Adults in Milwaukee County with Valid Drivers Licenses

ZIP Code (ZCTA)	Voting Age Males	% of males with a valid drivers license in the ZIP Code	Voting Age Females	% of females with a valid drivers license in the ZIP Code
Milwaukee 53233	7,485	21%	6,471	16%
Milwaukee 53205	2,858	38%	3,854	36%
Milwaukee 53206	8,860	40%	12,555	37%
Milwaukee 53204	15,707	47%	13,113	33%
Milwaukee 53212	9,796	47%	11,827	44%
Milwaukee 53210	8,632	49%	11,713	50%
Milwaukee 53208	10,668	53%	12,992	46%
Milwaukee 53202	11,129	55%	9,217	57%
Milwaukee 53216	9,976	57%	13,577	60%
Milwaukee 53218	11,895	61%	15,734	58%
Milw., Wauwatosa 53225	8,582	62%	10,497	63%
Milwaukee, Brown Deer, Glendale, River Hills 53209	15,447	62%	20,067	63%
Milw., West Milw. 53215	19,384	63%	20,407	52%
Milwaukee 53224	6,247	63%	7,565	63%
Milw., Shorewood, W. Bay 53211	14,669	65%	16,068	64%
W. Allis, Milw., W. Milw. 53214	14,124	65%	14,474	68%
Milw., Brown Deer 53223	10,443	66%	13,060	65%
St. Francis 53235	3,562	67%	3,878	63%
W. Allis, Milw., Greenfield 53227	9,273	74%	10,534	71%
Milwaukee, Greenfield, West Allis, West Milwaukee 53219	12,956	74%	14,995	70%
Milwaukee 53207	14,327	75%	15,028	74%
Milwaukee, Wauwatosa 53222	8,818	76%	11,357	71%
Franklin 53132	12,208	77%	11,121	90%
Wauwatosa, Milwaukee 53226	7,085	77%	8,433	77%
Milwaukee, Greenfield 53221	13,444	78%	15,615	72%
Cudahy 53110	7,007	79%	7,639	75%
Wauwatosa, Milwaukee 53213	9,298	80%	10,974	80%
Greenfield, Milwaukee 53220	9,532	81%	11,319	78%
South Milwaukee 53172	8,001	81%	8,342	83%
Greenfield, Milwaukee 53228	5,295	85%	6,292	80%
Oak Creek 53154	10,832	88%	11,564	87%
Greendale 53129	5,329	88%	6,145	89%
Hales Corners 53130	2,826	89%	3,302	84%
Bayside, Fox Pt., Glendale, River Hills, W. Bay 53217	10,707	92%	12,087	92%
Milwaukee County	336,402	66%	381,816	65%

Voting Age Adults in Milwaukee County with Drivers Licenses (including Valid, Suspended and Revoked Licenses)

ZIP Code (ZCTA)	Voting Age Males	% of males with a drivers license in the ZIP Code	Voting Age Females	% of females with a drivers license in the ZIP Code
Milwaukee 53233	7,485	25%	6,471	19%
Milwaukee 53205	2,858	49%	3,854	42%
Milwaukee 53206	8,860	55%	12,555	43%
Milwaukee 53204	15,707	58%	13,113	36%
Milwaukee 53212	9,796	61%	11,827	50%
Milwaukee 53210	8,632	64%	11,713	56%
Milwaukee 53208	10,668	65%	12,992	50%
Milwaukee 53202	11,129	61%	9,217	59%
Milwaukee 53216	9,976	72%	13,577	66%
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Bayside, Fox Pt., Glendale, River Hills, W. Bay 53217	10,707	96%	12,087	93%
Milwaukee County	336,402	75%	381,816	68%

III. License Suspensions and Revocations

Wisconsin law permits units of government to suspend a drivers license for failure to pay outstanding fines. In the case of juveniles who fail to pay fines for truancy, curfew violations, underage drinking, jaywalking, etc., a suspension order is placed which prevents the youth from obtaining a license until these fines are paid. The suspensions solely for failure to pay bills make up almost half of the total suspensions in the state. Previous studies of the impact of these suspensions have shown the adverse impact on residents of central city neighborhoods in Milwaukee. Milwaukee County residents are twice as likely to have a suspension in a year than are residents in the balance of the state. Most of this disparity occurs because Milwaukee has the largest concentration of poor young minorities, who show the highest levels of suspensions for failure to pay fines.[1] Review of drivers license files showed 89,489 Milwaukee County residents and 237,434 adults in the Balance of State with recent license suspensions or revocations. Other residents lost their licenses in the past and have not paid the fines and fees required to restore them.

IV. Drivers License Status of Elderly Residents

The population of 177,399 older persons without a Wisconsin drivers license or photo ID would be adversely effected by the voter ID legislation proposed, except for those living in nursing homes and assisted living quarters. Nearly all of those affected appear to be white (91 percent) and most are female (70 percent). The population of those 65 and over totaled 780,947 as of 2002 (based on Census data), while those with a Wisconsin drivers license totaled 560,686 and those with a photo ID and no license totaled 42,862, leaving 177,399 without an ID. Only a small portion (5 percent) of the older population is in a nursing home (38,199 persons statewide as of 2000) and some of these nursing home residents may still have an unexpired Wisconsin drivers license.

V. License Status of College Students in Residence Halls

Students enrolled at post secondary institutions and not currently living at home may face problems when attempting to vote while at school. Most college students do not change their drivers license address when attending school. Student ID's typically do not include addresses, and students in dorms are most often under 21 years of age with no reason to obtain a photo ID from the DOT to prove they are of legal drinking age. Statewide, students living in dormitories in the 2000 Census totaled 51,249.

As shown below, very few University of Wisconsin-Milwaukee, University of Wisconsin-Madison, and Marquette University students 18-24 years of age have a drivers license that lists their dorm as their current address. Fewer than 3 percent of students have a drivers license with their current

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[1] See John Pawasarat, **Removing Transportation Barriers to Employment: The Impact of Driver's License Suspension Policies on Milwaukee County Teens** (University of Wisconsin-Milwaukee Employment and Training Institute, 2000) online at www.uwm.edu/Dept/ETI/barriers/teensdot.htm; John Pawasarat and Frank Stetzer, **Removing Transportation Barriers to Employment: Assessing Driver's License and Vehicle Ownership Patterns of Low-Income Populations** (UWM Employment and Training Institute, 1998) online at www.uwm.edu/Dept/ETI/dot.htm; and **Neighborhood Indicators Central City Milwaukee: 1992-Present** online at www.uwm.edu/Dept/ETI/reports/indypage.htm.

residence hall address, while 97 percent could require special handling at the polls under proposed legislation and at the time they register to vote under current legislation.

University Students in Residence Halls Compared to Licensed Drivers at the Address: UWM, Marquette University, and UW-Madison

Residence Hall	Address	With Drivers License at address	Residents Capacity
University of Wisconsin-Milwaukee:			
Sandburg Residence Halls	3400 N. Maryland Ave.	51	2,700
Marquette University (Milwaukee)			
Cobeen Hall	729 N. 11th Street	8	350
Carpenter Hall	716 N. 11th Street	3	300
Mashuda Hall	1530 W. Wisconsin Ave.	10	400
McCormick Hall	1530 W. Wisconsin Ave.	9	725
O'Donnell Hall	725 N. 18th Street	6	300
Schroeder Hall	715 N. 13th Street	7	650
South Hall	525 N. 17th Street	1	87
Straz Hall	915 W. Wisconsin Ave.	12	376
(Sub-total, Marquette University)		(56)	(3,188)
University of Wisconsin-Madison			
Adams Hall	1520 Tripp Circle	12	276
Barnard Hall	970 University Ave.	8	138
Bradley Hall	1900 Willow Drive	10	246
Chadbourne Hall	420 N. Park Street	23	687
Cole Hall	625 Elm Drive	8	244
Elizabeth Waters Hall	1200 Observatory Drive	5	473
Friedrick Center	1950 Willow Drive	0	50
Kronshage Hall	1650 Kronshage Drive	11	616
Merit House	919 W. Dayton Street	0	23
Ogg Hall	716 W. Dayton Street	38	950
Sellery Hall	821 W. Johnson Street	21	1,148
Slichter Hall	625 Babcock Drive	7	198
Sullivan Hall	635 Elm Drive	5	257
Tripp Hall	1510 Tripp Circle	8	280
Witte Hall	615 W. Johnson Street	17	1,150
(Sub-total, UW-Madison)		(173)	(6,736)

There are 15 residence halls at the University of Wisconsin-Madison, having a capacity of 6,736 beds. However, the number of licensed drivers with the residence hall addresses totaled 173, or less than 3 percent of the residents. At the Sandburg Residence Halls at UWM, out of 2,700 dorm residents, less than 2 percent of dorm residents had a drivers license with the Sandburg address. Similarly, less than 2 percent of the students living in the Marquette University dorms (or 56 out of 3,188 residents) had a drivers license with their dorm's address. It is not possible, based on published data tables for state photo IDs, to determine how many students have obtained Wisconsin photo IDs or how many have state drivers licenses with a different home address listed.

College students not in dorms may be in a similar situation. Students and young people who move away from home to attend school usually have a drivers license but do not change their license address during college. In many cases younger adults may not change their license address until they find a permanent job except for occasional situations when a current drivers license may be required for another purpose. (For example, the City of Milwaukee overnight parking permits require a current drivers license with the address where the vehicle is parked.)

The Wisconsin DOT drivers license file and Census 2000 (SF3 file) are used to assess the degree to which students do not change their license address in **"student intense ZIP codes"** throughout the state. The U.S. Census data was used to compare the number of 18 through 21 year olds to the number enrolled in undergraduate programs in each Wisconsin ZIP code. The top 16 ZIP codes (ZCTAs, Zip Code Tabulation Areas) where the highest number of undergraduates resided accounted for a total of 96,589 undergraduates and 78,075 young people ages 18 through 21. The 18-21 year old population with a drivers license in these same 16 ZIP codes totaled 15,321, or 20 percent of those 18 through 21 years old. The population in these 16 ZIP codes without a drivers license with their current residence totaled 62,754. When the population of 22 to 24 year olds are included, the number without a drivers license address at the current address totals 83,981. In some ZIP codes 98 to 99 percent of the students do not have a license with their current school address.

18, 19 and 20 Year Olds in the 2000 Census and With a Drivers License for the ZIP Code for the Top 16 Student-Intensive ZIP Codes in Wisconsin

ZIP Code (ZCTA)	Census 2000 population 18-20 yr.	With drivers license at this ZIP Code	Without a drivers license at this ZIP Code	% without a drivers license at this ZIP Code
Madison 53703	5,527	308	5,219	94%
Madison 53706	4,872	56	4,816	99%
LaCrosse 54601	5,880	1,124	4,756	81%
MU-Milwaukee 53233	4,379	109	4,270	98%
Whitewater 53190	4,042	456	3,586	89%
Eau Claire 54701	4,711	1,152	3,559	76%
Oshkosh 54901	4,222	913	3,309	78%
Stevens Point 54481	4,010	1,089	2,921	73%
Stout 54751	3,287	632	2,655	81%
UW-Milwaukee 53211	3,435	1,138	2,297	67%
Platteville 53818	2,286	363	1,923	84%
River Falls 54022	2,493	578	1,915	77%
Madison 53705	2,660	750	1,910	72%
Madison 53715	1,781	135	1,646	92%
Milwaukee 53202	1,307	122	1,185	91%
Eau Claire 54703	2,371	1,345	1,026	43%
Total 16 ZIP Codes	**57,263**	**10,270**	**46,993**	**82%**

The problem of young adults without drivers licenses at their current address is not limited to the

younger college student population. An analysis of the population of 21-24 year olds in the "student intense ZIP codes" also showed a large number of adults aged 21-24 without a drivers license for the ZIP code. Almost 37,000 young adults, 61 percent of those living in these college area ZIP codes, did not have a drivers license for that ZIP code.

21-24 Year Olds in the 2000 Census and With a Drivers License for the ZIP Code for the Top 16 Student-Intensive ZIP Codes in Wisconsin

ZIP Code (ZCTA)	Census 2000 population 21-24 yr.	With drivers license at this ZIP Code	Without a drivers license at this ZIP Code	% without a drivers license at this ZIP Code
Madison 53703	9,247	2,464	6,783	73%
LaCrosse 54601	5,725	2,938	2,787	49%
Oshkosh 54901	4,669	1,886	2,783	60%
MU-Milwaukee 53233	3,315	563	2,752	83%
UW-Milwaukee 53211	5,037	2,331	2,706	54%
Stevens Point 54481	4,456	1,988	2,468	55%
Whitewater 53190	3,369	928	2,441	72%
Madison 53715	3,197	795	2,402	75%
Eau Claire 54703	4,431	2,220	2,211	50%
Stout 54751	3,365	1,201	2,164	64%
Milwaukee 53202	2,941	1,158	1,783	61%
Platteville 53818	2,105	645	1,460	69%
River Falls 54022	2,442	990	1,452	59%
Madison 53705	3,010	1,681	1.329	44%
Eau Claire 54701	3,198	1,946	1,252	39%
Madison 53706	305	90	215	70%
Total 16 ZIP Codes	**60,812**	**23,824**	**36,988**	**61%**

VI. The Number of Unlicensed Adults Is Expected to Grow

According to population estimates prepared by the Wisconsin Department of Administration, the population of adults aged 18 or older as counted in the 2000 Census is continuing to grow in the state, in part because as older residents die or move away from Wisconsin, they are being replaced by a much larger population of young adults. For example, the population of 65-year olds in the 2000 Census totaled 36,876, while the population of 17-year olds in Wisconsin totaled 81,360.

The Wisconsin Department of Administration estimates the population of Wisconsin residents 18 or over as of January 1, 2004 to be 4,119,320, or a 124,401 increase over the 2000 Census count. Assuming the same annual growth of the 18 and over population, the January 1, 2005 estimate will be close to 4,152,521, or 157,602 higher than 2000 population count.

VII. Households Without a Vehicle Unlikely to Have Current Licensed Drivers

Census 2000 special tabulation files for the PUMS (Public Use Microdata Sample) offer detailed data on households in Wisconsin. Of particular interest are those households that do not have any vehicles. Statewide, a total of 371,501 persons, aged 18 and over, were reported in households with 0 vehicles (cars or trucks). These persons were heavily concentrated in the City of Milwaukee, where 87,300 adults were in households without vehicles. While many adults in other households may be unlicensed, it is likely that households where there is **no** car or truck owned by any household member would have much higher numbers of persons without current drivers licenses. As shown in the table below, while the City of Milwaukee has 11 percent of the state's adult population, it has 23 percent of the adults living in households without a vehicle.

Wisconsin Voting Age Adults Without a Vehicle in Their Household
Census 2000 PUMS Files

	Total Voting Age Adult Population:		Adults With NO Vehicle in the Household:	
Location	Number	% of Total	Number	% of Total
State of Wisconsin	3,990,736	100%	371,501	100%
City of Milwaukee	425,372	11%	87,300	23%
Milwaukee County Suburbs	268,667	7%	23,831	6%

As seen in the tables below, the number of adults without a vehicle in their household varies greatly by subpopulation. Older adults, for example, without vehicles in their household reflect statewide distributions of this age cohort and show less intense concentration in the City of Milwaukee compared to outstate. The numbers of older adults without vehicles in the household are similar for the City of Milwaukee as for the Milwaukee County suburbs.

Wisconsin Older Adults (Ages 55 and Above) Without a Vehicle in Their Household
Census 2000 PUMS Files

Location	Total Adult Population (Ages 55+): Number	% of Total	Older Population With NO Vehicle in the Household: Number	% of Total
State of Wisconsin	1,111,676	100%	149,158	100%
City of Milwaukee	98,902	9%	24,351	16%
Milwaukee County Suburbs	84,872	8%	14,441	10%

Non-white residents show very different patterns of potential impact of drivers license policies on voting. Fully, 60 percent of African American adults in Wisconsin without a car or truck in their household live in the City of Milwaukee.

Wisconsin African American Voting Age Adults Without a Vehicle in Their Household:
Census 2000 PUMS Files

Location	Adult African American Population (Ages 18+): Number	% of Total	Adult Afr. Americans With NO Vehicle in the Household: Number	% of Total
State of Wisconsin	327,073	100%	80,034	100%
City of Milwaukee	170,209	52%	47,858	60%
Milwaukee County Suburbs	15,264	5%	3,104	4%

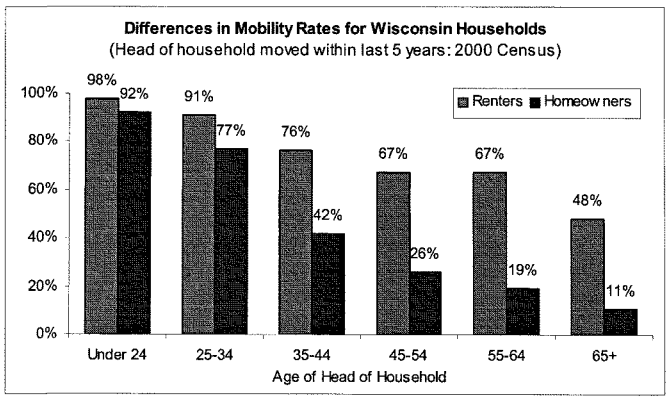
Wisconsin White Voting Age Adults Without a Vehicle in Their Household:
Census 2000 PUMS Files

Location	Adult White Population (ages 18+): Number	% of Total	Adult White Pop. With NO Vehicle in the Household: Number	% of Total
State of Wisconsin	3,663,663	100%	291,467	100%
City of Milwaukee	255,163	10%	39,442	14%
Milwaukee County Suburbs	253,403	7%	20,727	7%

VIII. Subpopulations Without a Current License or Photo ID Address

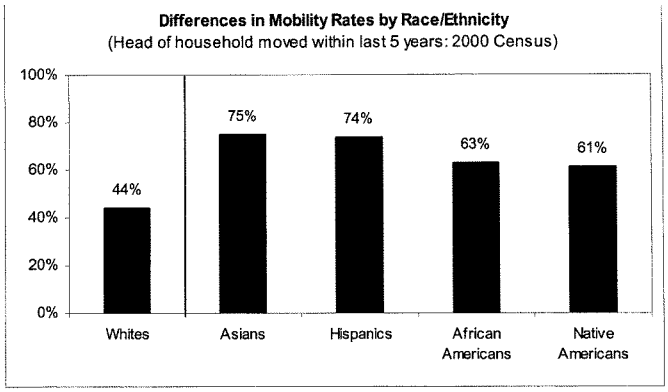
Many people move to another residence at various times and for various reasons. As a result, some subpopulations will be less likely to have a Wisconsin drivers license or photo ID with a current address. The Wisconsin drivers license is usually valid for eight years, but many citizens move frequently and may not update their license address each time they move. According to the 2000 U.S. Census, 46 percent of Wisconsin households had moved into their current residence since 1995 or after. This moving population involved 962,425 households. Any of these residents who had not updated their drivers license to their current address would require special processing by the local election board or at the polls. Those most effected by proposals to use the drivers license to verify voters' current addresses would include the following:

1. **Renters.** Seventy-six percent of Wisconsin households who are renters changed their residence between January 1995 and March 2000, and many may have moved multiple times. (By comparison, 22 percent of households owning their own home had moved between January 1995 and March 2000.) Almost forty percent of the renting households moved one or more times in the 2-1/4 year period from January 1999-March 2000.



2. **College students.** As detailed above, college students do not usually contact the Department of Transportation each time they move during their college years and instead maintain their permanent home address on their drivers license.

3. **Minorities.** Mobility rates differ substantially by racial/ethnic groups in Wisconsin. According to the 2000 Census, whites are least likely to move with 44 percent of white households having moved in 1995 or after. By comparison, the mobility rates for Native Americans, African Americans, Hispanics, and Asians ranged from 61 to 75 percent.



Wisconsin Household Heads Who Moved from Jan. 1995 to Mar. 2000 by Race/Ethnicity: 2000 Census

Race/Ethnicity of Householder	% of Household Heads Who Moved from 1/1995 to 3/2000
Whites	44%
Native Americans	61%
African Americans	63%
Hispanics	74%
Asians	75%

4. **Younger adults.** Mobility rates for Wisconsin adults differ by the age of the householder. Statewide, 97 percent of head of households ages 18-24 had moved in 1995 or after. Older adults showed much lower mobility rates.

Wisconsin Households Heads Who Moved from Jan. 1995 to March 2000: 2000 Census

Age of Householder	% of Household Heads Who Moved from 1/1995 to 3/2000
Under 25 yr.	97%
25-34 years	84%
35-44 years	52%
45-54 years	34%
55-64 years	32%
65 and older	21%

IX. Subpopulations Considered in the Drivers License Analysis

Drawing on its prior research work using institutional databases and its work studying the use of the Wisconsin drivers license for collection of fines and civil forfeitures, the Employment and Training Institute assessed the extent to which the population of licensed drivers compares to the state's estimated eligible voting population. The research identifies subpopulations that are underrepresented in the drivers license file and who may need separate attention at the polling place. Examination of DOT records and U.S. Census counts of the state population show significant **subpopulations without a current license**.

1. **Persons who use mass transit**. In cities, persons who use mass transit and do not own a vehicle may not have or need a drivers license. The City of Milwaukee will have the largest population of unlicensed residents using mass transit.

2. **Lower income residents.** Some lower income households may find the costs of purchasing, maintaining and insuring a vehicle to be prohibitive. Without a car, they have little reason to obtain a drivers license.

3. **Teenagers who don't own their own car and who have not obtained a license.** While many teenagers obtain a drivers license soon after they turn 16, some do not. In some households the teenager may not have access to a car or may have access to alternative transportation from relatives and friends. In Wisconsin drivers license applicants under age 18 are required to show evidence of completion of a driver education course before receiving their probationary license – a requirement that presents an economic impediment in lower-income households, as free drivers education may not be available.

4. **Senior citizens.** Many older adults give up driving for health or economic reasons. While only 5 percent of Wisconsin seniors aged 65 and older are in nursing homes, many others do not drive.

5. **Women.** Females are disproportionately underrepresented in the drivers license file. Rates of licensing are lower for Hispanic women and for older white women.

6. **Bad drivers.** Persons who have lost their drivers license due to suspensions and revocations include those who lost their licenses for repeat speeding offenses, drunk driving ("DWI," or "driving while intoxicated"), or drug convictions.

7. **Drivers with unpaid fines.** The vast majority of suspended licenses in Wisconsin are for failure to pay municipal and circuit court fines and civil forfeitures (sometimes called "driving while poor"). The suspension of drivers licenses for failure to pay fines falls disproportionately upon citizens of color in the state, who are both disproportionately poor and also are more likely to be subject to racial profiling. In some cases, college students also will be overrepresented in this population. For example, a student fails to pay parking tickets. The agency (municipality, university, etc.) issuing the ticket pays DOT to put a trap on the student's vehicle license. The fine costs escalate and if the student continues driving with an expired plate may result in a traffic citation.

8. **Non-drivers with suspended licenses.** In Wisconsin it is possible to receive a suspended drivers license even if an individual has never had a vehicle-related ticket or problem. Teenagers cited for being out of their homes after curfew, jaywalking, or underage drinking may have a suspension placed on their "drivers license" even though they've never actually had a drivers license.

9. **Persons with medical or vision problems.** Individuals may stop driving or never obtain a drivers license for medical reasons if they or their physician believe that they are unable to drive safely. Others may be deemed ineligible to obtain or renew a license based on their failure to pass the vision test.

This report offers a first-time analysis of the drivers license population by age, gender, race and geography. Future research analyzing driver's license suspension issues by type of offense or collection problem and the race/ethnicity and residence of the driver should provide additional useful information for voting and other policy issues.

Acknowledgments

Research on drivers license suspension and revocation issues is supported by grants from the Greater Milwaukee Foundation and the Helen Bader Foundation. Review comments were provided by the state Department of Transportation staff. Send comments to: John Pawasarat, Director, Employment and Training Institute, University of Wisconsin-Milwaukee, 161 W. Wisconsin Avenue, Suite 6000, Milwaukee, WI 53203. For other drivers license reports, see the Employment and Training Institute website at www.eti.uwm.edu.

CENSUS COUNT AND DRIVERS LICENSE STATUS OF YOUNG ADULTS (AGES 18 – 24) IN WISCONSIN

MILWAUKEE COUNTY

U.S. CENSUS, ages 18 thru 24 in 2002

	TOTAL	WHITE	BLACK	HISPANIC
MALES	48,240	26,151	12,391	6,731
FEMALES	49,116	26,233	14,269	5,562
TOTAL	97,356	52,384	26,660	12,293

18 thru 24 years
VALID WISCONSIN DRIVER LICENSE

	TOTAL	WHITE	BLACK	HISPANIC
MALES	19,928	13,917	2,558	2,322
FEMALES	24,201	16,758	4,299	1,813
TOTAL	44,129	30,675	6,857	4,135

18 thru 24 years
PERCENT WITH A VALID WISCONSIN DRIVER LICENSE

	TOTAL	WHITE	BLACK	HISPANIC
MALES	41%	53%	21%	34%
FEMALES	49%	64%	30%	33%
TOTAL	45%	59%	26%	34%

BALANCE OF STATE

U.S. CENSUS, ages 18 thru 24 in 2002

	TOTAL	WHITE	BLACK	HISPANIC
MALES	233,423	206,900	6,222	10,027
FEMALES	220,592	199,522	4,201	7,194
TOTAL	454,015	406,422	10,423	17,221

18 thru 24 years
VALID WISCONSIN DRIVER LICENSE

	TOTAL	WHITE	BLACK	HISPANIC
MALES	145,681	134,918	1,562	4,825
FEMALES	163,024	153,173	1,889	2,929
TOTAL	308,705	288,091	3,451	7,754

18 thru 24 years
PERCENT WITH A VALID WISCONSIN DRIVER LICENSE

	TOTAL	WHITE	BLACK	HISPANIC
MALES	62%	65%	25%	48%
FEMALES	74%	77%	45%	41%
TOTAL	68%	71%	33%	45%

CENSUS COUNT AND DRIVERS LICENSE STATUS OF VOTING AGE ADULTS (AGES 18 AND ABOVE) IN WISCONSIN

MILWAUKEE COUNTY

U.S. CENSUS, ages 18 and older as of 2002

	TOTAL	WHITE	BLACK	HISPANIC
MALES	337,802	230,688	64,091	28,678
FEMALES	381,237	257,722	84,298	24,632
TOTAL	719,039	488,410	148,389	53,310

18 YEARS AND OLDER
VALID WISCONSIN DRIVER LICENSE

	TOTAL	WHITE	BLACK	HISPANIC
MALES	222,740	171,809	28,568	13,731
FEMALES	244,245	186,636	40,612	8,950
TOTAL	466,985	358,445	69,180	22,681

18 YEARS AND OLDER
PERCENT WITH A VALID WISCONSIN DRIVER LICENSE

	TOTAL	WHITE	BLACK	HISPANIC
MALES	66%	74%	45%	48%
FEMALES	64%	72%	48%	36%
TOTAL	65%	73%	47%	43%

BALANCE OF STATE

U.S. CENSUS, ages 18 and older as of 2002

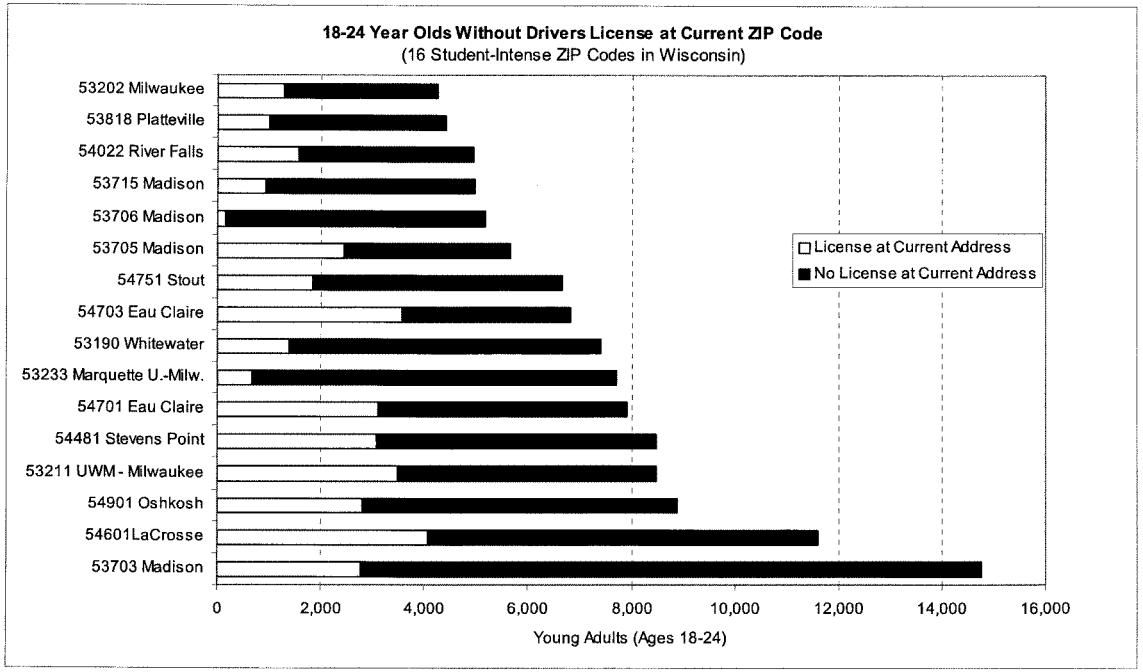
	TOTAL	WHITE	BLACK	HISPANIC
MALES	1,692,811	1,579,255	29,091	41,103
FEMALES	1,744,759	1,647,897	21,064	30,836
TOTAL	3,437,570	3,227,152	50,155	71,939

18 YEARS AND OLDER
VALID WISCONSIN DRIVER LICENSE

	TOTAL	WHITE	BLACK	HISPANIC
MALES	1,399,635	1,336,496	13,365	23,930
FEMALES	1,469,271	1,403,222	13,182	13,768
TOTAL	2,868,906	2,739,718	26,547	37,698

18 YEAR AND OLDER
PERCENT WITH A VALID WISCONSIN DRIVER LICENSE

	TOTAL	WHITE	BLACK	HISPANIC
MALES	83%	85%	46%	58%
FEMALES	84%	85%	63%	45%
TOTAL	83%	85%	53%	52%


18-24 Year Olds Without Drivers License at Current ZIP Code
(16 Student-Intense ZIP Codes in Wisconsin)
53202 Milwaukee
53818 Platteville
54022 River Falls
53715 Madison
53706 Madison
53705 Madison
54751 Stout
54703 Eau Claire
53190 Whitewater
53233 Marquette U.-Milw.
54701 Eau Claire
54481 Stevens Point
53211 UWM - Milwaukee
54901 Oshkosh
54601LaCrosse
53703 Madison
License at Current Address
No License at Current Address
0
2,000
4,000
6,000
8,000
10,000
12,000
14,000
16,000
Young Adults (Ages 18-24)

Ms. LOFGREN. Thank you. This study shows that among young adults age 18 to 24, 78 percent of African American men didn't have a driver's license, 78 percent of African American men in that age bracket didn't have a driver's license or photo ID, 66 percent of African American women in that age bracket did not have a driver's license. And you think about—you don't have a driver's license if you don't have enough money for a car. And if you take a look at poverty in this country, who lives in inner cities, who lives on an Indian reservation, it is the lack of ID that we just so blindly assume everyone has because we are the privileged, we are the elites in society. It is not the case for every element of our society.

So you know, we don't know very much about fraud. Presumably there is some in the United States, as there is in everything, but we do know a little bit about who is being deterred from voting. And I would like to ask unanimous consent to put an article into the record from the Los Angeles Times, if I may.

The CHAIRMAN. Without objection, so ordered.

[The information follows:]

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November 5, 2005 Saturday
Home Edition

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LENGTH: 1212 words

HEADLINE: Eligible to Vote in Arizona? Prove It;
A new law requires evidence of citizenship. Thousands of legal residents are in a bind.

BYLINE: Nicholas Riccardi, Times Staff Writer

DATELINE: PHOENIX

BODY:

A stringent new voter identification law being put into effect in Arizona -- designed to keep illegal immigrants from voting -- will also prevent thousands of legitimate voters from casting ballots Tuesday, election officials say.

Proposition 200, which voters approved last year, requires Arizonans to prove U.S. citizenship to register to vote and to show a photo ID at the polls.

The law put this border state at the edge of a nationwide push to tighten screening at the polls: fifteen states now require ID at polling places, but no other state requires documentation of citizenship in order to register.

It's a movement that advocates say is long overdue to prevent election fraud, but which critics say will decrease voter turnout and has already disenfranchised thousands of Arizona voters.

In Maricopa County, home to Phoenix, more than 10,000 people trying to register have been rejected for being unable to prove their citizenship. Yvonne Reed, a spokeswoman for the recorder's office, said Friday that most probably are U.S. citizens whose married names differ from their birth certificates or who have lost documentation.

Reed said she hoped the number of rejected voters would shrink as election officials explained the new requirements. But, she said, "there will be an amount of people who we will not be able to get on the rolls because of not being able to find the right documents or just losing interest."

In Pima County, home to Tucson, 60% of those who tried to register initially could not. Chris Roads,

chief deputy recorder and registrar, said all appeared to be U.S. citizens but many had moved to Arizona recently and couldn't access birth certificates or passports.

Many of those prospective voters have since been able to register, but Roads said about 1,000 citizens were still unable to vote in Tuesday's election because of Proposition 200 requirements. "The biggest bloc of people who are impacted are the legitimate citizens," Roads said.

Any change of address -- people moving from outside the state or those moving within Arizona -- triggers the registration requirement.

Advocates of the new law contend that it has been too easy to exercise the most important right of an American citizen. They and state officials who support it argue that legitimate voters will not be harmed once citizens understand the law.

"There's been so much laxity introduced in the voting process by litigation and political cowardice," said Dan Stein, president of the Federation for American Immigration Reform. "We're hoping Proposition 200 will change this course."

Backers of the proposition cite the discovery this summer of 159 noncitizens on the voting rolls of Maricopa County. Helen Purcell, the county recorder, said the 159 cases all involve legal immigrants who misunderstood voting requirements and were sometimes registered by overeager canvassers or political groups.

Andrew Thomas, the newly elected county attorney who supported Proposition 200, has charged 10 of the immigrants with felonies.

Among those charged is Israel Rivera.

A soft-spoken father of six, Rivera registered to vote last year and said he cast his ballot for President Bush because the president "believes in Christian ways." But Rivera is not a U.S. citizen. He is a legal immigrant who has lived in the U.S. for 35 years.

Rivera said a woman approached him outside the Department of Motor Vehicles office in March 2004 and invited him to register to vote. The woman filled out the voter registration form, Rivera said, including the part where he affirmed he was a U.S. citizen. Rivera, 55, didn't think his immigration status would be an issue.

"I've lived here so many years and I always try not to break the law," Rivera said in the driveway of his South Phoenix home, with a hand-painted banner overhead reading "Jesus I Thank You."

Immigrant advocates say Rivera's case demonstrates why Proposition 200 is excessive.

"This is not a case of fraud," said Nina Perales, southwestern legal counsel for the Mexican American Legal Defense and Education Fund, which is suing to overturn Proposition 200. "Cutting out thousands and thousands of registered voters because some people have been erroneously registered is not the right response."

Officials who monitor election laws say that proposals have been introduced in at least a dozen states, including California, to tighten ID requirements.

There has often been a partisan edge to the legislation -- the bills typically introduced by Republicans, who are believed to benefit from lower voter turnout, and opposed by Democrats, who theoretically prosper when immigrants and poor people with little identification vote.

California Assemblyman Rick Keene (R-Chico) said he just wanted to tighten security at the polls by having voters show identification, but the Democrat-controlled Legislature killed his bill this year, citing fears of disenfranchisement.

Wisconsin's Democratic governor James Doyle this summer vetoed for the third time a Republican bill that required voters to show government-issued photo ID at the polls, saying it would unfairly affect the elderly and poor.

A federal appeals court in Georgia last month upheld a ruling that stopped the state from requiring voters to purchase identification cards, saying it would keep poor people from participating in the electoral process.

Proposition 200 was born after Arizona's Democratic Gov. Janet Napolitano vetoed a Republican-backed voter identification bill in 2003.

The initiative, similar to California's Proposition 187, was intended to deny most government benefits to illegal immigrants, as well as tighten voting requirements. It passed with 56% of the vote in November 2004.

The state's attorney general interpreted the initiative narrowly, which has meant that few illegal immigrants have been denied benefits. But the state moved ahead with the voting portion of the initiative.

The proof of citizenship requirement is in effect statewide.

The requirement that voters show ID at polls is going more slowly -- the plan for implementing it was approved by the U.S. Justice Department just last month, too late for most of the state to use it during this election. One rural county will require ID on Tuesday, although the rest of the state will implement it in elections next March.

Voters can prove their identity by presenting a photo ID with their current address, such as a driver's license, or two pieces of written proof, such as utility bills, that contain their name and current address.

In Pima County, elections chief Roads is concerned that people who have recently moved or don't have detailed bills could be blocked from voting. Roads, a Republican, said many of those would be traditional supporters of Democrats such as Native Americans, elderly people and the poor. "The whole point of this is to reduce the turnout."

Backers of the initiative deny that was ever the intent. "It's critical we protect our place of elections," said state Rep. Russell K. Pearce, a Republican and one of Proposition 200's authors.

Kevin Tyne, a deputy secretary of state, says that the new identification procedures should not lead to anyone being turned away. "There's a point of personal responsibility now," said Tyne. "With proper

education, people won't be disenfranchised."

LOAD-DATE: November 5, 2005

Ms. LOFGREN. And quoting from this article which will go in the record, in Arizona, Maricopa County, home to Phoenix, according to the L.A. Times, more than 10,000 people trying to register have been rejected for being unable to prove their citizenship. Yvonne Reid, spokesman for the Recorder's Office, says most are U.S. citizens whose married names differ from the birth certificates or have lost documentation. And in Pima County, home to Tucson, according to this article, 60 percent who tried to register initially could not and all appear to be U.S. citizens, according to this article. And in Pima County, and again this L.A. Times article, Elections Chief Rhodes is concerned that people who have recently moved or don't have detailed bills could be blocked from voting. Rhodes, a Republican, said many of those would be traditional supporters of Democrats, such as Native Americans, elderly people and the poor. Quote, the whole point of this is to reduce the turnout, unquote, and that is from the Republican Registrar.

So I think we need to think about the impact of this proposal on suppressing the vote, and I am sorry, as I said in my opening statement, I can't help but being mindful that we didn't act on the Voting Rights Act yesterday, and today we are looking at this that would have the impact of suppressing the vote of African Americans and poor people. I do believe that we should take educational efforts and—for Mr. Martinez, if you could—I think that most noncitizens, if they knew that they would be subject to prosecution, be deported if they were to register to vote, that would be pretty chilling. Do you think we should do an educational effort, maybe some TV, "register to vote if you are not a U.S. citizen, and you will lose your green card"? I think that is certainly more severe than any penalty I could think of. Has the commission thought about doing that?

Mr. MARTINEZ. No, we have not. Obviously the funds we have distributed under the Help America Vote Act, particularly Title II funds, there is a component to that, Congresswoman, that allows State and local jurisdictions to spend a portion of this money on voter education efforts. But that is not something that we as a commission have necessarily urged.

Ms. LOFGREN. Well, I see my time has expired, Mr. Chairman, and I appreciate the indulgence in allowing the witness to answer.

The CHAIRMAN. Thank you. I thank this panel very much for your testimony. It has been extremely helpful. It seems at this point the only answer is a microchip, but we will keep investigating. But thank you very much for your testimony. We deeply appreciate it, and I call for the next panel.

On our third panel today we are pleased to have Mr. Dan Stein, President, Federation for American Immigration Reform; Daniel Calingaert, Associate Director, Center for Democracy and Election Management; Spencer Overton, Professor at the George Washington University Law School; and Christine Chen, Executive Director, Asian Pacific Islander American Vote.

I am pleased to finally have you here, Ms. Chen. Welcome to our panel. I appreciate having you here, and we will begin by asking Mr. Stein to make his statement. Once again, 5-minute limit and you are familiar with the red, yellow and green lights.

Mr. Stein.

STATEMENTS OF DAN STEIN, PRESIDENT, FEDERATION FOR AMERICAN IMMIGRATION REFORM; DANIEL CALINGAERT, ASSOCIATE DIRECTOR, CENTER FOR DEMOCRACY AND ELECTION MANAGEMENT; SPENCER OVERTON, PROFESSOR, THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL; AND CHRISTINE CHEN, EXECUTIVE DIRECTOR, ASIAN PACIFIC ISLANDER AMERICAN VOTE

STATEMENT OF DAN STEIN

Mr. STEIN. Thank you, Mr. Chairman. I very much appreciate the opportunity to be here, and want to salute your leadership in holding these hearings to explore this very important issue that many Americans are concerned about.

My organization, Federation for American Immigration Reform, primarily deals with U.S. immigration policy and issues, the Nation's largest organization working for U.S. immigration laws, 200,000 members and supporters all across the country, every walk of life, and we have developed some expertise on immigration issues over time.

The CHAIRMAN. Is your microphone on?

Mr. STEIN. Now it is.

The CHAIRMAN. Thank you.

Mr. STEIN. Mr. Chairman, one of the reasons why so many people from all over the world want to come to this country and see it as a land of opportunity is because they see in the United States certain things that they don't see in their own country. One of them is that we have a system that works, and they believe that the rules are enforced, that if you play by the rules fairly you have an opportunity to get ahead. And fairness has always been a very important value, fundamentally, among American citizens and the American people. And in the course of becoming new citizens, they learn an awful lot about responsibility.

Citizenship entails not only certain rights but responsibilities, and one of those responsibilities is voting. Now, a good deal of the hearing has dealt with this whole question of whether or not there is a conflict between trying to promote a large turnout, which we all support and naturally FAIR wants to make sure everyone who is eligible and is interested in voting does so, and how you balance that with ensuring the integrity of the process, and how to bring about measures to ensure that noncitizens are not voting in a way that does not unduly burden citizens who are eligible. And naturally, low turnout is a big problem, but you know if you really want to decrease turnout in this country, continue to allow the perception to be created that the registration system lacks integrity at any phase of the registration process. And that is the perception that is spreading around the country and is one of the reasons why we were very much involved in Proposition 200 in Arizona, why the overwhelming majority of the people of Arizona supported the voting registration provisions of Proposition 200, including minority voters, minority women voters, and other blocs that supported it.

I think 47 percent of Hispanic American voters supported Proposition 200. Clearly it was not a class-based issue, as some might suggest here, but there was very strong public support for the voter registration provisions in Arizona. I will just reference again Judge

Silver's decision yesterday in which he said that the requirements of the National Voter Registration Act is just a starting point. States are free to enact measures, including proof of citizenship, to make sure those people who sign up to vote are in fact legally qualified to do so. What is at stake here is ensuring the legitimacy of the electoral process and the franchise of supreme importance given the enormous power that Congress wields in important areas, such as taxation.

Now, one of the reasons why it is so hard to get empirical evidence—we have heard a lot about empirical evidence today. Well, if you think about it, it is almost impossible to get certain kinds of empirical evidence about illegal immigrants voting. If you enter the country without inspection, you are not going to have any kind of immigration record. One of the reasons why someone here illegally wants a voter registration card is because it is very valuable to use on the I–9 which, along with a Social Security card, can be used as proof of citizenship and work authorization.

For people here illegally, there are two highly sought after documents, driver's license and voter registration card. Those are the keys to the kingdom—I have been at this long enough to remember when William Francis Smith made the comment that our entire documentary structure is built on a foundation of sand. The fact is we don't have a national birth registry, which we are hoping the REAL ID Act will begin to move us toward and this, has made it very difficult for States to verify false claims to citizenship. The argument that there are criminal sanctions for false claims of citizenship and that somehow that would be self-executing as a deterrent obviously rings hollow when you look at the high level of illegal immigration today, and you can certainly make the argument that illegal immigration is against the law, but laws, as we now know, that are not well enforced or enforced at all are going to be routinely abused when there is an incentive to do so.

So what we are talking about here is gradually closing a web, a web that starts at the State level with a lack of birth records and the ability to establish native-born citizenship, trying to improve Federal immigration records and trying to improve the security of State documents, such as driver's licenses. While there is no uniform solution to this, the legislation that Congressman Hyde has proposed is an important first step, and we have to start somewhere. I think the overwhelming majority of the American people would support the kind of documentary requirements proposed in this bill.

Would there be an adjustment process? Do we have to grandfather people who are already registered? Of course. But that doesn't mean we should do nothing. To do nothing is to risk jeopardizing the integrity of our electoral system, which is the heart of our whole republic.

Thank you so much for this opportunity, and free to answer any questions you might have.

[The statement of Mr. Stein follows:]

Testimony of

Dan Stein
President
Federation for American Immigration Reform

Presented to the
HOUSE COMMITTEE ON ADMINISTRATION

Thursday, June 22, 2006

This testimony concerns the issue of non-citizen voting in U.S. elections
and identification requirements.

Mr. Chairman, Madam Ranking Minority Member and members of the Committee, I am Dan Stein, President of the Federation for American Immigration Reform. FAIR is a national, non-profit public interest organization representing more than 200,000 members and activists working to end illegal immigration, to restore moderate legal immigration and to reform our immigration laws to bring them into accord with the national interest. Thank you for the opportunity to present the views of the Federation for American Immigration Reform (FAIR) on the growing threat that our nation's voting laws are becoming compromised by illegal alien registration and voting.

There is widespread awareness that illegal immigration is a massive and growing problem in the United States. Estimates of the illegal population vary between 11 and 20 million. FAIR believes there are likely between 11 to 13 million illegal residents, but the number could certainly be higher. In addition to the illegal aliens already in the country, the Census Bureau estimates that the illegal alien population is growing by a minimum of 500,000 per year.

Combining the number of legal and illegal aliens, there are at least 26 million non-U.S. citizens in the United States at any given time. The bulk of them are legal and illegal residents (22 million), and about 1.6 million are tourists or temporary visitors from Canada or Mexico. Many of the remaining 2.4 million visitors, such as students and temporary workers, are on long-term visas.

As we all know, there is a great demand in our society by anyone of working age to have a driver's license. States have established a wide spectrum of laws governing the issuance of those licenses. While some require and verify evidence that an applicant is either a U.S. citizen or a foreigner in the country legally, other states deliberately or inadvertently create loopholes that allow illegal aliens to gain access to a license or identity card. Seven states allow registrants to use an individual taxpayer identification number (ITIN) in lieu of a Social Security number (SSN) when they register.[1] The ITIN is available to noncitizens, including illegal aliens for purposes of tax withholding. Another 11 states have provisions that allow illegal aliens to obtain driver's licenses, such as neglecting to verify the authenticity of the SSN.

With the passage of the National Voter Registration Act of 1993 (NVRA) — known as the Motor-Voter law — the process of registering to vote became nearly automatic for anyone applying for a state driver's license. Under this law, the information supplied by the applicant for a license doubles as information for voter registration unless the applicant indicates that he/she does not want to be registered to vote.[2] With driver's

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[1] The National Immigration Law Center in April 2003 listed the following states as accepting ITINs for driver's license purposes: Kansas, Kentucky, New Mexico, North Carolina, Pennsylvania, Rhode Island, and Utah (see www.nilc.org).

[2] John Fund's Political Diary, *Wall Street Journal*, October 23, 2000. "Voter fraud has become a bigger problem since the 1993 federal Motor Voter law required states to allow people to register to vote when they get a driver's licenses; 47 states don't require any proof of U.S. residence for enrollment."

licenses made available by several states to aliens (both legal and illegal), it seems likely that voter rolls now contain large numbers of non-citizens — enough in close elections to change the outcome if those aliens illegally vote.[3]

Two other offshoots from the 1993 NVRA compound the potential for non-citizen voting to corrupt the election process. Absentee voting has become ubiquitous, so there is no opportunity for the elections officials to challenge the voter in person as a possible illegal voter or to monitor the voting to assure that the voter is voting independently. And, those who would challenge the eligibility of voters are constrained by protections against intimidation of voters.

In 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act, making it a federal crime for non-citizens to vote in any federal election (or state election, unless authorized by state law). As a penalty, ineligible non-citizens who knowingly vote may be deported. Additionally, a non-citizen who falsely claims to be a United States citizen is in violation of this law.

Despite these penalties, there are numerous documented reports of non-citizens voting.[4] [5] Mr. Chairman, let me discuss some of the evidence of electoral fraud.

1996 Election – California

One of the most extensively documented cases of illegal voting was in California in 1996. Loretta Sanchez, a Democrat, defeated Republican incumbent Robert Dornan by 984 votes. Dornan called for an investigation of alleged illegal voting by noncitizens. According to *Congressional Quarterly*, a Washington, DC newspaper that focuses on developments in Congress, "Task force Chairman [U.S. Representative] Vernon J. Ehlers, R-Mich., said investigators had found concrete evidence of 748 illegal votes by noncitizens, not enough to throw Sanchez's victory into doubt."

2000 Election - Florida

In the 2000 election, there were 11 states carried by President Bush that had small enough winning vote margins that voting by noncitizens could have tipped the results to Vice President Gore. Those states were Colorado, Florida, Georgia, Missouri, Nevada, New Hampshire, North Carolina, Ohio, Tennessee, Texas, and Virginia. A switch of three

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[3] On September 26, 1996, California's Secretary of State ordered county voter registrars not to permit non-citizens to vote in the November 1996 elections, after it was revealed that 727 non-citizens in Los Angeles county had filled out the voter registration form attached to the driver's license application under the new "motor voter" law.

[4] "Fraud Roundup," United Press International, January 26, 2001.

[5] "Putnam Opposed Voting Reform Act," Lakeland, Florida *Ledger*, December 17, 2001. Rep. Adam Putnam (R-FL) is quoted: "Now we find that one of the guys that flew into the buildings in New York had voted in Florida," (referring to the Sept. 11 terrorist attacks on the World Trade Center towers). "Think about it," he said. "You are told you are entitled to public assistance and then almost in the same breath asked if you want to register to vote. Now, if you think that registering to vote is tied to getting assistance or to getting your driver's license, you are going to say, 'Yes.'"

votes in the Electoral College from Bush to Gore would have reversed the outcome of that election, so the voting of enough noncitizens to reverse the outcome in any one of those 11 states would have reversed the final outcome.

In Florida, with more than 1.5 million noncitizens of voting age, 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.[6] In fact, election observers reported that a "sizable number" of votes may have been cast by ineligible felons, illegal immigrants, and non-citizens.[7]

2004 Election - Wisconsin

More recently, FAIR obtained evidence of efforts by an ethnic advocacy group to get non-citizens to register to vote. FAIR enlisted the aid of two immigration reform activists who posed as illegal aliens attempting to register to vote. They were able to register in two Wisconsin counties, with the assistance of an organization known as *Voces de la Frontera*, in spite of the fact that the two individuals presented themselves as noncitizens. The Wisconsin case involved the registration of non-citizens residing legally in the U.S., but it might just as easily have involved illegal residents.

2004 Investigation – New York

Two years ago, DMV officials in New York, a state that supposedly does not permit illegal aliens to obtain driver's licenses, found that when they retroactively checked the Social Security Numbers provided by driver's license applicants, approximately 300,000 applications that had false or repeat numbers. This investigation did not study how many of these persons who were presumably in large measure illegal aliens fraudulently obtaining the state license also obtained at the same time registration as a voter. It seems reasonable to assume, however, that there may have been many thousands of such cases. And, while state officials began an effort to rescind the driver's licenses, there was no similar effort to eliminate any of the possible voter registrants from the voter rolls.

2005 Investigation - Utah

In Utah, Legislative Auditor General John Schaff said in a February 8, 2005 report to the President of the Utah Senate that more than 58,000 illegal immigrants had Utah drivers' licenses, nearly 400 of them used their license to register to vote in Utah, and a sampling of that group revealed at least 14 actually voted in an election. The state authorities had verified with the U.S. Department of Homeland Security that only 5 of those with suspicious registration to vote were naturalized U.S. citizens.

Other Indications of Illegal Voter Registration

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[6] "Ineligible Voters May Have Cast a Number of Florida Ballots," *Washington Times*, November 29, 2000.

[7] *Washington Times,* November 29, 2000.

Hawaiian Election officials found 543 Oahu residents who were not U.S. citizens had registered to vote. The officials speculated a number of factors may have resulted in the voter irregularities, including language barriers and the ease of voter registration.[8]

Instances are periodically reported of the discovery of illegal voting by aliens by immigration authorities during investigation of applicants for U.S. citizenship. Even though illegal voting could have made the alien ineligible for U.S. citizenship, the disqualification has been consistently waived. Therefore, the penalty in the law against illegal voting could be likened to a paper tiger.

Reports periodically surface about persons who are called for jury duty on the basis of voter registration rolls declining to serve on the basis that they are non-citizens. In one prominent case earlier this year a person who did in fact serve on a jury later notified the judge that she was not a U.S. citizen.

There is reason to believe that some illegal aliens applying for driver's licenses deliberately, rather than accidentally, seek voter registration. This is due to the fact that the employer sanctions law adopted in 1986 to deter employment of illegal aliens allows a voter registration card to be used as one of the documents that establishes the employee's identity. That document, plus a Social Security card, is all that is necessary to establish work eligibility. Thus, the fact that some non-citizens register to vote is not necessarily a harmless misunderstanding of the rules, as immigrants' rights groups contend.

The only control against noncitizens registering to vote is a required statement in the application form that the registrant is a U.S. citizen. With more than 20 million foreign-born residents who are not U.S. citizens in the country, including an estimated 11 to 13 million illegal residents, the potential for non-citizens voting is enormous given the ease of registration and lack of screening at the time of voting. That fact, combined with the razor-thin election margins of recent years suggests that there is the very real possibility that non-citizens have affected the outcomes of elections.

If the United States wants to prevent fraudulent voting, procedures must be adopted to verify the eligibility of individuals when they register, and then to verify the identity of voters when they vote. There must also be a heightened dedication to prosecute those who fraudulently register and vote. If there is no real penalty for illegal voting, it is unreasonable to expect that an 'honor system' to keep ineligible persons from voting will be effective. It is worth noting, that with the passage of Proposition 200, Arizona is was the first state to implement such measures. Approximately 32 other states are considering similar legislation.

Conclusion

The potential for illegal immigration has grown at a rapid pace as the number of non-citizen residents – both legal and illegal – has soared and registration to vote is done

[8] "Illegal Voters," *Honolulu Advertiser,* September 9, 2000.

without verification of U.S. citizenship. The recent wave of demonstrations around the country by aliens demanding amnesty has forcefully brought the magnitude of the problem home to the American public.

The American public is also increasingly aware of the issue of voter fraud. Recent comments by California Congressional candidate Francine Busby that "you don't need papers to vote" along with the sharp criticism leveled at her in response are further indicators that the problem has a real impact. It is entirely fitting that we take time now to examine our nation's election laws and debate what reforms are necessary to secure the integrity of the franchise.

Protecting our election process against fraud is vital to assuring the American public that their interest in our democratic form of government is protected. It undermines the principle of the rule of law to allow the opportunity to vote on people who are not legally entitled to have it. The size of the illegal alien population has become so large and the impediments to illegal voting are so few that this issue should no longer be ignored by this nation's policymakers.

The CHAIRMAN. Thank you.
Dr. Calingaert.

STATEMENT OF DANIEL CALINGAERT

Dr. CALINGAERT. Thank you, Mr. Chairman, honorable members. I appreciate the invitation to speak this morning.

I had the privilege of serving as Associate Director of the Carter-Baker Commission on Federal Election Reform. The commission noted that too many Americans lack confidence in our election process. Polls show about one in three Americans have doubts about the accuracy of the vote. The commission set out to bolster confidence in the election system by strengthening the integrity of the election process and, at the same time, expanding access and participation. This combination of focusing on integrity and access was the basis of a bipartisan package of reforms.

One of the most noted recommendations of the commission was for voter ID. The commission recommended voter ID to ensure that each person who appears at the polls is the same person who is listed on the voter registration list.

This is simply a basic and fundamental check on the integrity of the system. We have had lots of discussion earlier about fraud, and in the Commission's perspective fraud is probably not extensive, but it does occur and the main concern is that in close elections, fraud can affect the outcome. If we are trying to increase confidence in the election process, we need to have safeguards in place to detect and deter fraud and to verify the identity of voters.

The Carter-Baker Commission's recommendations differ from many other proposals on voter ID in significant respects. Others have talked about issuing free ID's to citizens who do not have driver's licenses. What the Carter-Baker Commission recommended was to base the voter ID on the REAL ID Act, so that driver's licenses issued under REAL ID would double as a voting card.

What this does is combines the process of issuing photo ID with the process of voter registration. In other words, when citizens are issued a REAL ID driver's license, they are automatically registered to vote, so if they go to the polling station, if there are issues with their voter registration, the fact that they would have a REAL ID card under the system would be proof that they are eligible to vote.

More importantly, the Commission recommended proactive measures from States to reach out to voters who aren't registered, who don't have ID, so that they could be issued free ID's and they can be registered. This is a very significant change in how things are done. Now states essentially play a passive role in voter registration. They wait for citizens to come to them.

What the Commission recommends is that States begin to take the initiative to reach out to voters, for instance, using mobile offices as they do in Michigan to go to college campuses, to nursing homes, to the key audiences who lack ID at the moment.

This combination of voter ID requirements with proactive, new measures to expand voter registration and to make free ID's available are what distinguishes the Carter-Baker Commission's recommendations, and I think this is a sound basis for bipartisan

compromise and a way to move forward in building an election system that will give confidence to all Americans.

Thank you.

The CHAIRMAN. Thank you very much.

[The statement of Dr. Calingaert follows:]

Testimony by Daniel Calingaert
Associate Director
Center for Democracy and Election Management
American University
Washington, D.C.

Committee on House Administration
U.S. House of Representatives
June 22, 2006

Bi-Partisan Compromise on Voter Identification Requirements

Mr. Chairman, Honorable Members, thank you for the opportunity to speak to you this morning about the recommendations of the Commission on Federal Election Reform, which was co-chaired by former U.S. President Jimmy Carter and former U.S. Secretary of State James A. Baker, III and was organized by the Center for Democracy and Election Management at American University.

The Carter-Baker Commission's recommendations aim to bridge the gap between Republicans and Democrats on critical issues of election reform, including voter identification requirements, and to forge consensus on ways to improve U.S. elections. Rather than seek consensus at the lowest common denominator, the Commission recognized that the primary concerns of each party were valid, and it put forward a bold package of proposals to address both sets of concerns.

The Carter-Baker Commission issued its report last September with 87 specific recommendations to build confidence in U.S. election systems. Polls taken around the time of the November 2004 elections indicated that about a third of Americans had doubts about the accuracy of the vote. The Commission's recommendations aim to bolster confidence both by improving ballot integrity and by expanding access to elections.

Voter identification ensures that each voter who arrives at the polls is the same person named on the registration list. About 40 million Americans move each year, and many urban residents do not know the people living in their own apartment building, let alone in their precinct. Some form of voter ID therefore is needed to check that voters are who they say.

While the available evidence of fraud does not indicate that it is extensive, there is no doubt that fraud occurs, and it could affect the outcome of a close election. The electoral system cannot inspire public confidence if no safeguards are in place to detect or deter fraud or to confirm the identity of voters.

The use of photo ID cards in today's society has become common. Photo IDs currently are needed to board a plane, to enter a federal building, and to cash a check. The security of the vote is equally important.

Voter ID requirements have proliferated in recent years. The number of states that require some form of voter ID has increased from 11 in 2001 to 25 today. Some states require photo ID, while others accept utility bills, affidavits, or other documents. In addition, 11 other states have considered bills to introduce or strengthen voter ID requirements.

Rather than allow disparate ID requirements to proliferate, and raise the risk that they might be applied in a discriminatory manner, the Carter-Baker Commission proposed a uniform system of voter ID. This system is designed both to enhance ballot security and to increase voter participation.

The Carter-Baker Commission recommends a national standard for voter ID based on the REAL ID card. As you know, the REAL ID Act 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 ID card. Individuals who receive a REAL ID card thus prove that they are also eligible to vote. Moreover, the National Voter Registration Act (known as "Motor Voter") has already linked voter registration to the process of obtaining a driver's license.

The use of REAL ID cards for voting purposes would allow a driver's license to double as a voting card. The only change needed would be to make a small notation on the front or back of the card to indicate whether the card-holder is a U.S. citizen.

Some have expressed concern that photo ID requirements are intended or will have the effect of disenfranchising voters. The Carter-Baker Commission shared this concern and thus developed proposals to expand voter participation. First of all, the proposals tie the photo ID directly to voter registration. Citizens who are issued REAL ID cards would be automatically registered to vote. Thus, if there is any problem with the registration of voters when they turn up at the polls, their ID card would provide proof of their eligibility to vote.

An estimated 88 percent of Americans have a driver's license, while only 72 percent of the voting aged population (according to the U.S. Census Bureau) or 86 percent of adult citizens (according to the U.S. Election Assistance Commission's Election Day Survey) are registered to vote. Implementation of the Carter-Baker Commission's recommendations therefore will increase the number of registered voters. But that is not enough.

The Commission is concerned about the 12 percent of Americans who do not have a driver's license. A photo ID requirement may create a barrier to voting unless it is combined with affirmative measures by states to make voter IDs accessible and available to all eligible citizens. The Carter-Baker Commission recommends that anyone who does not have a driver's license should be able to get a photo ID card free of charge.

The Commission also calls on states to take the initiative in reaching out to citizens both to register voters and to provide non-drivers with free ID cards. States should do so by deploying mobile offices, like the one used in Michigan, opening new offices, and using social service agencies to register voters and to issue IDs. The Carter-Baker Commission's proposals thereby should significantly expand the number of citizens who are both registered to vote and issued a photo ID card.

Under the Carter-Baker Commission's proposed system of voter registration and ID, states would be able to easily identify and locate registered voters who do not have ID cards. In addition, the proposed mobile offices would reach out to citizens who neither are registered nor have a driver's license and thus would bring new participants into the electoral process.

One additional safeguard is critical to prevent photo ID requirements from depressing voter participation: The Carter-Baker Commission recommends that voters without a photo ID should be able to cast provisional ballots. Until 2010, their votes would count if the signature they placed on the ballot matched the one on file with the election office. After 2010, people who forget their photo IDs could cast provisional votes that would be counted if they returned with their ID within 48 hours.

The overall point of the Commission's recommendations is that a mandatory photo ID will raise confidence in the electoral system and an affirmative program to expand voter registration and access to IDs will increase participation in elections. The combination of uniform photo ID requirements and expanded voter registration with free IDs sets the Carter-Baker Commission's recommendations apart from other proposals on voter ID.

Voter ID requirements remain controversial. In several states that considered new voter ID requirements, state legislatures split almost entirely along party lines. The Carter-Baker Commission recommendations, by contrast, offer a way to bridge the partisan divide.

The Commission's bipartisan plan combines constructive proposals from both major parties to modernize our nation's electoral systems. This plan defines a solid basis for consensus on the complex and sometimes contentious issues of election reform, including of voter ID requirements. By finding common ground, we can move towards an electoral system that simultaneously improves ballot access and election integrity and thereby gives confidence to all Americans.

The CHAIRMAN. Mr. Overton.

STATEMENT OF SPENCER OVERTON

Mr. OVERTON. Thank you, Mr. Chair. I am a law professor at George Washington University. My specialty is voting rights. I served as a commissioner on the Carter-Baker Commission. I am the author of this new book: Stealing Democracy, The New Politics of Voter Suppression. There is a chapter in this book on voter identification and its implications.

I am also the author of this academic paper that will be published in the University of Michigan Law Review entitled Voter Identification. I have submitted it as my written testimony for the record.

Mr. Chair, basically, political sound bites and political correctness have shaped this photo ID debate rather than facts. As a result, many people have embraced flawed assumptions by relying on a couple of false stories about voter fraud.

For example, in August of 2005, legislators in Wisconsin held a press conference claiming that a photo ID requirement was needed because they found that nine people who voted in Milwaukee in November 2004 also cast ballots in Chicago, Minneapolis, or Madison. The Republican-appointed U.S. attorney investigated all nine claims and found that none involved fraud, all involved different people with similar names or clerical errors.

Research shows that photo ID advocates regularly throw out broad examples of voting irregularities without knowing the details of the stories they cite.

Photo ID advocates, like John Fund of The Wall Street Journal, cite stories of multiple registrations, vote buying, improper absentee balloting or voting by ineligible former felons. Research shows that these stories were missing critical facts and that a photo ID wouldn't have prevented these problems.

One example here would be Fund claims that several of the 9/11 terrorists were registered to vote in Virginia. Virginia election officials have investigated that claim, they haven't found evidence of that assertion. But even if they were registered, a photo ID requirement wouldn't prevent the 9/11 hijackers from voting because the 19 terrorists had 63 drivers licenses between them.

There are many other examples in my paper, the Michigan Law Review paper, of misleading claims of fraud.

Now while fraud may be rare here, data shows that this bill would suppress the legitimate votes of millions of Americans. About 20 million voting age Americans don't have a State-issued ID. That is more people than in New Mexico, Delaware and 14 other States combined. Representative Lofgren talked about Wisconsin, which is an important study, and I won't repeat that.

Now, some photo ID advocates ignore this data and instead they rely on rhetoric that legitimate voters won't be excluded, because photo IDs are needed to board a plane and buy cigarettes. This compares apples and oranges. So, for example, it makes sense to prevent a thousand legitimate travelers from flying who don't have ID if we can stop one terrorist who will blow up the plane. But it doesn't make sense with voting to exclude a thousand legitimate voters just to stop one possible fraudulent voter.

Businesses charge money for airline tickets and cigarettes, but charging just $2 to vote is unconstitutional. Why? Because it excludes certain citizens and thwarts the will of the people.

Let me also say as a law professor, a court would likely find this particular bill before us unconstitutional because it would likely exclude so many legitimate voters and so few fraudulent ones, it wouldn't be appropriately tailored and would be found to be an undue burden on the right to vote. Also, because the bill provides no funds for photo identification cards and documents like birth certificates and passports and naturalization papers, the bill constitutes an unconstitutional poll tax.

We have got real problems in our democracy and Americans want us to fix those problems by using real tools that work. Mr. Bettencourt mentioned a number of tools they use to prevent fraud in Texas that already work. Unfortunately, this bill would throw the baby out because the baby has a drop of bathwater on the baby's arm.

In our Nation we need to spread democracy around the world, that is absolutely right, but we also need to protect democracy here in the United States for people at home. Our voter participation is very low. We are in the bottom 19 percent of all democracies in the world in voter participation.

The excessive regulation and unfunded Federal mandate in this current bill would suppress voter participation and undermine the integrity of government of, by and for the people.

Thank you very much.

The CHAIRMAN. Thank you very much.

[The statement of Mr. Overton follows:]

WRITTEN TESTIMONY OF PROFESSOR SPENCER OVERTON FOR THE COMMITTEE ON HOUSE ADMINISTRATION

VOTER IDENTIFICATION

June 22, 2006

This written testimony will be appear as an article entitled "Voter Identification" published in The University of Michigan Law Review

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Biography:

Spencer Overton, a tenured professor at the George Washington University Law School, teaches courses in voting rights, civil rights, and property. Professor Overton served as a commissioner on the 2005 Carter-Baker Commission on Federal Election Reform, which was co-chaired by former U.S. President Jimmy Carter and former U.S. Secretary of State James Baker. Overton graduated with honors from Hampton University and Harvard Law School, clerked for U.S. Court of Appeals Judge Damon J. Keith, and returned to Harvard to serve as the Charles Hamilton Houston Fellow in 1999. He currently sits on the boards of the Center for Responsive Politics, Common Cause, and Demos. Professor Overton's scholarship on election law has appeared in the *Harvard Civil Rights-Civil Liberties Law Review*, the *North Carolina Law Review*, the *University of Pennsylvania Law Review*, the *Texas Law Review*, the *Vanderbilt Law Review*, the *Washington & Lee Law Review*, and the *UCLA Law Review*. His book, *Stealing Democracy: The New Politics of Voter Suppression*, was released by W.W. Norton in June 2006.

VOTER IDENTIFICATION

*Spencer Overton**

ABSTRACT

In the wake of closely contested elections, calls for laws that require voters to present photo identification as a condition to cast a ballot have become pervasive. Advocates tend to rely on two rhetorical devices: (1) anecdotes about a couple of elections tainted by voter fraud; and (2) "common sense" arguments that voters should produce photo identification because the cards are required to board airplanes, buy alcohol, and engage in other activities. This Article explains the analytical shortcomings of anecdote, analogy, and intuition, and applies a cost-benefit approach generally overlooked in election law scholarship. Rather than rushing to impose a photo identification requirement for voting, policymakers should instead examine empirical data to weigh the costs and benefits of such a requirement. Existing data suggests that the number of legitimate voters who would fail to bring photo identification to the polls is several times higher than the number of fraudulent voters, and that a photo identification requirement would produce political outcomes that are less reflective of the electorate as a whole. Policymakers should await better empirical studies before imposing potentially antidemocratic measures. Judges, in turn, should demand statistical data to ensure that voter identification procedures are appropriately tailored to deter fraudulent voters rather than legitimate ones and do not disproportionately exclude protected classes of voters.

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* Michael Abramowicz, Bob Bauer, David Becker, Tom Colby, Jamie Grodsky, Paul Herrnson, David Hyman, Michael Kang, Ellen Katz, Leslie Overton, Richard Pildes, Peter Smith, Amanda Tyler, Tova Wang, and Fane Wolfer read earlier drafts of this Article and provided helpful comments. The Article also benefited from my interaction with Tom Daschle and Raul Yzaguirre in formulating our dissent to the Commission on Federal Election Reform's photo identification proposal; conversations with Wendy Weiser and Justin Levitt of the Brennan Center for Justice at NYU School of Law during the drafting of our Response to the Report of the 2005 Commission on Federal Election Reform; and discussions with Adam Cox, Heather Gerken, Michael Kang, and Daniel Tokaji during the drafting of our letter to the U.S. Justice Department regarding Georgia's photo identification law. Exchanges with Steve Carbo, David Dill, John Duffy, Chris Edley, Grant Hayden, Gracia Hillman, Ellen Katz, Orin Kerr, Bill Kovacic, Lori Minnite, Jon Molot, Peter Swire, Dan Tokaji, Clyde Wilcox, and Brenda Wright also helped develop my thinking. Daniel Taylor provided invaluable research assistance.

Spencer Overton
Voter Identification
UNIVERSITY OF MICHIGAN LAW REVIEW (forthcoming)
Written Testimony for the Committee on House Administration
June 22, 2006 Version

INTRODUCTION

I. THE VOTER IDENTIFICATION LANDSCAPE
- *A. Existing State Laws for Identifying Voters*
- *B. Photo Identification Requirements to Vote*

II. THE SHORTCOMINGS OF ANECDOTE, ANALOGY, AND INTUITION TO JUSTIFY PHOTO IDENTIFICATION
- *A. Misleading and Unrepresentative Anecdotes About Voter Fraud*
- *B. Flawed Analogies*

III. THE NEED FOR EMPIRICAL EVIDENCE TO BETTER UNDERSTAND FRAUD AND ACCESS
- *A. Toward Better Data on the Extent of Fraud*
- *B. Toward Better Data on Legitimate Voters Excluded by Photo Identification*

IV. THE LEGAL STATUS OF PHOTO IDENTIFICATION REQUIREMENTS
- *A. Burdening the Fundamental Right to Vote*
- *B. Photo Identification Fees as Poll Taxes*
- *C. Abridging Voting Rights Along Racial Lines*
- *D. "Individual Responsibility" in the Context of Democracy*

V. PHOTO IDENTIFICATION SUPPLEMENTS AND ALTERNATIVES
- *A. Supplements that May Enhance Voter Access*
- *B. Alternatives that Allow Voters Who Lack Photo Identification to Cast Ballots*

CONCLUSION

INTRODUCTION

I served as a member of the Commission on Federal Election Reform, a bipartisan, private commission tasked with proposing solutions to America's most pressing election problems. Former Democratic President Jimmy Carter and former Republican U.S. Secretary of State James Baker co-chaired the 21-member body,[1] and other commissioners included former members of Congress, cabinet officials, and university presidents.[2] On September 19, 2005, the "Carter-Baker Commision" released 87 different recommendations, one of which proposed that voters produce a photo identification card as a condition to cast a ballot. I dissented from the proposed photo identification requirement, as did two other commission members.[3]

The Commission's photo identification proposal received extensive media attention and fueled a firestorm of photo identification proposals across the nation.[4] In 2005, Georgia and Indiana adopted laws making them

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[1] President Carter and Secretary of State Baker had their own experiences with election problems. President Carter led delegations that monitored elections in countries around the world, and Secretary of State Baker led the George W. Bush campaign during the disputed Florida presidential election recount in 2000.

[2] Former U.S. Senate Democratic Leader Tom Daschle, former Democratic Congressman and 9/11 Commission Chair Lee Hamilton, former Republican Congresswoman Susan Molinari, and former Republican U.S. Secretary of Commerce Robert Mosbacher were some of the other more recognizable commissioners. Robert Pastor, an advisor to President Carter in trips abroad to monitor elections, organized the Carter-Baker Commission in early 2005 through the Center for Democracy and Election Management and served as Executive Director of the Carter-Baker Commission. *Cf.* Robert A. Pastor, *Improving the U.S. Electoral System*, 3 ELECTION L.J. 584, 588 (2004) (proposing a variety of election reforms, including a photo identification requirement to vote). For a complete list of commission members, go to http://www.american.edu/ia/cfer/members.htm (last accessed Mar. 14, 2006).

[3] While several Commission members expressed strong criticisms of a photo identification requirement during our final Commission meeting, only three of us issued a formal dissent—former U.S. Senator Tom Daschle, former National Council of La Raza President Raul Yzaguirre, and myself. COMM'N ON FED. ELECTION REFORM, BUILDING CONFIDENCE IN U.S. ELECTIONS 88-89 (2005) *available at* http://www.american.edu/ia/cfer/report/full_report.pdf (last accessed Jan. 6, 2006). Unfortunately, the three of us were prevented from including in the Report an extensive analysis of a photo identification requirement's costs and benefits because of a rule limiting dissent to 250-words per commissioner that Executive Director Robert Pastor first announced at our final meeting.

[4] See, e.g., Dan Balz, *Carter-Baker Panel to Call for Voting Fixes: Election Report Urges Photo IDs, Paper Trails And Impartial Oversight*, WASH POST, Sep. 19, 2005, at A3; Jimmy Carter & James A. Baker III, *Voting Reform is in the Cards*, NY TIMES, Sept. 23, 2005, at A19; Brian DeBose, *Panel*

the only states to prohibit citizens from casting a ballot unless they produce photo identification, and bills that tighten voter identification requirements are currently pending in Congress and 29 state legislatures.[5] Polls show that 81 percent of Americans favor or strongly favor requiring voters to produce a photo identification card before voting.[6] Several recommendations of the Commission's 2001 predecessor—the Carter-Ford Commission—were enacted into law in the Help America Vote Act of 2002,[7] and hopeful photo identification advocates repeatedly cited the 2005 Carter-Baker Commission's recommendation to bolster their proposals.[8]

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recommends photo ID for voters, WASH. TIMES, Sept. 20, 2005, at A4; James Gerstenzang, *Election Overhaul is Urged*, L.A. TIMES, Sep. 19, 2005, at A7; John Harwood, *Panel on Elections Proposes Changes*, WALL ST. J., Sep. 20, 2005, at A18; *Report urges photo IDs to curb vote fraud*, COMMERCIAL APPEAL (Memphis, TN), Sept. 20, 2005, at A4; Sep. 19, 2005, at A16; News Hour with Jim Lehrer (PBS television broadcast Sep. 19, 2005).

[5] S. 414, 109st Cong., 2d Sess. § 203 (2005) (proposed legislation that would require all in-person voters in federal elections to present current and valid photo identification before voting).

[6] *See* HART & MCINTURFF, NBC NEWS AND THE WALL STREET JOURNAL, Study # 6062 (2006), at 13 http://online.wsj.com/public/resources/documents/poll20060426.pdf. (poll conducted in April 2006 finding that 62 percent strongly favor the showing of a photo identification before voting, 19 percent somewhat favor, 12 percent not sure, 3 percent somewhat opposed and only 4 percent strongly opposed). JOHN FUND, STEALING ELECTIONS: HOW VOTER FRAUD THREATENS OUR DEMOCRACY, 5 (2004) (citing a Rasmussen poll showing that 82 percent of Americans believe that "people should be required to show a driver's license or some other form of photo ID before they are allowed to vote").

[7] Congress adopted the 2001 Carter-Ford Commission's proposals for provisional ballots, statewide voter registration lists, and the creation of the Election Assistance Commission. NAT'L COMM'N ON FED. ELECTION REFORM, TO ASSURE PRIDE AND CONFIDENCE IN THE ELECTORAL PROCESS (2001) *available at* http://millercenter.virginia.edu/programs/natl_commissions/commission_final_report/1_front_text_to_page_15.pdf (last accessed Mar. 19, 2006). The Century Fund and the Miller Center of Public Affairs at the University of Virginia organized the Carter-Ford Commission. *Id.*

[8] *See, e.g*, Gary Andres, Editorial, *Public Backs Voter IDs; But Liberals Don't Get It*, WASH. TIMES, Oct. 17, 2005, at A19 ("One of the commission's central recommendations calls for all voters to show a standard photo ID, like a driver's license, as a condition to vote."); Jo Mannies, *Measure to Require Photo IDs Stirs Outcry*, ST. LOUIS POST-DISPATCH, Feb. 12, 2006, at B1 ("Thor Hearne, a prominent Republican who has been pushing [photo ID] legislation in several states . . . notes that photo identification was among the recommendations of the bipartisan Commission on Federal Election Reform"); *Photo ID for Voters Discourages Fraud*, Editorial, LANCASTER NEW ERA (Lancaster, Pa.), Sep. 30, 2005, at A10 (a national photo ID requirement is a "practical, relatively simple way to eliminate the opportunity for voter fraud . . . [and] has the endorsement of a private commission"); Dane Smith, *Panel OKs Bill Requiring Citizenship Proof to Vote*, STAR TRIB. (Minneapolis, Minn.), Mar. 16, 2006, at 1B (Republican sponsor of state legislation to require voters to show proof citizenship notes that the bipartisan commission recommended a photo ID requirement).

This Article is the first academic work to analyze photo identification requirements in depth, and it employs an empirical cost-benefit approach to expose the erroneous assumptions of conventional wisdom.[9] It argues that before jumping on the photo identification bandwagon, policymakers should examine closely empirical data about the magnitude of voter fraud and the extent to which a photo identification requirement would reduce participation by legitimate voters. While a small amount of voter fraud hypothetically could determine a close election, the exclusion of 20 million Americans who lack photo identification could erroneously skew a larger number of elections.[10]

No systematic, empirical study of the magnitude of voter fraud has been conducted at either the national level or in any state to date,[11] but the best existing data suggests that a photo identification requirement would do more harm than good. An estimated 6 to 10 percent of voting-age Americans do not possess a state-issued photo identification card, and in states such as

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[9] A few other articles list photo identification proposals along with a bundle of other election reforms or election law developments but do not analyze the proposals extensively. *See Developments in the Law: Voting and Democracy*, 119 HARV. L. REV. 1144, 1154 (2006); Richard L. Hasen, *Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown*, 62 WASH. & LEE L. REV. 937, 969-70 (2005); Publius, *Securing the Integrity of American Elections: The Need for Change*, 9 TEX. REV. LAW & POL. 277, 288-89 (2005); Pastor, *supra* note 2, at 588. *See also* Dan Eggen, *Official's Article on Voting Law Spurs Outcry*, WASHINGTON POST, Apr. 13, 2006, at A19 (identifying a senior lawyer in the Justice Department's Civil Rights Division who played a critical role in overruling career attorneys and approving Georgia's identification program, Hans von Spakovsky, as "Publius," the author of the Texas Review of Law & Politics article).

[10] *See* NAT'L COMM'N ON FED. ELECTION REFORM, *supra* note 7, at 60-66 (Chapter Six, Verification of Identity) (asserting that six percent to ten percent of voting-age Americans (approximately 11 million to 20 million potential voters) do not possess a driver's license or a state-issued non-driver's photo identification card); Brennan Ctr. for Justice, NYU Sch. Of Law & Spencer Overton, Response to the Report of the 2005 Commission on Federal Election Reform 3 n.10 (2005) (estimating that 22 million voting-age citizens lack a driver's license based on analysis of 2003 Census and Federal Highway Administration data).

[11] Chandler Davidson, Tanya Dunlap, Gale Kenny, & Benjamin Wise, Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both? 99 (2004) *available at* http://www.votelaw.com/blog/blogdocs/GOP_Ballot_Security_Programs.pdf (last accessed Feb. 12, 2006). Rather than wait 12 to 18 months for teams of researchers to compile and publish the extensive studies proposed in Part III and risk the chance that politicians in dozens of states will continue to introduce and enact photo identification requirements that could potentially exclude millions of legitimate voters, this Article compiles the best data currently available on voter fraud and voter access to assert that lawmakers should place a moratorium on more restrictive voter identification proposals until they obtain a better empirical understanding of the extent and nature of voter fraud.

Wisconsin 78 percent of African-American men ages 18-24 lack a driver's license.[12] By comparison, a study of 2.8 million ballots cast in 2004 in Washington State showed only 0.0009 percent of the ballots involved double voting or voting in the name of deceased individuals.[13] If further study confirms that photo identification requirements would deter over 6,700 legitimate votes for every single fraudulent vote prevented, a photo identification requirement would increase the likelihood of erroneous election outcomes.

This Article is important because political sound bites and media reports have shaped the photo identification debate rather than comprehensive academic analysis. As a result, many Carter-Baker Commission members, Justice Department officials, members of Congress, governors, state legislators, newspaper columnists, and average citizens have embraced flawed assumptions by relying on a story or two about voter fraud. While anecdotes about fraud are rhetorically persuasive because people without specialized knowledge can understand stories, the narratives often contain false information, omit critical facts, or focus on wrongdoing that a photo identification requirement would not prevent. Even when true, anecdotes do not reveal the frequency of similar instances of voter fraud.

The current popular debate has also relied on flawed analogies, with advocates asserting that photo identification cards are commonly required to curb terrorism, prevent credit card fraud, and protect minors. They do not, however, explore why people are allowed to engage in many activities without photo identification, such as traveling by bus and subway, making credit card purchases via telephone, accessing pornography over the Internet, and voting via absentee ballot. More important, erroneous exclusion of legitimate participants carries greater costs in the voting context because assessing the will of the people as a whole is an essential objective of democracy.

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[12] *See* NAT'L COMM'N ON FED. ELECTION REFORM, *supra* note 7, at 60-66 (Chapter Six, Verification of Identity); John Pawasarat, *The Driver License Status of the Voting Age Population in Wisconsin* 4-5 (June 2005), *available at* http://www.uwm.edu/Dept/ETI/barriers/DriversLicense.pdf.

[13] Borders v. King County, No. 05-2-00027-3 (Wash. Super. Ct. Chelan County June 24, 2005), *available at* http://www.secstate.wa.gov/documentvault/694.pdf.

Politicians and opinion leaders critical of photo identification proposals regularly recite talking points about threats to voter participation by the poor and minorities, but often fail to quantify this assertion or elaborate on the value of widespread participation. Widespread participation furthers democratic legitimacy by producing a government that reflects the will of the people and allowing diverse groups of citizens to hold government officials accountable for their decisions.[14] Various constitutional and statutory provisions promote broad participation by eliminating voter qualifications that many believed were reasonable, such as paying a $2 poll tax or exhibiting an ability to read. As the U.S. Supreme Court stated:

> Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.[15]

This Article engages in a careful and meticulous analysis of the conceptual, empirical, and legal issues arising from photo identification proposals, effectively establishing the terms of an inevitable academic debate on the subject.

In addition, the Article applies an empirical approach that has the potential to reframe various election law controversies.[16] Current scholarship often rests upon isolated democratic goals and unsubstantiated factual assumptions. Election law, however, involves competing values, such as access and integrity. Votes provide a metric that allows for costs and benefits to be quantified. Instead of relying on personal assumptions about how politics works,[17] scholars and lawmakers should use data to resolve

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[14] *See infra* Part III.B.

[15] Reynolds v. Sims, 377 U.S. 533, 561-62 (1964).

[16] Only a few legal scholars have emphasized empirical data in the law of democracy context. *See, e.g.*, Richard H. Pildes, *The Politics of Race*, 108 HARV. L. REV. 1359, 1360-62 (1995) (reviewing Quiet Revolution in the South (Chandler Davidson & Bernard Grofman eds., 1994) (suggesting that courts and scholars should rely on empirical data rather than mere anecdote and speculation in the context of voting rights, and asserting that "values cannot be debated apart from underlying facts and assumptions about facts.").

[17] *Cf.* Daniel P. Tokaji, *The Moneyball Approach to Election Reform,* ElectionLaw@Moritz, Oct. 18, 2005, *available at http://moritzlaw.osu.edu/electionlaw/comments/2005/051018.php* (last accessed Feb.

controversies such as how many fraudulent voters relative to legitimate voters are excluded by photo identification requirements, partisan challengers at the polls, restrictions on voter registration organizations, and various methods of purging voting rolls.

This approach also helps in balancing access and fiscal restraint. For example, if voting lines during presidential elections average an hour, how much would it cost to reduce lines to 30 minutes, 15 minutes, or 5 minutes? What societal gains are realized through increased productivity by those who no longer wait an hour to vote, and increased political participation by those who refuse to wait in long lines? To what extent does election-day registration enhance turnout, and what are the increased administrative costs and risks of fraud? Real data allows for a more honest and thoughtful discussion about the structure of democracy, which is especially useful in light of the self-serving platitudes that incumbent politicians often bring to the debate. While empirical data does not answer all questions, it is an essential component in the quest for better rules.

More and more, other areas of the law reject urban myths and turn to empirical data for insight. The study of law and economics quantifies problems and analyzes whether the benefits of legal solutions justify their costs.[18] University of Chicago law professor Cass Sunstein observes that people "often deal poorly with the topic of risk," and asserts that "sensible policymakers should generally follow science and evidence." In 2000, Congress passed the Data Quality Act, which instructs the Office of Management and Budget to issue guidelines that ensure the "quality, objectivity, utility, and integrity of information" to improve decision making by federal agencies.[19]

27, 2006) (website entry asserting that election law should be based on hard data and rigorous analysis rather than merely anecdotes and intuition).

[18] *See, e.g.*, STEPHEN BREYER, REGULATION AND ITS REFORM (1982); ROBERT COOTER & THOMAS ULEN, LAW AND ECONOMICS (1988); RICHARD A. POSNER, ECONOMIC ANALYSIS OF LAW (5th ed. 1998); Ronald H. Coase, *The Problem of Social Cost*, 3 J. LAW & ECON. 1 (1960).

[19] Pub. L. No. 106-554, 515, 114 Stat. 2763, 2763A-153 (2000). *See also* Wendy E. Wagner, *Commons Ignorance: The Failure of Environmental Law to Produce Needed Information on Health and the Environment*, 53 DUKE L.J. 1619 (2004) (commenting on the need for better data in formulating environmental law); Cass Sunstein, *The Laws of Fear*, 115 HARV. L. REV. 1119, 1123 (2002) (reviewing PAUL SLOVIC, THE PERCEPTION OF RISK (2000)); *cf.* STEPHEN BREYER,

Better data is also essential to determining whether election regulations pass constitutional and statutory muster. Judges wander into the political thicket blindly, for example, when they make decisions based on their own assumptions about fraud and voter access to photo identification rather than empirical evidence. The extent to which a regulation that requires photo identification not only deters fraudulent votes but also inhibits legitimate ones reflects its overinclusiveness and its burden on the fundamental right to vote. Better data will show whether a photo identification requirement abridges the franchise contrary to the Voting Rights Act and the Constitution's prohibition on poll taxes.

Part I of this Article examines the various methods states currently use to identify voters and the emerging conflict over photo identification as an absolute requirement to vote. Part II reveals that anecdotes used to justify photo identification requirements are often unrepresentative, misleading, and even false, and it shows how oversimplified analogies fall short under scrutiny. Part III compiles the best existing data on the pervasiveness of fraud and the number of voters who lack photo identification, and it provides a roadmap for obtaining even better empirical information. Part IV explains how data plays a critical role in assessing the constitutional and statutory status of photo identification requirements, and Part V reviews several less restrictive alternatives to photo identification requirements.

I. THE VOTER IDENTIFICATION LANDSCAPE

The U.S. Supreme Court's decision in *Bush v.* Gore ratified presidential election returns that George W. Bush received one more vote than Al Gore for every 11,100 votes cast in Florida,[20] and reminded the nation that every vote counts in a closely divided political environment.

In response, civil rights activists focused largely on reforms designed to improve access, such as replacing obsolete punch card machines that had

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BREAKING THE VICIOUS CIRCLE: TOWARD EFFECTIVE RISK REGULATION 10-29, 59-68 (1993) (asserting that regulators devote extensive resources to insignificant problems and too few resources to significant problems, and proposing risk specialists to assess risk and redirect regulatory resources).

[20] 531 U.S. 98 (2000).

relatively high voter error rates, providing provisional ballots to voters whose names do not appear on the voting rolls, and restoring voting rights to felons who had completed their prison sentences.

An alternative movement characterized fraud as the most significant threat to democracy. Political groups that purport to "assist" senior citizens with voting effectively cast absentee ballots for those with dementia.[21] Poll workers stuff ballot boxes to benefit their favored candidate.[22] Ineligible voters, such as former felons, noncitizens, nonresidents, and people who have already voted, cast illegal ballots with impunity. The National Voter Registration Act of 1993 worsened these problems, advocates argued, because it limited the extent to which officials could purge deadwood voters from the polls.[23] According to integrity advocates, a photo identification requirement at the polls would solve some of these problems.[24]

The claims about voter fraud arose from an earlier movement that focused on the integrity of elections in the 1960s.[25] Democrat John F. Kennedy beat Republican Richard Nixon by only 0.2 percent of the popular

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[21] FUND, *supra* note 6, at 44, 47; *see also* Paul Applebaum, Richard Bonnie, Brian James, Rosalie Kane, Pamela Karlan, Jason Karlawish, David Knopman, Constantine Lyketsos & Christopher Patusky, *Addressing the Ethical, Legal, and Social Issues Raised by Voting by Persons with Dimantia*, 292 JAMA 1345, 1348 (2004) (assering that absentee voting by persons with dementia creates a potential pool of votes that can be exploited by third parties).

[22] *Id.* at 8.

[23] *Id.* at 4, 23-25, 41-55. The National Voter Registration Act, otherwise known as the "Motor Voter" law, directs states to make "a reasonable effort to to remove the names of ineligible voters from the official lists of eligible voters" where voters have died or moved to another jurisdiction, but also prevents states from removing voters for failing to vote unless they have not voted in two or more consecutive elections. National Voter Registration Act of 1993, Pub. L. 103-31, 107 Stat. 77 (1993); codified at 42 U.S.C. §§ 1973gg-6.

[24] *See* FUND, *supra* note 6, at 136-139.

[25] Although the anti-fraud movement took on a national partisan cast that implicated race following the 1960 presidential election, concerns about fraud and voter suppression existed decades earlier. In 1928, the Committee on Election Administration of the National Municipal League called for "improving the registration machinery for the purpose of preventing fraudulent voting." EARL R. SIKES, STATE AND FEDERAL CORRUPT-PRACTICES LEGISLATION 58-60 (1928). The Committee asserted that "the present registration systems do not properly provide for the purging of dead wood from the registration lists." *Id.* at 59. In response, 38 passed statutes to deal with the problem. *Id.* at 70; *see also* ANDREW GUMBEL, STEAL THIS VOTE: DIRTY ELECTIONS AND THE ROTTEN HISTORY OF DEMOCRACY IN AMERICA 14 (2005). Additionally, several state political parties employed ballot protection teams to challenge voters' literacy and citizenship at the polls prior to 1960.

vote in the 1960 presidential contest, and some alleged that fraud in Texas and Illinois cost Nixon the election.[26] Republicans responded by organizing "Operation Eagle Eye," an intricate anti-fraud campaign designed to detect and eliminate unqualified voters from registration rolls, challenge the qualifications of suspicious voters at the polls, and deter fraud through securing press coverage of the security program and taking photographs of voters at polling places.[27] Republicans deployed tens of thousands of poll challengers in the 1964 presidential election, many of whom were concentrated in 36 major metropolitan Democratic strongholds.[28] Democrats and civil rights groups charged that Operation Eagle Eye deterred legitimate voter participation and intimidated voters of color.[29] Similar ballot security efforts continued in subsequent elections, accompanied by claims of voter suppression.[30]

Following the closely contested 2000 presidential contest, Congress passed the Help America Vote Act of 2002.[31] The Act was a broad election reform package that reflected a series of compromises between Democrats largely interested in access, and Republicans focused on fraud prevention. The Act enhanced access by providing provisional ballots to registered voters whose names do not appear on the rolls,[32] but the law also required that all first-time voters who registered by mail provide photo or non-photo documentary identification (such as a utility bill or bank statement) when they arrive at the polls.[33] States remain split as to how other voters must identify themselves.

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[26] *See* GUMBEL, *supra* note 26, at 161-69.

[27] *See* DAVIDSON, ET AL., *supra* note 11, at 25-35.

[28] *Id.* at 26.

[29] *Id.* at 35.

[30] *Id.* at 40-95 (2004) (documenting ballot security programs from 1968 to 2004, and detailing 13 case studies of "ballot security excesses").

[31] As discussed above, Congress adopted many of the recommendations proposed by the 2001 Carter-Ford Commission on Federal Election Reform. The Carter-Ford Commission explicitly rejected a proposal for voter identification requirements at the polls.

[32] 42 U.S.C. § 15482(a).

[33] *Id.* at § 15483(b). The Help America Vote Act requires that voters produce a copy of "valid photo identification, or . . . a copy of a current utility bill, bank statement, government check, pay check, or other government document that shows the name and address of the voter." 42 U.S.C. § 15483(b).

A. Existing State Laws for Identifying Voters

As of 2005, only Georgia and Indiana required photo identification as an absolute condition to vote. The other 48 states fell into four general categories.[34]

No documentary identification required. In 2005, two-thirds of the U.S. population lived in the majority of states that did not request documentary evidence at the polls beyond federal requirements for first-time voters.[35] In

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[34] While states outside of Georgia and Indiana generally fall into one of the four categories listed below, some states provide additional detailed rules. Alaska, for example, allows a voter who lacks documentary identification to cast a ballot if he or she is identified by poll workers. ALASKA STAT. § 15.15.225 (Michie 2005); MO. REV. STAT. § 115.427 (2005). Voters in Louisiana who lack photo identification are subject to challenge. LA. REV. STAT. ANN. §§18:562, 18:565 (West 2005). Many states that require documentary identification as an absolute requirement to vote allow those without documentary identification to cast a provisional ballot that officials will count if the voter presents the proper documentation to an appropriate election official within one or two days. *See, e.g.* COLO. REV. STAT. §§ 1-7-110 (2005).

[35] As of July 1, 2005, the population of the District of Columbia and the 28 states that did not request documentary identification at the polls was 196,194,611 out of a total U.S. population of 296,410,404. U.S. Census Bureau, U.S. Dep't of Com., Annual Estimates of the Population for the United States, and for Puerto Rico: April 1, 2000 to July 1, 2005 (2005), *available at* http://www.census.gov/popest/states/NST-ann-est.html (last accessed Feb. 17, 2006). The full list of such states include California, the District of Columbia, Idaho, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas, Utah, Vermont, West Virginia, Wisconsin, and Wyoming. CAL. ELECTIONS CODE § 14243 (Deering 2005); D.C. CODE ANN. § 1-1001.07 (2005); Board of Elections and Ethics, District of Columbia, District of Columbia Voter Guide 3 (2004) available at http://www.dcboee.org/voterinfo/voter_guide.shtm (last accessed Jan. 21, 2006); IDAHO CODE § 34-410 (2005); 10 ILL. COMP. STAT. 5/17-9 (2005); Ill. State Board of Elections, Illinois Voter Information, available at http://www.elections.state.il.us/Downloads/VotingInformation/PDF/Illinois_Voter_Information.pdf (last accessed Jan. 5, 2006); IOWA CODE ANN. § 49.77 (West 2005); ME. REV. STAT. ANN. tit. 21-A, § 671 (West 2005); MD. CODE ANN., Election Law § 10-310 (2005); MASS. GEN. LAWS ANN. ch. 54, § 76 (2005); MICH. COMP. LAWS §§ 168.727, 168.736 (2005); MINN. STAT. § 204C.10 (2005); MISS. CODE ANN. § 23-15-541 (2005); NEB. REV. STAT. § 32-914 (2005); NEV. REV. STAT. §§ 293.285, 293.272, 293.283 (2005); N.H. REV. STAT. ANN. § 659:13 (2005); N.J. STAT. ANN. § 19:15-17 (West 2005); N.Y. ELEC. LAW §§ 8-302, 8-404 (Consol. 2005); N.C. GEN. STAT. § 163-166.7 (2005); OHIO REV. CODE ANN. § 3505.18 (Anderson 2005); OKLA. STAT. tit 26, § 7-114 (2005); OR. REV. STAT. § 254.385 (2003); R.I. GEN. LAWS § 17-19-24 (2005); TEX. ELEC. CODE ANN. §§ 63.001, 63.0011 (Vernon 2005); UTAH CODE ANN. § 20A-3-104 (2005); VT. STAT. ANN. tit. 17, § 2563 (2005); W. VA. CODE ANN. § 3-1-34 (2005); WIS. STAT. § 6.79 (2005); WYO. STAT. ANN. § 22-3-118 (Michie 2005). Although Kansas and Pennsylvania do not request documentary evidence from most voters, they require all first-time voters (not just first-time voters who registered by mail, as required of all states by the federal Help America Vote Act) to produce documentary identification at their polling place to cast a vote. KAN.

these states poll workers check a voter's name off of pre-printed lists of registered voters when he or she arrives at the polls to cast a vote. Voters establish their identity through various methods, such as signing an affidavit under penalty of perjury,[36] taking an oral oath,[37] reciting their birth date and address to the poll worker,[38] or signing a poll book that is compared to the voter's signature on file.[39]

Documentary identification requested, not required. A handful of states request that voters produce documentary identification and give them the option to produce either a photo identification card, such as a driver's license, or a non-photographic form of identification, such as a utility bill, bank statement, government check, or paycheck.[40] In these states, voters who do not bring documentary identification to the polls can establish their identity by signing an affidavit or by some other means.[41]

STAT. ANN. § 25-2908 (2005); 25 PA. CONS. STAT. § 3050 (2005). In 1996, Michigan passed a law that requested photo identification but allowed voters without an identification to sign an affidavit to establish their identity. MICH. COMP LAWS ANN. § 168.523 (West 2006) ("If the elector does not have an official state identification card, operator's or chauffeur's license as required in this subsection, or other generally recognized picture identification card, the individual shall sign an affidavit to that effect before an election inspector and be allowed to vote as otherwise provided in this act. However, an elector being allowed to vote without the identification required under this subsection is subject to challenge as provided in section 727."). The law was never implemented, however, because the Michigan Attorney General issued an advisory opinion that found the identification requirement unconstitutional. At the request of Republican state legislators, the Michigan Supreme Court recently agreed to issue an advisory opinion on the constitutionality of the 1996 law (the five Republican-nominated justices voted to issue the advisory opinion and the two Democrat nominees opposed the opinion). Dawson Bell, *Court Jumps Into Dispute over Voter ID Checks*, DETROIT FREE PRESS, April 27, 2006, available at http://www.freep.com/apps/pbcs.dll/article?AID=/20060427/NEWS06/604270623&template=printart (last accessed June 7, 2006).

[36] *See, e.g.,* IOWA CODE ANN. § 49.77 (West 2005).

[37] *See, e.g.,*CAL. ELECTIONS CODE § 14243 (Deering 2005).

[38] *See, e.g.,*MD. CODE ANN., Election Law § 10-310 (2005).

[39] *See, e.g.,*N.J. STAT. ANN. § 19:15-17 (West 2005). Although Oregon now conducts its elections by mail (OR. REV. STAT. § 254.465 (2003)), county clerks are nonetheless required to maintain some physical polls (OR. REV. STAT. § 254.474 (2003)), and voters who opt to cast a ballot in person establish their identity by signing a poll book. OR. REV. STAT. § 254.385 (2003).

[40] In 2005, states that requested documentary identification but provided an affidavit option or other means for those without documentary identification to vote included Arkansas, Connecticut, Delaware, Kentucky, North Dakota, and Tennessee. ARK. CODE ANN. § 7-5-305 (Michie 2005); CONN. GEN. STAT. § 9-261 (2004); DEL. CODE ANN. tit. 15, § 4937 (2005); KY. REV. STAT. ANN. §§ 117.227, 117.245 (Michie 2005); N.D. CENT. CODE § 16.1-05-07 (2005); TENN. CODE ANN. § 2-7-112 (2005).

[41] In North Dakota, voters without photo identification can vote without being challenged by providing

Photo identification requested, not required. A few states request that voters produce a form of photo identification but provide other avenues for voters who lack photo identification to establish their identity, such as by signing an affidavit or reciting their birth date and address.[42]

Documentary identification required. In 2005, ten states require documentary identification as an absolute requirement to vote: Alabama, Alaska, Arizona, Colorado, Missouri, Montana, New Mexico, South Carolina, Virginia, and Washington.[43] Acceptable identification generally includes photo identification, or non-photo identification such as a utility bill or bank statement. Thus, these states effectively expand the Help America Vote Act's documentary requirements for first-time voters who registered by mail to all voters.[44]

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their date of birth – provided that a member of the election board or a clerk knows them personally, and will vouch that they are a qualified voter. N.D. CENT. CODE § 16.1-05-07 (2005). Voters who are not recognized by poll workers may still vote if they sign an affidavit that they are a qualified voter. N.D. CENT. CODE § 16.1-05-06 (2005). In Arkansas, if a voter does not present documentary identification when asked, the poll worker simply makes a note on the precinct voter registration list that the voter lacked identification; however, after each election the county board of commissioners "may review the precinct voter registration lists and may provide the information of the voters not providing identification to the prosecuting attorney . . . [who] may investigate possible voter fraud." ARK. CODE ANN. § 7-5-305 (Michie 2005).

[42] In 2005, voters without photo identification could establish their identity by signing an affidavit in Florida, Louisiana, and South Dakota, and by reciting their birth date and address in Hawaii. FLA. STAT. ANN. § 101.043 (2005); LA. REV. STAT. ANN. §18:562 (West 2005); S.D. CODIFIED LAWS § 12-18-6.1 (2005); HAW. REV. STAT. § 11-136 (2005).

[43] *See* ALA. CODE. § 17-11A-1 (2005); ALASKA STAT. § 15.15.225 (Michie 2005); ARIZ. REV. STAT. § 16-579 (2005); COLO. REV. STAT. §§ 1-7-110, 1-1-104(19.5) (2005); MO. REV. STAT. § 115.427 (2005); MONT. CODE ANN. § 13-13-114 (2005); N.M. STAT. ANN. §§ 1-12-7.1, 1-1-24 (2005); S.C. CODE ANN. §§ 7-13-710, 7-5-125, 7-5-180 (Law. Co-op. 2005); VA. CODE ANN. § 24.2-643 (Michie 2005); WASH. REV. CODE § 29A.44.205 (2005). Arizona is unique in that a voter without photo identification must produce two pieces of non-photo documentary identification that have both the voter's name and address. ARIZ. REV. STAT. § 16-579 (2005). [The Missouri legislature recently passed a photo identification requirement, and this section will be modified.]

[44] A couple of states, however, are more restrictive in the non-photo documentary identification they require. Virginia, for example, accepts only a voter registration card, driver's license, any other identification card issued by Virginia or the federal government, or a photo identification issued by an employer. VA. CODE ANN. § 24.2-643 (Michie 2005).

B. *Photo Identification Requirements to Vote*

In 2005, Republican-controlled legislatures in Georgia[45] and Indiana[46] passed laws mandating government-issued photo identification as an absolute requirement to vote at the polls.[47]

Georgia's new statute reduced the acceptable forms of identification from 17—which included non-photo identification such as bank statements and paychecks—down to six forms of government-issued photo identification.[48] The new law also made a photo identification an absolute requirement to vote at the polls by eliminating an earlier provision that allowed voters without identification to sign an affidavit. The new Georgia law did not, however, require that absentee voters establish their identity through photo identification.[49]

The American Civil Liberties Union, Common Cause, and other groups brought suit challenging the law under the Voting Rights Act, the 14th

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[45] GA. CODE. ANN. § 21-2-417 (2005).

[46] IND. CODE § 3-11-8-25.1 (Michie 2005).

[47] In the Georgia Senate, 31 Republicans voted for the measure, while 18 Democrats and two Republicans voted against it. Ga. Gen. Assemb., Senate Vote 565, *available at* http://www.legis.state.ga.us/legis/2005_06/votes/sv0565.htm (last accessed Mar. 10, 2006). In the Georgia House, 90 Republicans and 1 Democrat voted for it, while 72 Democrats and 3 Republicans voted against it. Ga. Gen. Assemb., House Vote 510, *available at* http://www.legis.state.ga.us/legis/2005_06/votes/hv0510.htm (last accessed Mar. 10, 2006). *See also* Ga. Gen. Assemb., HB 244, *at* http://www.legis.state.ga.us/legis/2005_06/sum/hb244.htm (last accessed Feb. 25, 2006) (legislative history of Senate Bill 84). In the Indiana House, all 52 Republicans who were present voted for the bill; all 45 Democrats who were present voted against it. Ind. Gen. Assemb., Action List: Senate Bill 0483, *available at* http://www.in.gov/apps/lsa/session/billwatch/billinfo?year=2005&request=getActions&doctype=SB&docno=0483 (last accessed Mar. 19, 2006); Ind. Gen. Assemb., Roll Call 259: Passed, available at http://www.in.gov/legislative/bills/2005/PDF/Hrollcal/0259.PDF.pdf (last accessed Mar. 19, 2006); Mary Beth Schneider, *House OKs Strict Voter ID Bill*, INDIANAPOLIS STAR, Mar. 22, 2005, at 1B. Similarly, the 33-17 vote in the Indiana Senate was a straight party vote. Mary Beth Schneider, *Voter ID Law Looming for Hoosiers*, INDIANAPOLIS STAR, Apr. 13, 2005, at 1A. Republican governors signed the photo identification requirement into law in both Georgia and Indiana. Republican legislatures in five other states have passed photo identification laws that Democratic governors subsequently vetoed. FUND, *supra* note 6, at 138.

[48] GA. CODE ANN. §§ 21-2-220, 21-2-417 (2005); Sonji Jacobs & Carlos Campos, *Perdue Signs ID Bill*, ATLANTA J. CONST. Apr. 23, 2005, at 1B.

[49] *See* GA. CODE ANN. § 21-2-381 (indicating that applicants for absentee ballot must provide their address and identify the primary, election, or run-off in which they intend to vote).

and 15th Amendments to the U.S. Constitution, and other legal provisions.[50] A federal district court granted a preliminary injunction preventing implementation of the new law, concluding that the law would likely constitute an undue burden on the right to vote and that fees for photo identification cards would constitute a poll tax.[51]

The Indiana photo identification law, which took effect on January 1, 2006, requires that voters provide a photo identification card issued by the Indiana state or the federal government.[52] The statute included exceptions for the "indigent [who are] unable to obtain proof of identification without the payment of a fee" and voters whose religious beliefs prevent them from being photographed.[53] Voters who fall into either of those categories may cast a provisional ballot at the polling place, which will be counted within two weeks of the election only if the voter makes a separate trip to the county elections board and signs an indigency or religious objector affidavit (such affidavits are not made available to voters at polling places).[54] Like the Georgia law, the Indiana photo identification requirement did not require that absentee voters establish their identity through photo identification.[55]

The Indiana Democratic Party filed suit, and the Federal District Court for the Southern District of Indiana refused to enjoin the law, asserting that the plaintiffs failed to prove that the photo identification requirement would burden voting in violation of the federal Constitution or the Voting Rights Act.[56]

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[50] Complaint for Declaratory and Injunctive Relief at 32-41, Common Cause/GA v. Billups, No. 4:05-CV-0201-HLM, 2005 U.S. Dist. LEXIS 26222, at *115, (N.D. Ga. Oct, 18, 2005).

[51] Common Cause/GA v. Billups, No. 4:05-CV-0201-HLM, 2005 U.S. Dist. LEXIS 26222, at *115, (N.D. Ga. Oct, 18, 2005). The Department of Justice refused to object to Georgia's new photo identification requirement under Section 5 of the Voting Rights Act, but the *Washington Post* later reported that four of five career attorneys recommended objection but were overruled by Republican political appointees. Dan Eggen, *Politics Alleged in Voting Cases*, WASH. POST, Jan. 23, 2006, at A1.

[52] IND. CODE § 3-11-8-25.1 (Michie 2005).

[53] IND. CODE § 3-11.7-5-2.5(c) (Michie 2005). Voters who live and cast their ballots in a state licensed care facility are not required to show photo identification. *Id.* at § 3-11-8-25.1(f) (Michie 2005).

[54] *Id.* ("all provisional ballots must be counted by not later than noon on the second Monday following the election").

[55] IND. CODE § 3-11-10-1.2 (2006).

[56] Ind. Democratic Party v. Rokita, No. 1:05-CV-0634-SEB-VSS, 2006 WL 1005037, at *35, *47 (S.D. Ind. Apr. 14, 2006).

In September 2005, the Carter-Baker Federal Commission on Election Reform recommended that the remaining 48 states adopt a photo identification requirement.[57] The Commission connected its photo identification proposal to the "Real ID" Act, which prohibits states from issuing a driver's license or non-driver's identification card after 2007 unless an individual presents documentary proof of her full legal name and date of birth, Social Security number, and citizenship.[58] The Carter-Baker Commission recommended that states require a "Real ID" card as a prerequisite for voting at the polls.[59]

To mitigate access concerns, the Commission proposed that states "undertake their best efforts to make voter registration and ID accessible and available to all eligible citizens" through mobile offices and offering "Real ID" cards to non-drivers free of charge.[60] Further, the Commission recommended that through 2009 states permit voters without a "Real ID" card to cast a provisional ballot by signing an affidavit attesting to their identity.[61] Thereafter, the showing of a "Real ID" card would be an absolute requirement to vote.[62] The Commission also proposed that states confirm the identity of absentee voters not through "Real ID," but through signature match.[63]

Before states follow the lead of Georgia, Indiana, and the Carter-Baker Commission, however, lawmakers should pause to closely examine the arguments put forth in support of photo identification requirements.

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[57] COMM'N ON FED. ELECTION REFORM, *supra* note 3, at 18-21.

[58] *Id.* at 19-21.

[59] *Id.* at 21.

[60] *Id.* at 21, 33-34.

[61] *Id.* at 21. Former President Jimmy Carter asserted that the proposal's transition period and card distribution proposals mitigate access problems, and he criticized photo identification legislation that failed to incorporate these elements. *See* Letter from Jimmy Carter, Former President, to Robin Carnahan, Missouri Secretary of State (Mar. 16, 2006) (available at http://www.sos.mo.gov/img/03-16-06_President_Carter_Letter.pdf) (asserting that some Missouri legislators improperly invoked the Carter-Baker Commission photo identification proposal to support Missouri photo identification legislation because the Missouri bill did not contain adequate safeguards for voter access).

[62] *Id.*

[63] *Id.* at 20.

II. THE SHORTCOMINGS OF ANECDOTE, ANALOGY, AND INTUITION TO JUSTIFY PHOTO IDENTIFICATION

Photo identification advocates often rely on two categories of assertions: (1) anecdotes about voter fraud; and (2) analogies to other contexts that require photo identification. Both are deeply flawed.

Voter-fraud anecdotes are often misleading, incomplete, and unrepresentative. Advocates selectively emphasize the ones that are sure to evoke indignation or other emotions rather than the most typical anecdotes, and omit facts or other stories that cut against their desired policy result. They also employ analogy to justify their proposals, but they often ignore important differences between voting and activities that require photo identification, such as traveling by air and purchasing alcohol.

A. Misleading and Unrepresentative Anecdotes About Voter Fraud

Voter-fraud anecdotes can lead to misleading generalizations absent disclosure of the anecdotes' truthfulness and typicality. We cannot determine whether a photo identification requirement is an appropriate response to voter fraud, for example, unless we understand whether there are ten fraudulent votes for every 100, 10,000, or 1,000,000 votes cast. [64] As Professor Michael Saks has written:

> [A]necdotal evidence is heavily discounted in most fields, and for a perfectly good reason: such evidence permits only the loosest and weakest of inferences about matters a field is trying to understand. Anecdotes do not permit one to determine either the frequency of occurrence of something or its causes and effects. . . . These anecdotes may work as a persuasive device, in that a few examples of apparent greed, abuse, or system irrationality can arouse people emotionally. . . . [Some anecdotes] are systematically distorted portrayals of the actual

[64] *See* David A. Hyman, *Lies, Damned Lies, and Narrative*, 73 IND. L.J. 797, 836 (1998) ("The significance of a story of oppression depends on its representativeness. . . . .to evaluate policies for dealing with the ugliness we must know its frequency, a question that is in the domain of social science rather than of narrative.")

> cases they claim to report. . . . [E]ven when true, anecdotes enjoy a persuasive power that far exceeds their evidentiary value. . . . Anecdotes have a power to mislead us into thinking we know things that anecdotes simply cannot teach us.[65]

Professor David Hyman illustrates the shortcomings of anecdote in policymaking by recounting a story conveyed by President Ronald Reagan. For years Reagan told the story of an alleged "welfare queen" who he claimed used 80 different names and a dozen Social Security cards to defraud the government of more than $150,000. Even after the true story was pointed out to him – the woman had used two aliases to take $8,000 – Reagan continued to use his false version.[66] The reliance on anecdote to discredit the welfare system became common. One white waitress in suburban Chicago who was married to a police officer complained that "blacks buy porterhouse steaks with food stamps, while we eat hamburgers."[67] The woman admitted that she "had never actually seen any blacks do this. But she had heard and read stories, and that [was] enough."[68]

Anecdotes about voter fraud are also misleading and fail to indicate the frequency of the alleged fraud.[69]

For example, although John Kerry lost the 2004 presidential race nationwide, he won Wisconsin by just 11,000 votes. Republicans suspected that massive fraud swung the Wisconsin election to Kerry, and pushed for a photo identification requirement at the polls.

In August 2005, Republican politicians in Wisconsin held a press conference to emphasize the need for a photo identification requirement. The

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[65] Michael J. Saks, *Do We Really Know Anything About the Behavior of the Tort Litigation System-and Why Not?*, 140 U. PA. L. REV. 1147, 1159-61 (1992).

[66] *See The Mendacity Index*, WASH. MONTHLY, Sep. 1, 2003, at 27.

[67] Hyman, *supra* note 66, at 804 n.28; Isabel Wilkerson, *The Tallest Fence: Feelings on Race in a White Neighborhood*, N.Y. TIMES, June 21, 1992, at 1.

[68] *Id.*

[69] My utilization of an anecdote of misleading anecdotal evidence in Wisconsin should not be construed to suggest that all anecdotes about fraud are misleading, false, or otherwise flawed. Instead, the Wisconsin anecdote illustrates the flaws of anecdote and the need for empirical data to determine the frequency and typicality of voter fraud.

Republicans announced that their research uncovered nine people who voted in Milwaukee in November 2004 and also cast ballots in Chicago, Minneapolis, or Madison.[70] The press conference was held in front of one of the homes allegedly used to vote twice, according to GOP chair Rick Graber.[71] "We now are able to make this link to show that this voter fraud has crossed state lines," announced Republican State Representative Jeff Stone.[72]

In its September 2005 Report, the Carter-Baker Commission on Federal Election Reform also supported its call for photo identification by invoking the 2004 Wisconsin election:

> In Milwaukee, Wisconsin, investigators said they found more than 200 cases of felons voting illegally and more than 100 people who voted twice, used fake names or false addresses, or voted in the name of a dead person. Moreover, there were 4,500 more votes cast than voters listed.[73]

Commissioner Susan Molinari, a Republican and former Congresswoman, asserted that a photo identification requirement was justified because the election in Wisconsin was "decided by illegal votes," a fact "established by a joint report written by the U.S. Attorney, FBI, Chief of Police and senior local election official—both Republicans and Democrats."[74]

But these Wisconsin anecdotes are misleading.

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[70] *See* Greg J. Borowski, *9 May Have Voted in 2 Cities*, MILWAUKEE J. SENTINEL, Aug. 10, 2005, at B1.

[71] *See Voter ID Gets Push From GOP; Milwaukee Cases Cited As Example*, CAPITAL TIMES (Madison, Wis.), Aug. 10, 2005, at 3A.

[72] *See* Borowski, *supra* note 72, at B1.

[73] *See* COMM'N ON FED. ELECTION REFORM, *supra* note 3, at 4 (citing MILWAUKEE POLICE DEPARTMENT, MILWAUKEE COUNTY DISTRICT ATTORNEY'S OFFICE, FEDERAL BUREAU OF INVESTIGATION, AND UNITED STATES ATTORNEY'S OFFICE TASK FORCE, PRELIMINARY FINDINGS OF JOINT TASK FORCE INVESTIGATING POSSIBLE ELECTION FRAUD (May 10, 2005), *available at* http://www.wispolitics.com/1006/electionfraud.pdf); *id.* at 18 n.19 (establishing that fraud and multiple voting occur by referring back to Section 1.1, which details alleged fraud in November 2004 elections in Washington state and Wisconsin).

[74] *Id.* at 90 (additional statement of Commissioner Susan Molinari).

Of the nine "double voting" names presented by the Republican Party leadership at their press conference, the Republican-appointed U.S. Attorney found that *none* involved fraud.[75] Six of the cases involved clerical errors, and in three cases individuals with a similar name but a different birth date voted in Chicago, Madison, or Minneapolis.[76]

In its support for a photo identification requirement, the Carter-Baker Commission on Federal Election Reform also failed to disclose a variety of important factors regarding the Wisconsin anecdote.[77]

First, the ballots examined by the U.S. Attorney/Milwaukee County District Attorney taskforce differ from those in other states. Most states require voters to register in advance of Election Day and restrict the casting of regular ballots to those on the voting rolls.[78] Wisconsin and five other states, however, have Election Day registration, and thus unregistered individuals can show up, register, and cast a vote.[79] The taskforce investigation focused on 70,000 Milwaukee votes of individuals who registered at the polls on election day, a pool of votes that would not exist in 44 other states.

Further, many of the fraudulent activities listed by the Carter-Baker Commission are unrelated to photo identification. A photo identification requirement would not have kept ineligible felons from voting, nor would it have prevented the final total of "4,500 more votes cast than voters listed." Out of the 70,000 same-day registrations studied, investigators found only

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[75] *See* Borowski, *supra* note 72, at B1.

[76] *Id.*

[77] *Cf.* Martha Minow, *Stories in Law*, *in* LAW'S STORIES: NARRATIVE AND RHETORIC IN THE LAW 24, 31 (Peter Brooks & Paul Gewirtz eds., 1996) (noting "selectivity problems in storytelling," and the conscious refusal to include "additional stories [which] convey unattractive features of the community that I was trying to paint in a sympathetic light"").

[78] Under the Help America Vote Act, an individual who is not on the voting rolls may cast a provisional ballot, which is counted if officials later determine that the individual is a properly registered voter. 42 U.S.C. § 15482.

[79] Idaho, Maine, Minnesota, New Hampshire, and Wyoming also allow voters to register on election day. WIS. STAT. § 6.55 (2005); IDAHO CODE ANN. § 34-408A (2006); ME. REV. STAT. ANN. tit. 21-A, § 122 (2005); MINN. STAT. § 201.061 (2005); N.H. REV. STAT. ANN. §§ 654:7-a, 654:7-b (2005); WYO. STAT. § 22-3-104 (2005).

about 100 questionable instances in which people may have voted twice, used false addresses or fake names, or voted in the name of a dead person.[80]

Assuming that each of these instances resulted from intentional voter fraud rather than a clerical mistake or other explanation, this is a fraud rate of less than one seventh of one percent (0.14 percent to be exact), or one in 700. And the rate may not be that high. As of December 2005, authorities had charged only four people out of the group, and three of the charges resulted in dismissal, acquittal, and a hung jury.[81]

Contrary to the claims of Carter-Baker Commissioner Molinari, the law enforcement taskforce did not find that the Wisconsin election was "decided by illegal votes."[82] Even in the improbable event that all 100 alleged fraudulent votes and 200 improper felon votes were cast for John Kerry, Kerry's lead in the state would be reduced from 11,000 to 10,700 in Wisconsin. The U.S. Attorney explicitly stated, "We don't see a massive conspiracy to alter the election in Milwaukee, one way or another."[83]

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[80] MILWAUKEE POLICE DEP'T, MILWAUKEE COUNTY DISTRICT ATT'Y'S OFFICE, FED. BUREAU OF INVESTIGATION, & U.S. ATT'Y'S OFFICE TASK FORCE, PRELIMINARY FINDINGS OF JOINT TASK FORCE INVESTIGATING POSSIBLE ELECTION FRAUD (May 10, 2005), *available at* http://www.wispolitics.com/1006/electionfraud.pdf (last accessed Mar. 10, 2006).

[81] *See* Steve Schultze, *No vote fraud plot found; Inquiry leads to isolated cases, Biskupic says*, MILWAUKEE J. SENTINEL, Dec. 6, 2005, at A1.

[82] COMM'N ON FED. ELECTION REFORM, *supra* note 3, at 90 (additional statement of Commissioner Susan Molinari).

[83] *See* Schultze, *supra* note 83, at A1. The Commission on Federal Election Reform also cited ex-felon voting and votes cast in the names of the dead as evidence of fraud in a closely-contested 2004 Washington State gubernatorial that was decided by 129 votes. COMM'N ON FED. ELECTION REFORM, *supra* note 3, at 4. In a separate statement, Commissioner Susan Molinari argued that states should adopt photo identification requirements because the Washington race was "decided by illegal votes" and that "this fact was established by a lengthy trial and decision of the court." COMM'N ON FED. ELECTION REFORM, *supra* note 3, at 90 (additional statement of Commissioner Molinari). These claims suffer from many of the problems of the Wisconsin anecdote. A photo identification requirement would not have stopped ex-felon voting in Washington state. The Commission also failed to note that the Washington court concluded that that of more than 2.8 million ballots, only six were cast by voters who voted twice and 19 were cast in the name of deceased individuals. Borders v. King County, No. 05-2-00027-3 (Wash. Super. Ct. Chelan County June 24, 2005), *available at* http://www.secstate.wa.gov/documentvault/694.pdf. Since the margin of victory was 129 votes, it is clear that these 25 illegal votes (many of which would not have been prevented by a photo identification requirement) did not decide the election, even making the improbable assumption that all of them went for Democratic candidate Christine Gregoire. Further, the Commission did not emphasize that most if not all of the 19 votes cast statewide in the names of the dead were cast

Photo identification advocates generally respond to these observations by emphasizing the existence of fraud rather than its magnitude. After the U.S. Attorney in Wisconsin announced no massive conspiracy of voter fraud had been found, the GOP released a statement indicating that "the Republican Party of Wisconsin continues to maintain that one case of voter fraud is one too many."[84] The Carter-Baker Commission also dismissed the need to examine the extent of empirical evidence:

> While the Commission is divided on the magnitude of voter fraud — with some believing the problem is widespread and others believing that it is minor — there is no doubt that it occurs. **The problem, however, is not the magnitude of the fraud.** In close or disputed elections, and there are many, a small amount of fraud could make the margin of difference.[85]

The magnitude of fraud, however, is critical to determining whether a photo identification requirement will do more harm than good. One cannot assess a photo identification requirement's true cost without determining whether, for every 10 cases of voter fraud, a photo identification requirement would deter from voting 1, 100, or 10,000 legitimate voters.[86] Depending on the magnitude of fraud, a photo identification requirement could erroneously skew more election outcomes than a lack of a photo identification requirement.[87]

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absentee, and thus would not have been prevented by a photo identification requirement at the polls (the Commission recommended a signature requirement over photo identification for absentee voting). *See* Gregory Roberts, *Six More Charged With Offenses in 2004 Election*, SEATTLE POST-INTELLIGENCER, June 22, 2005, at B1.

[84]Statement of the Wisconsin Republican Party Chairman, Statement Re: U.S. Attorney Biskupic's investigation into voter fraud DEC. 6, 2005, *available at* http://www.wisgop.org/site/Viewer.aspx?iid=231&mname=ArticleGroup&rpid=802 (last accessed Feb. 24, 2006).

[85] COMM'N ON FED. ELECTION REFORM, *supra* note 3, at 18 (2005) (emphasis added).

[86] *Cf.* Saks, *supra* note 67, at 1161 ("It makes a difference if for every ten anecdotes in which an undeserving plaintiff bankrupts an innocent defendant, one, ten, one hundred, or one thousand equal and opposite injustices are done to innocent plaintiffs. The proportion of cases that results in one or the other error, and the ratio of one kind of error to the other, ought to be of greater interest to serious policy-makers than a handful of anecdotes on either side of the issue.").

[87] *Cf. id.* at 1162 ("The answers to most questions about the behavior of the litigation system are inherently statistical. Anecdotes simply do not provide the information one needs to assess the

In addition to overlooking typicality, anecdotes often distract with emotion and fail to reveal the causes or effects of fraud.[88] On the first page of his book *Stealing Elections: How Voter Fraud Threatens Our Democracy*, *Wall Street Journal* editor John Fund asks:

> How sloppy [is our electoral system]? Lethally so. At least eight of the nineteen hijackers who attacked the World Trade Center and the Pentagon were actually able to register to vote in either Virginia or Florida while they made their deadly preparations for 9/11.[89]

Photo identification proponents rely on this dramatic statement to cite the potential for voter fraud. One editorialist, for example, claimed that "[h]ad [the hijackers] survived, they could have shown up on Election Day and voted."[90] But it remains unclear that eight of the hijackers were registered to vote—data has not yet been found to confirm this assertion.[91]

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system.").

[88] *Id.* at 1159 ("Anecdotes do not permit one to determine either the frequency of occurrence of something or its causes and effects."). Professor Richard Epstein states:

> The capacity of narrative to inflame, inform, or excite depends on its ability to take you away from the peak of the distribution to see what some extraordinary novel and different circumstance is and indeed that is exactly why we call these things novel because of the way in which they take you away from the core. But if you are trying to understand the way in which social reality works then the important thing to remember is that the prosaic and the boring is often far more important in the way in which the world organizes itself than is the exotic and profane.

Discussion, 45 STAN. L. REV. 1671, 1678 (1993) (remarks of Professor Richard Epstein), *cited in* Hyman, *supra* note 66, at 836.

[89] FUND, *supra* note 6, at 1.

[90] *See e.g.*, *One Lawyer, One Vote*, Editorial, INVESTOR'S BUS. DAILY, Oct. 22, 2004, at A16 ("Had they survived, they could have shown up on Election Day and voted."); John O'Sullivan, Editorial, *Voter Fraud is Both Easy to Commit – and Easy to Stop*, CHI. SUN-TIMES, Oct. 19, 2004, at 37 ("[T]hey [the terrorists] could have turned up at the voting booth on Nov. 2."). Members of Congress used this same argument during the debate over the Help America Vote Act. *See e.g.* 148 CONG. REC. S1171 (2002) (statement of Sen. Bond that "In Colorado, a Saudi man detained by Federal authorities for questioning about the September 11 terrorist attacks voted in Denver during last year's Presidential election, even though he was not a U.S. citizen. . . In North Carolina, a Pakistani man facing a vote fraud charge has been linked to at least two of the September 11 hijackers.").

[91] When my research assistant Daniel Taylor contacted John Fund and asked about the source of the fact that eight of the hijackers were registered in either Florida or Virginia, John Fund indicated that he obtained the fact from an interview with then-Assistant Attorney General Michael Cherthoff. Taylor

Even assuming eight of the hijackers registered to vote in Virginia or Florida, it is unlikely that the registrations caused the lethal attack on 9/11. Fund does not reveal how many of the improper registrations resulted in fraudulent votes. Further, the 19 hijackers obtained 63 driver's licenses from various states and "could have shown up on Election Day and voted" even had a photo identification requirement to vote existed.

Photo identification advocates also regularly cite irregularities that would not be prevented by a photo identification requirement.

For example, proponents regularly cite fictitious people, illegal aliens, and pets being registered and the fact that voting rolls contain more names than U.S. Census records as a justification for photo identification requirements.[92] Photo identification advocates fail to disclose that many bloated voting rolls are not caused by malicious citizens who plan to vote in multiple jurisdictions. Instead, bloated rolls are often caused county registrars failing to purge voters' old data after they move. Further, photo identification advocates do not provide evidence that most fictitious registrations are caused by people who vote under their own name, a second time as "Mickey Mouse," and a third time as "Mary Poppins," rather than by workers who get paid $2 per name registered and profit by padding their registrations with fictitious

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then contacted the Department of Justice's Criminal Division, the Counterterrorism Section, and Voting Section, and no one knew about the claim. At the suggestion of these offices, Taylor filed a FOIA request. He also repeatedly called the Department of Homeland Security (Cherthoff is now Secretary of Homeland Security), but so far no has responded to Taylor. Taylor also contacted the former Virginia Secretary of the Board of Elections, Cameron Quinn. Quinn indicated that she was unable to confirm or deny that the September 11 hijackers were registered to vote in VA. She was familiar with the claim, and indicated that they looked into it while she was Secretary of the Board of Elections. However, they had a difficult time getting from federal officials the actual names of the hijackers, their Social Security numbers (which is how they usually look up registrations), or their actual voter registration numbers. As a result, she believes that her agency was never able to prove or disprove that any of the 9/11 hijackers registered to vote in Virginia. Taylor's calls to the Florida Secretary of State have not yet been returned. [This note will be revised as more facts are discovered].

[92] *See* FUND, *supra* note 6, at 4; COMM'N ON FED. ELECTION REFORM, *supra* note 3, at 4 (asserting that "[o]ne potential source of election fraud arises from inactive or ineligible voters left on voter registration lists," and that "there were over 181,000 dead people listed on the voter rolls in six swing states in the November 2004 elections.") (citing Geoff Doughtery, *Dead Voters on Rolls, Other Glitches Found in 6 Key States*, CHI. TRIB., Dec. 4, 2004, C13); COMM'N ON FED. ELECTION REFORM, *supra* note 3, at 72 (Additional Statement of Commissioner Molinari) (asserting that photo identification requirements are necessary because "voter rolls are filled with fictional voters like Elmer Fudd and Mary Poppins.").

names. Such fictitious reporting is a problem, but primarily to the voter registration organizations that pay workers for fraudulent names and the jurisdictions that contend with bloated voter registration rolls.[93]

Proponents of photo identification requirements also regularly rely on instances of absentee ballot fraud rather than voter fraud at the polls to support their proposals.[94] A photo identification requirement at the polls, however, does not prevent absentee ballot fraud. Indeed, in Georgia and Indiana absentee voters need not produce photo identification, and the Carter-Baker Commission proposed that states confirm the identity of absentee voters through signature match rather than photo identification.[95]

The fact that photo identification advocates use unrepresentative and misleading anecdotes that would persist even with the implementation of a photo identification requirement does not, in and of itself, mean that voter fraud does not exist. Instead, it simply illustrates the limitations of anecdotal analysis. Policymakers need better data about fraud and statistical analysis to fully understand whether the benefits of a photo identification requirement justify its costs.

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[93] *See Common Cause/Ga,* No. 4:05-CV-0201-HLM, at *102 (holding that substantial likelihood exists that Georgia photo identification requirement is unconstitutional, and noting that "although Defendants have presented evidence from elections officials of fraud in the area of voting, all of that evidence addresses fraud in the area of voter registration, rather than in-person voting.").

[94] See, e.g., Deroy Murdock, *A Necessary Shaming*, NATIONAL REVIEW, Sept. 14, 2004 (citing several examples of fraudulent absentee voting and bloated voting rolls to criticize those who resist photo identification requirements at the polls); COMM'N ON FED. ELECTION REFORM, *supra* note 3, at 4 (citing ex-felon voting and votes cast in the names of the dead as evidence of fraud in a closely-contested 2004 Washington State gubernatorial as evidence that a photo identification requirement is needed, but failing to disclose that many of the votes cast in the name of the dead were absentee); Common Cause/Ga. v. Billups, 406 F. Supp. 2d 1326, 1366 (N.D.Ga. 2005) (Asserting that the argument that requiring photo identification at the polls furthers the interest of preventing voter fraud is unavailing when "the Photo ID requirement does absolutely nothing to preclude or reduce the possibility for the particular types of voting fraud that are indicated by the evidence: voter fraud in absentee voting, and fraudulent voter registrations.").

[95] GA. CODE ANN. § 21-2-381 (2005); IND. CODE § 3-11-10-1.2 (2006); COMM'N ON FED. ELECTION REFORM, *supra* note 3, at 20.

B. Flawed Analogies

By analogizing voting to other contexts, photo identification advocates often avoid the question of whether a photo identification card will reduce participation by legitimate voters. People need photo identification to board a plane, enter federal buildings, cash a check, use a credit card, rent a video, and buy cigarettes and alcohol, advocates argue. Why should voting be an exception to this rule?[96]

Analogy is a common rhetorical tool, but it has limitations. As Professor Cass Sunstein has written:

> Everything is a little bit similar to, or different from, everything else. . . . Everything is similar in infinite ways to everything else, and also different from everything else in the same number of ways. At the very least one needs a set of criteria to engage in analogical reasoning. Otherwise one has no idea what is analogous to what. . . . By themselves, factual situations tell us little until we impose some sort of pattern on them.[97]

The question in examining photo identification analogies is whether democracy sufficiently resembles adult recreation, air travel, and other activities that require photo identification to warrant identical treatment.

While a photo identification requirement in voting and other contexts aims to ensure that a person is who she presents herself to be and/or meets particular qualifications, the costs of erroneous exclusion differ with voting. John Fund, for example, asserts that the Clinton administration hypocritically pushed for photo identification requirements for cigarette purchases, but

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[96] *See* COMM'N ON FED. ELECTION REFORM, *supra* note 3, at 18 ("Photo IDs currently are needed to board a plane, enter federal buildings, and cash a check. Voting is equally important"); *Voting should require photo identification*, POST-CRESCENT (Appelton, WI) February 2, 2005 ("As for people being less likely to vote, think about it. Does the need to show an ID make people less likely to go grocery shopping or buy a pack of cigarettes?").

[97] Cass R. Sunstein, *On Analogical Reasoning*, 106 HARV. L. REV. 741, 774 (1993).

opposed such requirements for voting.[98] But for those who consider widespread participation a critical democratic value, erroneously preventing a legitimate voter from casting a ballot poses more harm than erroneously preventing a 22-year-old adult from buying cigarettes.

Erroneous exclusion of air travelers or legitimate credit card users who lack photo identification may inconvenience individuals and slow the economy, but these harms differ as well. In the airline and commercial context, participants do not have "votes" that are weighed relative to one another to assess the will of the entire citizenry and determine who will govern society. Liquor stores, airlines, and department stores generally lack incentives to exclude legitimate consumers, whereas some politicians benefit by reducing turnout among particular demographic populations likely to vote against them. While the benefits of deterring one terrorist outweigh the costs of excluding 1,000 "safe" air travelers who lack photo identification, the benefits of excluding one fraudulent voter do not outweigh the costs of excluding 1,000 legitimate voters.

A similar cost-benefit analysis explains the lack of photo identification requirements in many financial contexts. Merchants lose millions of dollars a year through credit card fraud, but they generally do not require photo identification or even a signature when individuals use a credit card at a gas pump or use credit card numbers online. Empirical data about the extent of fraudulent transactions and the true costs of a photo identification requirement help merchants determine whether the requirement would increase or decrease profits.

Even with non-monetary objectives, such as terrorism prevention and the protection of minors, a cost-benefit analysis shapes whether photo identification will be required. For example, despite recent bombings in Israel, London, and Madrid, the United States still generally does not require commuters entering a subway or a bus to show photo identification. The administrative burden of requiring photo identification for all commuters

[98] FUND, *supra* note 6, at 137 ("Opposition to photo ID laws has often reached comical levels. In the 1990s, the Clinton administration managed to come up with a public policy argument that people had to show a photo ID to buy cigarettes, while on the other hand, a state could not fight election fraud by requiring photo ID.").

seems high while the effectiveness of such a requirement in preventing terrorism seems low. Despite the fact that minors can obtain wine, cigarettes, movie rentals, and even free pornographic material via the Internet without photo identification, lawmakers have not deemed the magnitude of these problems sufficiently large to outweigh distributors' profits and the convenience and anonymity provided to adult customers.

Policymakers also rely on a cost-benefit assessment with regard to political participation. Although absentee ballots pose a greater risk of fraud than voting at the polls, states generally confirm absentee voter identity through a signature match rather than requiring that absentee voters show a photo identification card to a notary public.[99] Although foreign nationals have made political contributions to both Democrats and Republicans in violation of federal law, the law does not require that every donor produce photo identification that establishes U.S. citizenship.

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A photo identification requirement could disenfranchise 20 million Americans, and policymakers should resist the temptation to rush to adopt the proposal based solely on anecdotes, analogy, and "common sense" popular assumptions.[100] Without hard data, many people misperceive risk.[101] About

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[99] The Carter-Baker Commission on Federal Election Reform expressly adopted a signature requirement rather than a photo identification requirement for absentee ballots. *See* COMM'N ON FED. ELECTION REFORM, *supra* note 3, at 20.

[100] *Cf.* Marc Galanter, *Real World Torts: An Antidote to Anecdote*, 55 MD. L. REV. 1093, 1094-95 (1996) (wrapping an argument "in the mantle of common sense [is] certainly cause for suspicion"). Many photo identification advocates defer to "common sense" rather than hard data and risk analysis. See, e.g., *Press Release, Missouri Republican Party, Mo. Republican Party: Secretary of State Carnahan Opposes Common Sense Voting Measure* (Feb. 15, 2006) (criticizing Democratic Secretary of State for opposing a photo ID requirement); *Preserving Election Integrity*, Editorial, LAS VEGAS REV. J., Jan. 28, 2006, at 14B ("Georgia's [photo ID] bill is a common-sense reform that would bolster public confidence in the election process."); Chuck Williams, *Voter ID Battle at Forefront: Controversial Bill Could See Vote by End of Week*, COLUMBUS LEDGER-ENQUIRER (Columbus, Ga.), Jan. 11, 2006 (quoting a state representative as saying, "What is the big deal about showing a picture ID. It just makes common sense. To me it is a no-brainer."); Patrick McIlheran, Editorial, *Election Plot or Not, Milwaukee's Vote Wasn't Clean*, MILWAUKEE J. SENTINEL, Dec. 7, 2005, at A21 (arguing that Wisconsin's Democratic governor should "compromise on the common-sense safeguard of photo ID.").

[101] *See* Sunstein, *supra* note 19, at 1123 (reviewing PAUL SLOVIC, THE PERCEPTION OF RISK (2000).

four in ten Americans believe, for instance, that flying in an airplane is more dangerous than riding in a car, even though in reality people are more than twice as likely to die for every mile they ride in a car than for every mile they fly in a plane.[102] A variety of factors skew perception of risk, including perceived control over a situation, familiarity with a process, stereotypes, personal fears, outrage, and other emotions.[103] Data is a critical component of a reasoned decision-making process.

III. THE NEED FOR EMPIRICAL EVIDENCE TO BETTER UNDERSTAND FRAUD AND ACCESS

Before enacting any additional fraud prevention proposals, including photo identification, it is crucial to understand the scope and nature of voter fraud. Policymakers need data on both fraud and access to the polls to determine whether a photo identification requirement would lead to fewer erroneous election outcomes, by preventing a large number of fraudulent votes, or result in more erroneous election outcomes, by deterring a larger number of legitimate voters. Empirical information also indicates whether a photo identification requirement would disproportionately exclude groups such as senior citizens, the poor, Americans with disabilities, and people of color.

To date, no systematic, empirical study of vote fraud has been conducted at either the national or the state level.[104] This gap in knowledge

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[102] *See* Bureau of Trans. Statistics, U.S. Dep't of Trans., "Omnibus Survey Household Survey Results Summary Report – December 2000," *available at* http://www.bts.gov/programs/omnibus_surveys/household_survey/2000/december/summary_report.html (last accessed Mar. 1, 2006); Office of Hazardous Materials Safety, U.S. Dep't of Trans., "A Comparison of Risk," *available at* http://hazmat.dot.gov/riskmgmt/riskcompare.htm (last accessed Mar. 1, 2006).

[103] *See* Ann Bostrom, *Risk Perceptions: "Experts" v. "Lay People,"* 8 DUKE ENVTL. L. & POL'Y F. 101 (1997) (illustrating how heuristics used by laypersons sometimes lead to biases in risk perception); P. Sandman, *Risk Communcation: Facing Public Outrage*, 13 EPA JOURNAL 21-22 (1987) (distinguishing the probability and magnitude of harm from the qualitative aspect of risk that prompts public anger or worry). Control, familiarity, and emotion need not be removed from all decision making, but in light of the misperception of risk, policymakers and courts also need real data to make informed judgments.

[104] DAVIDSON, ET AL., *supra* note 11, at 99.

is not inevitable. This Part examines the best available data on the fraudulent votes a photo identification requirement would deter and the legitimate votes it would inhibit. This Part also proposes methods that promise to yield better data about whether a photo identification requirement would do more harm than good.

A. *Toward Better Data on the Extent of Fraud*

Proponents of photo identification assert that voter fraud exists but is tough to measure because it is difficult to detect.

Even if perfect information is unobtainable, however, we can secure better data that allows for reasonable assessments about the amount of voter fraud in U.S. elections. Three approaches—investigations of voter fraud, random surveys of voters who purported to vote, and an examination of death rolls provide a better understanding of the frequency of fraud. All three approaches have strengths and weaknesses, and thus the best studies would employ all three to assess the extent of voter fraud. Further, an accurate estimate of the benefits of a photo identification requirement must also consider the amount of fraud that would persist due to forged photo identification cards,[105] and thus would not be prevented by a photo identification requirement.

1. Investigations and Prosecutions of Voter Fraud

Policymakers should develop databases that record all investigations, allegations, charges, trials, convictions, acquittals, and plea bargains regarding

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[105] *Cf.* Peter Prengaman, *Fake ID Sellers Dismiss Tamperproof Push*, AP, June 2, 2006, *available at* http://abcnews.go.com/US/wireStory?id=2035012&CMP=OTC-RSSFeeds0312 (last accessed June 7,2006) (reporting that modern computer technology makes producing false identification easier and more difficult for authorities to prevent); Donna Leinwand, *Tech-Savvy Teens Swamp Police With Fake ID's*, USA TODAY, July 2, 2001, *available at* http://www.usatoday.com/news/nation/2001/07/02/fake-ids.htm (last accessed June 7, 2006) ("Computer-savvy teenagers are creating millions of fake driver's licenses despite the holograms and other high-tech security features that states now put on licenses to thwart forgers. . . .Using the Internet, anyone willing to break a few laws can be a mass producer of fake IDs"); *Bush Daughter Used Fake ID to Buy Alcohol*, BIRMINGHAM POST, May 31, 2001, at 11.

voter fraud. Existing studies are incomplete but provide some insight. For example, a statewide survey of each of Ohio's 88 county boards of elections found only four instances of ineligible persons attempting to vote out of a total of 9,078,728 votes cast in the state's 2002 and 2004 general elections. This is a fraud rate of 0.00000045 percent.[106] The Carter-Baker Commission's Report noted that since October 2002, federal officials had charged 89 individuals with casting multiple votes, providing false information about their felon status, buying votes, submitting false voter registration information, and voting improperly as a non-citizen.[107] Examined in the context of the 196,139,871 ballots cast between October 2002 and August 2005, this represents a fraud rate of 0.0000005 percent (note also that not all of the activities charged would have been prevented by a photo identification requirement).[108]

A more comprehensive study should distinguish voter fraud that could be prevented by a photo identification requirement from other types of fraud — such as absentee voting and stuffing ballot boxes — and obtain statistics on the factors that led law enforcement to prosecute fraud. The study would demand significant resources because it would require that researchers interview and pour over the records of local district attorneys and election boards.[109]

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[106] *See* THE COALITION ON HOMELESSNESS AND HOUSING IN OHIO & THE LEAGUE OF WOMEN VOTERS OF OHIO, LET THE PEOPLE VOTE: A JOINT REPORT ON ELECTION REFORM ACTIVITIES IN OHIO, June 14, 2005, *available at* http://www.cohhio.org/alerts/Election%20Reform%20Report.pdf (last accessed Mar. 19, 2006) (study finding only four cases of fraud statewide, based on interviews of the Director or Deputy Director of each of the state's 88 county Boards of Elections in June 2005, and asked "Where there any voter fraud cases within your county from the Election of 2002 and 2004?").

[107] COMM'N ON FED. ELECTION REFORM, *supra* note 3, at 45 (*citing* U.S. Department of Justice press release, "Department of Justice to Hold Ballot Access and Voting Integrity Symposium," Aug. 2, 2005).

[108] *See* BRENNAN CTR. FOR JUSTICE & OVERTON, *supra* note 10, at 9-10.

[109] Professor Lorraine C. Minnite states:

> As a political scientist who has studied voter fraud I can tell you there are no reliable, officially compiled national or even statewide statistics available on voter fraud. . . . Researchers working on voter fraud must construct their own datasets by culling information about allegations, investigations, evidence, charges, trials, convictions, acquittals and pleas from local election boards and local D.A.'s, county by county and sometimes town by town across the U.S. The task is painstaking which explains in part why nobody has done it yet. Such a dataset is desirable because hard data are persuasive, at least with reasonable people.

Hard data on investigations, allegations, charges, pleas, and prosecutions is important because it quantifies the amount of fraud officials detect. Even if prosecutors vigorously pursue voter fraud, however, the number of fraud cases charged probably does not capture the total amount of voter fraud. Information on official investigations, charges, and prosecutions should be supplemented by surveys of voters and a comparison of voting rolls to death rolls.

2. *Random Surveys of Voters*

Random surveys could give insight about the percentage of votes cast fraudulently. For example, political scientists could contact a statistically representative sampling of 1,000 people who purportedly voted at the polls in the last election, ask them if they actually voted, and confirm the percentage who are valid voters. Researchers should conduct the survey soon after an election to locate as many legitimate voters as possible with fresh memories.

Because many respondents would perceive voting as a social good, some who did not vote might claim that they did, which may underestimate the extent of fraud. A surveyor might mitigate this skew through the framing of the question ("I've got a record that you voted. Is that true?").

Further, some voters will not be located by researchers and others will refuse to talk to researchers. Photo identification proponents might construe these non-respondents as improper registrations that were used to commit voter fraud.[110]

Instead of surveying all voters to determine the amount of fraud, researchers might reduce the margin of error by focusing on a random sampling of voters who signed affidavits in the three states that request photo identification but also allow voters to establish their identity through

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Posting of Lorraine C. Minnite, Assistant Professor, Barnard College, Columbia University, lcm25@columbia.edu, to election-law_gl@majordomo.lls.edu (Apr. 21, 2005, 20:52:30 EST) (on file with the author).

[110] *Id.*.

affidavit—Florida,[111] Louisiana,[112] and South Dakota.[113] In South Dakota, for example, only two percent of voters signed affidavits to establish their identity. If the survey indicates that 95 percent of those who signed affidavits are legitimate voters (and the other 5 percent were shown to be either fraudulent or were non-responsive), this suggests that voter fraud accounts for, at the maximum, 0.1 percent of ballots cast.

The affidavit study, however, is limited to three states, and it is unclear whether this sample is representative of other states (the difficulty may be magnified in Louisiana in the aftermath of Hurricane Katrina's displacement of hundreds of thousands of voters). The affidavit study also reveals information about the amount of fraud in a photo identification state with an affidavit exception—more voter fraud may exist in a state that does not request photo identification. Further, the affidavit study fails to capture fraudulent voters without photo identification who left the polls without voting when they were offered an affidavit to sign.

3. *Examining Death Rolls*

A comparison of death rolls to voting rolls might also provide an estimate of fraud.

Imagine that one million people live in state A, which has no documentary identification requirement. Death records show that 20,000 people passed away in state A in 2003. A cross-referencing of this list to the voter rolls shows that 10,000 of those who died were registered voters, and these names remained on the voter rolls during the November 2004 election. Researchers would look at what percentage of the 10,000 dead-but-registered people who "voted" in the November 2004 election. A researcher should distinguish the votes cast in the name of the dead at the polls from those cast

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[111] *See* FLA. STAT. ANN. § 101.043 (2005).
[112] *See* LA. REV. STAT. ANN. §18:562 (West 2005).
[113] *See* S.D. CODIFIED LAWS § 12-18-6.1 (2005).

absentee (which a photo identification requirement would not prevent).[114] This number would be extrapolated to the electorate as a whole.

This methodology also has its strengths and weaknesses. If fraudulent voters target the dead, the study might overestimate the fraud that exists among living voters (although a low incidence of fraud among deceased voters might suggest that fraud among all voters is low). The appearance of fraud also might be inflated by false positives produced by a computer match of different people with the same name.[115] Photo identification advocates would likely assert that the rate of voter fraud could be higher among fictitious names registered, and that the death record survey would not capture that type of fraud because fictitious names registered would not show up in the death records. Nevertheless, this study, combined with the other two, would provide important insight into the magnitude of fraud likely to exist in the absence of a photo identification requirement.

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[114] *Cf.* Jingle Davis, *Even Death Can't Stop Some Voters*, ATLANTA J. AND CONST., Nov. 6, 2000, at 1A (finding that of 1.1 million deaths since 1980, 5,412 ballots were cast in the name of dead people over a 20 year period, although not computing the fraud rate in relation to the total number of dead people who remained on the rolls between 1980 and 2000 (asserting only that "actual number of ballots cast by the dead is fairly small") and not distinguishing absentee votes from those cast at the polls); In contested Tennessee state senate seat in which Democrat Ophelia Ford won by 13 votes out of 8,653 votes cast in September 2005, an investigation showed that two votes were cast by dead people. See Lawrence Buser, *Senate gets nod for Ford vote today*, COMMERCIAL APPEAL, Apr. 19, 2006, at A1 ("Ford received 4,333 votes, while Republican candidate Terry Roland of Millington received 4,320."); Marc Perrusquia, *Dead voter evidence goes to DA*, COMMERCIAL APPEAL, May 19, 2006, at B1 (reporting that "someone at a North Memphis precinct cast ballots in the names of two dead voters in the Sept. 15 election narrowly won by Ophelia Ford.").

[115] Any computer "matches" would require more detailed investigation to ensure that they are not false positives. *See* THE BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW AND PROFESSOR MICHAEL MCDONALD, ANALYSIS OF THE SEPTEMBER 15, 2005 VOTER FRAUD REPORT SUBMITTED TO THE NEW JERSEY ATTORNEY GENERAL, 4 (2005) ("Attempts to match data on one list to data on another list will often yield 'false positives': two records that at first appear to be a match do not actually represent the same person. The natural incidence of 'false positives' for a matching exercise of this scale—especially when, as here, conducted with relatively little attention to detail—readily explains the ostensible number of double votes.").

B. *Toward Better Data on Legitimate Voters Excluded by Photo Identification*

In addition to better data on fraud, policymakers need better data on the impact of photo identification requirements on participation by legitimate voters before adopting the proposal.

Scholars have defined citizen participation as "purposeful activities in which citizens take part in relation to government."[116] Participation is a crucial democratic value. As Justice Brandeis remarked, "the greatest menace to freedom is an inert people."[117]

Widespread participation serves four functions. First, it exposes decision makers to a variety of ideas and viewpoints, which ensures fully informed decisions.[118] The failure to consider a wide, representative range of views sacrifices deliberation.[119] Second, widespread participation allows the people as a whole to check the power of government officials who might otherwise enact or tolerate abusive practices.[120] Accountability to the electorate as a whole ensures democratic legitimacy,[121] which in turn increases the likelihood that citizens will voluntarily comply with such

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[116] Stuart Langton, *What is Citizen Participation?*, *in* CITIZEN PARTICIPATION IN AMERICA 13, 17 (Stuart Langton ed., 1978).

[117] Whitney v. California, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring).

[118] *See* Nancy Perkins Spyke, *Public Participation in Environmental Decisionmaking at the New Millennium: Structuring New Spheres of Public Influence*, 26 B.C. ENVTL. AFF. L. REV. 263, 267–68 (1999) ("Widespread participation exposes decisionmakers to a healthy mix of perspectives, which is believed to improve the decisionmaking process.").

[119] *Cf.* Thomas I. Emerson, *Toward a General Theory of the First Amendment*, 72 YALE L.J. 877, 881 (1963) (listing one of the values of speech as "attainment of truth" acquired "by considering all facts and arguments which can be put forth in behalf of or against any proposition").

[120] *Cf.* THE FEDERALIST NO. 51, at 349 (James Madison) (Jacob E. Cooke ed., 1961) ("A dependence on the people is no doubt the primary controul [sic] on the government . . . .").

[121] *See* DON HERZOG, HAPPY SLAVES: A CRITIQUE OF CONSENT THEORY 205–07 (1989) (identifying responsiveness "as the core of a theory of legitimacy"); HANNA FENICHEL PITKIN, THE CONCEPT OF REPRESENTATION 232 (1967) (arguing that a "representative government must not merely be in control, not merely promote the public interest, but must also be responsive to the people"); Bernard Manin, *On Legitimacy and Political Deliberation*, 15 POL. THEORY 338, 351–52 (Elly Stein & Jane Mansbridge trans., 1987) (arguing that "the source of legitimacy is not the predetermined will of individuals, but rather the process of its formation, that is, deliberation itself").

decisions.[122] Third, widespread participation allows for a redistribution of government resources and priorities to reflect evolving problems and needs.[123] Finally, widespread participation furthers self-fulfillment and self-definition of individual citizens who play a role in shaping the decisions that affect their lives.[124]

Even in the absence of a photo identification requirement, the United States already has one of the lowest voter participation rates among the world's democracies. We trail many other established and developing democracies in voter turnout by 20 to 30 percentage points, and one survey ranked the United States 139th of 170 democracies.[125]

In light of the importance of widespread participation, policymakers should examine the data on the number of legitimate voters a photo identification requirement would exclude.

A driver's license is the most common form of state-issued photo identification. The 2005 Carter-Baker Commission estimated that twelve percent of voting-age Americans lack a driver's license,[126] and an analysis of 2003 Census and Federal Highway Administration data estimates that 22 million voting-age citizens lack a driver's license.[127] Three to four percent of

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[122] *See* MARY GRISEZ KWEIT & ROBERT W. KWEIT, IMPLEMENTING CITIZEN PARTICIPATION IN A BUREAUCRATIC SOCIETY: A CONTINGENCY APPROACH 132 (1981) (presenting the hypothesis that "[t]he more satisfied the citizens are with participation, the more trusting and efficacious they will be"); Luis Fuentes-Rohwer, *The Emptiness of Majority Rule*, 1 MICH. J. RACE & L. 195, 201 (1996) ("To deserve the democratic denomination, the people must take part in political affairs.").

[123] *See* KWEIT & KWEIT, *supra* note 125, at (asserting that the goals of public participation include the redistribution of power).

[124] *See* Frank I. Michelman, *Conceptions of Democracy in American Constitutional Argument: Voting Rights*, 41 FLA. L. REV. 443, 451 (1989) (discussing a "constitutive" vision of politics whereby citizens define themselves through their participation); *see also* C.B. MACPHERSON, THE LIFE AND TIMES OF LIBERAL DEMOCRACY 47–48, 51–52 (1977) (asserting that public participation increases "the amount of personal self-development of all the members of society").

[125] *See* Rafael López Pintor *et al.*, International IDEA, *Voter Turnout since 1945: A Global Report* 78-85 (2002), *available at* http://www.idea.int/publications/vt/upload/VT_screenopt_2002.pdf. (last accessed Mar. 7, 2006).

[126] COMM'N ON FED. ELECTION REFORM, *supra* note 3, at 73 n. 22. According to the Federal Highway Administration, 13.2 percent of U.S. residents 16 years and older lacked a driver's license. http://www.fhwa.dot.gov/policy/ohim/hs03/pdf/dl1c.pdf

[127] BRENNAN CTR. FOR JUSTICE & OVERTON, *supra* note 10, at 3 n.10

voting-age Americans carry a non-driver's photo identification card issued by a state motor vehicle agency in lieu of a driver's license.[128] Thus, according to the 2001 Carter-Ford Commission, an estimated six percent to ten percent of voting-age Americans (approximately 11 million to 20 million potential voters) do not possess a driver's license or a state-issued non-driver's photo identification card.[129]

Federal data suggests that younger and older Americans are less likely to have a driver's license. While the rate of unlicensed individuals ages 25-69 hovered between five percent and 11 percent in 2003, the percentages of older and younger Americans who lack a driver's license were much higher:

U.S. Residents Unlicensed by Age [130]

Age	% w/o license	Age	% w/o license
18	32.5	70-74	14.3
19	26	75-79	18.6
20	22.9	80-84	26.9
21	20.6	85+	48.3
22	20.1		
23	18.1		
24	19.3		

Other studies on demographic disparities in photo identification focus largely on particular areas and localities. According to the Georgia chapter of AARP, for example, 36 percent of Georgians over age 75 lack a driver's license.[131] In 1994, the U.S. Department of Justice found that African Americans in Louisiana were four to five times less likely than white residents

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[128] Publius, *supra* note 9, at 277, 289 (citing Fed. Elections Comm'n, The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, at 5-6 (1995-96)).

[129] *See* NAT'L COMM'N ON FED. ELECTION REFORM, *supra* note 7, at 60-66 (Chapter Six, Verification of Identity).

[130] Fed. Highway Admin., U.S. Dep't of Trans., Distribution of Licensed Drivers by Sex and Percentage in Each Age Group and Relation to Population: 2003 (Oct. 2004), *available at* http://www.fhwa.dot.gov/policy/ohim/hs03/pdf/dl20.pdf (last accessed Mar. 7, 2006).

[131] *See* Nancy Badertscher & Tom Baxter, *State AARP Criticizes Voter ID Bill*, ATLANTA J. CONST., Mar. 17, 2005, at 4C.

to have government-sanctioned photo identification.[132] Of the 40 million Americans with disabilities, nearly ten percent lack identification issued by the government.[133]

One of the more comprehensive studies was completed in June 2005 by the Employment and Training Institute at the University of Wisconsin-Milwaukee. The study used census data and data from the Wisconsin Department of Transportation computer database for licensed drivers, and it found that senior citizens, younger people, and people of color were less likely to possess a driver's license.[134] The study determined that 23 percent of Wisconsin residents (177,399 individuals) over age 65 do not have a Wisconsin driver's license or state photo identification.[135] Thirty percent of voting-age residents in Milwaukee County lack a driver's license, compared with 12 percent of residents in the balance of Wisconsin.[136] Statewide, significant racial and age disparities also existed, the most striking being that 78 percent of African American males ages 18-24 lack a valid driver's license.[137]

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[132] *See* Letter from Deval L. Patrick, Assistant Att'y Gen., Civil Rights Div., U.S. Dep't of Justice, to Sheri Marcus Morris, La. Assistant Att'y Gen. (Nov. 21, 1994).

[133] *See* Center for Policy Alternatives, Voter Identification and Integrity, *available at* http://www.stateaction.org/issues/issue.cfm/issue/VoterIdentification.xml (last accessed Feb. 12, 2006).

[134] *See* Pawasarat, *supra* note 12, at 1.

[135] *Id.*

[136] *Id.* at 6. According to Census estimates, the voting-age population of Milwaukee County consists of 425,372 residents who reside in the city of Milwaukee and 268,667who live in suburban communities. *Id.* at 15. In New York City, up to three million registered voters lack a driver's license. BRENNAN CTR. FOR JUSTICE & OVERTON, *supra* note 10, at 3 n.11 (citing Elizabeth Daniel, *The New Voter Identification Requirement*, GOTHAM GAZETTE (NEW YORK, N.Y.), April 2002, *at* http://www.gothamgazette.com/article/ 20020401/17/728 (last accessed Feb. 28, 2006)).

[137] Pawasarat, *supra* note 12, at 5.

Race and Percentage of Unlicensed Wisconsin Residents[138]

	Ages 18-24	All Voting Ages
White Males	36	17
White Females	25	17
Black Males	78	55
Black Females	66	49
Latino Males	57	46
Latino Females	63	59

The data above suggests that a photo identification requirement would exclude some legitimate voters and would have a disparate demographic impact.[139]

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[138] *Id.* at 4, 5.

[139]Political appointees in the U.S. Justice Department recently used skewed data to suggest that photo identification requirements have no adverse impact on voters of color. In a letter to U.S. Senator Christopher Bond explaining the Justice Department's rationale in failing to object to Georgia's new photo identification law, Assistant Attorney General William E. Moschella asserted that previous identification requirements did not diminish African-American turnout in the 2000 or 2004 general elections. Letter from William E. Moschella, Assistant Att'y Gen., U.S. Dep't of Just., to U.S. Sen. Christopher S. Bond, (Oct. 7, 2005), *available at* http://www.usdoj.gov/crt/voting/misc/ga_id_bond_ltr.htm (last accessed Mar. 7, 2006). Political factors unrelated to voter identification rules, however--such as mobilization efforts by parties, controversial issues, and a polarized electorate--may increase turnout in a later contest. Further, the earlier identification laws were not photo identification requirements, but much less restrictive practices that allowed voters to establish their identity using 17 types of documentary identification (including non-photo identification such as utility bills or bank statements) or by signing an affidavit, and HAVA requirements that applied only to first-time voters who registered by mail, and allowed them to establish their identity through non-photo documentary identification such as utility bills or bank statements.

Assistant Attorney General Moschella also claimed to rely on Georgia Motor Vehicle Administration data that suggested that African-Americans were slightly more likely to possess identification than whites. *Id.* This data is inconclusive, however, because Georgia provided racial data for less than 60 of those with identification, and there is no evidence that this pool is a statistically representative sampling of voters from across the state. Indeed, county data suggests the opposite. The ten Georgia counties with the highest percentage of African-Americans (59.5 percent-77.8 percent black) have only 87.7 percent of the identification cards per 1000 voting-age residents as the 10 counties with the highest

A photo identification requirement may not exclude as many voters, however, as the numbers initially suggest. Assuming that those without photo identification are disproportionately poor and have lower voter participation rates, the percentage of those who lack photo identification may be lower among the electorate than it is among the entire voting-age population. Further, the most restrictive existing laws (in Georgia and Indiana) allow voters to establish their identity using a U.S. passport or federal and state employee photo identification card, and some voters who lack a driver's license will possess one of these documents.[140] Also, in the aftermath of the terrorist attacks of 9/11, the number of individuals who do not have photo identification may drop as Americans find that it is even more difficult to function in modern life without a photo identification card.[141] Finally, if a photo identification requirement to vote is enacted, some people who lack a state-issued photo identification will likely obtain one so that they can vote (although the percentage who will do so remains unclear).

Other factors suggest that a photo identification requirement could exclude many more than the 10 percent of the voting-age population who lack state-issued photo identification, and that demographic disparities may be greater. Some legitimate voters who have been issued a driver's license or other identification may not bring it to the polls because the card was stolen, lost, or simply forgotten. Further, the numbers of individuals without valid photo identification may rise due to the heightened burdens of the Real ID Act. After 2007, the Real ID Act prohibits states from issuing a driver's license or non-driver's identification card unless a person presents documentary proof of: (a) her full legal name and date of birth, (b) her Social

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percentage of whites (93.4 percent-97.1 percent white). *See* Letter from University of Chicago Law School Professor Adam Cox, Harvard Law School Professor Heather Gerken, Emory Law School Professor Michael Kang, George Washington University Law School Professor Spencer Overton, and Ohio State University Moritz College of Law Professor Daniel Tokaji to John Tanner, Assistant Att'y Gen. for the C.R. Div., U.S. Dep't of Just. (Aug. 19, 2005) (on file with author) (emphasis in original).

[140] The Carter-Baker Commission's recommendation limited acceptable forms of identification to a driver's license or state issued photo identification issued under the Real ID Act. COMM'N ON FED. ELECTION REFORM, *supra* note 3, at 20.

[141] *See id.* at 21.

Security number (or the fact that she is not eligible for one), (c) the address of her principal residence, and (d) her citizenship.[142]

A law that requires a voter's current address to appear on the photo identification card would also drive up the number of those excluded.[143] The University of Wisconsin-Milwaukee study confirmed that transient populations were less likely to have valid driver's licenses. Of the 12,624 students living in residence dorms at Marquette University, the University of Wisconsin-Madison, and the University of Wisconsin-Milwaukee, fewer than two percent had driver's licenses that listed their dorm's address.[144] Over 76 percent of Wisconsin renters moved between January 1995 and 2000, compared with only 22 percent of homeowners.[145] During this same time period, 44 percent of whites moved, compared with 75 percent of Asian Americans, 74 percent of Latinos, 63 percent of African Americans, and 61 percent of Native Americans.[146]

Rather than rely on uninformed "hunches," such as the assumption that the terrorist attacks of 9/11 will significantly increase the number of Americans who possess identification, more detailed empirical work is needed to determine the extent to which a photo identification requirement will shape the electorate. What percentage of the electorate (rather than the general population), for example, lacks a state-issued photo identification card? What percentage of those who have been issued photo identification will fail to bring it to the polls?

Some answers may come from data on affidavits in states that allow voters without photo identification to affirm their identity under penalty of perjury. Affidavits provide insight into the percentage of Americans who fail

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[142] Real ID Act of 2005, Pub. L. No. 109-13, Div. B, Title II, § 202(c), 119 Stat. 231, 302.

[143] For example, proposed legislation in Ohio indicated that a photo identification card must include a voter's current address (this provision was later removed). Daniel P. Tokaji, "Ohio Election Bill Clears Senate," *at* http://moritzlaw.osu.edu/blogs/tokaji/2005/12/ohio-election-bill-clears-senate.html (last accessed Feb. 28, 2006).

[144] Pawasarat, *supra* note 12, at 11-12.

[145] *Id.* at 17.

[146] *Id.* at 18.

to bring either a license or some other form of photo identification to the polls.

As mentioned earlier, South Dakota, Florida, and Louisiana request photo identification but allow voters to sign an affidavit in lieu of presenting such identification, and the number and demographic patterns of the affidavits in these states could indicate which voters would be excluded by making a photo identification card an absolute requirement to vote. For example, reports of the 2004 primary in South Dakota showed that two percent of voters used an affidavit statewide, whereas between four percent and 16 percent of voters used affidavits in the predominantly Native American counties of Shannon, Todd, Corson, Dewey and Zieback.[147]

Affidavit data is important, but not determinative. Affidavit data may underestimate the number of people who lack photo identification. For example, the affidavit records would not record the legitimate voter who lacks photo identification and does not cast a ballot because (1) the poll worker did not offer an affidavit to the voter or (2) the affidavit process was much more time-consuming and the voter decided not to wait. On the other hand, the affidavit does not measure voters who would obtain a photo identification card if it were an absolute requirement for voting, and a collection of affidavits may include forms completed by some fraudulent individuals who forged the signatures of others (although the study of fraud proposed in Part III.A may address this issue).

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[147] Chet Brokaw, *Lawmakers Asked to Repeal Voter Identification Law*, ABERDEEN NEWS (Aberdeen, SD), Jul. 15, 2004. Political appointees at the Justice Department have recently refused to examine affidavit evidence in reviewing whether Georgia's photo identification law disproportionately excluded people of color. In a letter that I drafted along with a group of other law professors before the Justice Department precleared the Georgia identification requirement, we asked officials to request and review affidavit information before making a decision. Specifically, we wrote: Indeed, the ultimate question is *not* whether state records show that minorities are just as likely as whites to have applied for a driver's license or other government-issued ID. *The most important question is what minorities bring to the polls on Election Day to establish their identity.* On that score, Georgia has failed to satisfy its burden by providing the most relevant information—racial data on those who have utilized the affidavit ID option." Letter from Adam Cox et al. to John Tanner, *supra* note 142 (emphasis in original). Assistant Attorney General William E. Moschella characterized the request for affidavit information as suggesting that "the Department seek data to establish that racial minorities may be more likely than non-minorities to misplace or forget their identification when coming to the polls. Such a notion is incredibly demeaning to minorities, and this Department emphatically declines to entertain such a request."

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While partisans can construe any study to favor their preferred outcomes, policymakers should obtain and consider the best data available.

Granted, empirical data is sometimes misleading due to value-driven research assumptions or deliberate skewing or manipulation of data.[148] Even for those who act in good faith, it may also be difficult to separate empirical data from normative democratic values in assessing and managing the risks of voter fraud and the exclusion of legitimate voters by a photo identification requirement.

Rather than using these shortcomings as a justification to completely dismiss empirical data and defer solely to misleading anecdotes and flawed analogies, policymakers should acknowledge the limitations of empirical study, scrutinize research methodologies, and make informed decisions based on more information rather than less. Empirical data is not perfect, but it allows for a better understanding of the true costs and benefits of a photo identification requirement, and permits a more honest debate about the democratic values at issue.

IV. THE LEGAL STATUS OF PHOTO IDENTIFICATION REQUIREMENTS

Empirical data is crucial not just for policymaking but also for analyzing whether proposed photo identification requirements comply with constitutional and statutory requirements. Empirical evidence allows courts to determine whether photo identification requirements constitute an undue burden on the fundamental right to vote, a poll tax, or a violation of Section 2 of the Voting Rights Act.[149]

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[148] *See e.g.*, Wendy E. Wagner, *Congress, Science, and Environmental Policy*, 1999 U. ILL. L. REV. 181 (1999) (arguing against overreliance on "science" in agency decisionmaking).

[149] Empirical data can help courts properly evaluate whether photo identification requirements violate other legal provisions, such as the Twenty-sixth Amendment (voting rights of citizens 18 years of age or older shall not be denied or abridged on account of age), the Fifteenth Amendment (prohibiting racial discrimination in voting), the Voting Accessibility for the Elderly and Handicapped Act, and various state constitutional claims. U.S. CONST. art. XXVI; *Id.* at art. XV; Voting Accessibility for the

A. Burdening the Fundamental Right to Vote

Depending on the amount of voter fraud that exists and the number of legitimate voters who would be excluded, a photo identification requirement may unduly burden the fundamental right to vote that stems from the First and Fourteenth Amendments.[150]

While allowing that "there must be a substantial regulation of elections if they are to be fair and honest,"[151] courts use the following test to determine whether an election procedure unduly abridges the right to vote:

> [A] court must resolve such a challenge by an analytical process that parallels its work in ordinary litigation. It must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In

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Elderly and Handicapped Act, Pub. L. No. 98-435, 98 Stat. 1678, 42 U.S.C. § 1973ee *et seq.*

[150] *See* Illinois Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 184, (1979) (asserting that "voting is of the most fundamental significance under our constitutional structure."); Reynolds v. Sims, 377 U.S. 533, 561 (1964) ("Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society."); Wesberry v. Sanders, 376 U.S. 1, 17-18 (1964) ("No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right."); Bush v. Gore, 531 U.S. 98, 112 (2000) ("[W]hen the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental.") Advocates of an amendment to the U.S. Constitution that calls for an explicit right to vote note that some U.S. Supreme Court Justices have observed that no such right exists. *See e.g.*, Jesse Jackson, Editorial, *No Change in No-Account System*, CHICAGO SUN-TIMES, Nov. 23, 2004, at 37 (citing Bush v. Gore, 531 U.S. 98, 104 (2000) (asserting that "the individual citizen has no federal constitutional right to vote for electors for the President of the United States.")). This Article does not address the need for the passage of a right-to-vote constitutional amendment, but it does note the U.S. Supreme Court has repeatedly recognized that voting is a fundamental right that arises from the First and Fourteenth Amendments.

[151] *See Storer v. Brown*, 415 U.S. 724, 730 (1974).

> passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights. Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional.[152]

The test operates on a continuum—there exists "[n]o bright line" that separates permissible from unconstitutional election regulation.[153] Strict scrutiny applies to "severe" restrictions on voting rights,[154] lesser burdens trigger less exacting review, and "reasonable, nondiscriminatory restrictions" are usually constitutional if "important regulatory interests" exist.[155]

1. Assessing the Voters' Burden Relative to the State Interest

Hard data is especially valuable in assessing the burdens of a photo identification requirement on voters and the state's interest in preventing fraud.

Without hard data, judges would likely engage in ad hoc, contestable conjecture about the danger of fraud and the difficulty of obtaining a photo identification card. Many judges inclined to favor a photo identification requirement, for example, can invoke a plausible anecdote of fraud or use flowery language to proclaim that photo identification is necessary to maintain voter confidence.[156] These judges can speculate that photo identification is

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[152] *Anderson*, 460 U.S. at 789. *Accord* Timmons v. Twin Cities Area New Party, 520 U.S. 351, 358 (1997); Burdick v. Takushi, 504 U.S. 428, 434 (1992).

[153] *See Timmons*, 520 U.S. at 359 ("No bright line separates permissible election-related regulation from unconstitutional infringements on First Amendment freedoms."); *Anderson*, 460 U.S. at 789-90 ("The results of this evaluation will not be automatic; as we have recognized, there is 'no substitute for the hard judgments that must be made.'"); Storer v. Brown, 415 U.S. 724, 730 (1974) ("No litmus-paper test . . . separates those restrictions that are valid from those that are invidious.").

[154] *Burdick*, 504 U.S. at 434; Norman v. Reed, 502 U.S. 279, 289 (1992).

[155] *Timmons*, 520 U.S. at 358-59.

[156] *See, e.g., The League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823, 829 (2004) ("If elections are not substantially free from fraud and other irregularities, public confidence in their integrity and the validity of their results, which is essential to the maintenance of ordered liberty, is threatened. . . ."). Some photo identification advocates argue that regardless of the magnitude of fraud, "the perception of possible fraud contributes to low confidence in the system," and that a photo identification requirement

not unreasonably burdensome because of fee waivers and new photo identification distribution programs.[157] A judge skeptical of a photo identification requirement, on the other hand, can emphasize assumptions that negate the existence of voter fraud and anecdotes about individuals who had difficulties securing a photo identification card.

Reliance on these personal assumptions allows for the charge that personal political ideology rather than law shaped the judge's holding. In light of the political nature of the photo identification debate, the institutional limitations of courts, and the important democratic values furthered by both widespread participation and the prevention of voter fraud, judges should look to empirical data for more reasoned analysis and consistency in decision making.

Imagine, for example, a state in which about 1,000,000 citizens regularly turn out to vote. Empirical studies suggest that five percent of legitimate voters in the state (50,000 people) will not bring a photo identification card to the polls if it were required, and most of these will be ethnic minorities who regularly support Party A. Studies also suggest that in the absence of a photo identification requirement at the polls, 50 fraudulent votes would be cast (0.005 percent of votes cast).

"can enhance confidence." COMM'N ON FED. ELECTION REFORM, *supra* note 3, at 18-19. Growing cynicism in the absence of a photo identification requirement, the argument goes, lowers voter participation. *See* FUND, *supra* note 6, at 2 (suggesting that low confidence may result in low voter turnout). The problem, however, is that a lack of empirical data allows photo identification proponents to make these claims without explaining the extent to which a lack of a photo identification requirement lowers voter confidence and participation relative to the existence of other factors, such as manipulation of voting rules by politicians that suppresses voter turnout. *Cf.* Nathaniel Persily & Kelli Lammie, *Perceptions of Corruption and Campaign Finance: When Public Opinion Determines Constitutional Law*, 153 U. PA. L. REV. 119 (2004) (asserting that popular perceptions of corruption are related to factors other than campaign finance laws and that restrictive campaign reforms would not lower the perception of corruption, and concluding that courts should not base their decisions about the need for campaign restrictions on popular opinion).

[157] Ind. Democratic Party v. Rokita, No. 1:05-CV-0634-SEB-VSS, 2006 WL 1005037, at *36, (S.D. Ind. Apr. 14, 2006). ("[T]he individuals and groups that Plaintiffs contend will be disproportionately impacted by [the statute] all appear fully capable of availing themselves of the law's exceptions so that they do not need to obtain photo identification in order to vote.").

In considering the magnitude[158] of the injury, the court can look to evidence that suggests 50,000 legitimate voters will not cast a ballot because of the photo identification requirement. The disproportionate impact of the proposal on ethnic minorities who vote for Party A suggests that the restriction lacks neutrality.[159] In examining the "legitimacy and strength"[160] of the "precise interests put forward by the State,"[161] the court can quantify the state's interest in preventing 50 fraudulent votes. The Court can determine whether it is "necessary to burden"[162] the legitimate voters with a photo identification requirement by looking at data on the effectiveness of alternatives such as an affidavit in deterring most fraudulent voters and very few legitimate ones.[163]

2. *Tailoring*

A court should also use empirical information to determine whether a photo identification requirement is properly tailored.

To be properly tailored, a statute must further the government's objectives, must not be overinclusive or underinclusive to an unacceptable extent, and must not be unnecessarily burdensome.[164] A statute is overinclusive when the proportion of invalid applications of the statute is substantially high relative to valid applications.[165] A statute is underinclusive

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[158] *Anderson*, 460 U.S. at 789.

[159] *Id.*

[160] *Id.*.

[161] *Id.*

[162] *Id.*

[163] See *infra* Part V for a discussion of supplements and alternatives to absolute photo identification requirements.

[164] *See* Eugene Volokh, *Freedom of Speech, Permissible Tailoring and Transcending Strict Scrutiny*, 144 U. PA. L. REV. 2417, 2422–23 (1996).

[165] *See* N.Y. v. Ferber, 458 U.S. 747, 773 (1982) (rejecting a substantial overbreadth claim because the statute's "legitimate reach dwarfs its arguably impermissible applications"); Broadrick v. Okla., 413 U.S. 601, 615 (1973) ("[W]e believe that the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep."). Scholars have described applications of the narrow tailoring and First Amendment substantial overbreadth tests as substantively identical. *See* Richard L. Hasen, *Measuring Overbreadth: Using Empirical Evidence to Determine the Constitutionality of Campaign Finance Laws Targeting Sham Issue Advocacy*, 85 MINN. L. REV. 1773, 1782 n.46 (2001) ("Other legal doctrines, such as the requirement of 'narrow tailoring' under strict scrutiny, serve a function similar to overbreadth."); Henry Paul Monaghan, *Overbreadth*,

when it fails to prevent a relatively large number of activities that pose the danger that the statute was designed to prevent.

The tailoring requirement addresses the difficulty in crafting a single, bright-line voter identification law that prevents all voter fraud and simultaneously includes all legitimate voters. Any rule will tend to be underinclusive and allow for some fraudulent voting, overinclusive and inhibit some legitimate votes, and often both.

The amount of overinclusiveness and underinclusiveness that a court should tolerate depends on the level of scrutiny. As mentioned above, the appropriate level of scrutiny to apply to a photo identification requirement depends on the magnitude of the burden relative to the precise interest of the state. Regulations subject to strict scrutiny must be narrowly tailored to advance a compelling state interest, and as much as possible they should avoid restricting constitutionally protected activity that does not pose the danger that motivated the regulation.[166] Regulations subject to intermediate scrutiny must be substantially related to an important government interest, and regulations subject to rational-basis scrutiny must be rationally related to a legitimate government interest.

Whatever scrutiny is applied, data allows a judge to consider the proportion of applications of the statute that pose the danger that the statute was designed to prevent (fraudulent votes) relative to the number of applications covered by the statute that do not pose the danger the statute was designed to prevent (legitimate voters who lack photo identification).

For example, assume data reveals that a photo identification requirement excluded 1,000 votes, and that 990 of these were fraudulent and ten were legitimate. This data provides strong evidence that such a photo identification requirement is narrowly tailored.

1981 SUP. CT. REV. 1, 37 n.152 ("The issue generally is framed in terms of the availability of less restrictive alternatives . . . . In the First Amendment area we speak of overbreadth, but fashions in the use of language cannot disguise the substantive identity of the two inquiries . . . .").

[166] *See* FEC v. Mass. Citizens for Life, Inc., 479 U.S. 238, 265 (1986) ("Where at all possible, government must curtail speech only to the degree necessary to meet the particular problem at hand, and must avoid infringing on speech that does not pose the danger that has prompted regulation.).

In contrast, assume that 990 of the excluded votes were legitimate and only ten were fraudulent. Further, assume that the regulation follows the Carter-Baker Commission's proposal and requires photo identification at the polls but merely a signature from absentee voters, and thus the regulation tolerates 3,000 fraudulent absentee ballots. This data suggests that the regulation is at once so overinclusive and so underinclusive that it is not rationally related to the state's purported interest in preventing fraud.

Granted, the magnitude of the burden, the appropriate level of scrutiny, and the proper tailoring cannot be reduced to a simple mathematical formula. Different methodologies and underlying assumptions, along with other variables, can result in varying numbers. Even when judges agree on data, they will still harbor normative differences that might lead them to vastly different conclusions. For example, judges might differ on whether a photo identification requirement that deters 1,000 fraudulent votes and 1,000 legitimate votes is "narrowly tailored," or whether a photo identification law that deters 250 fraudulent votes and 1,000 legitimate votes is "rationally related" to the prevention of fraud. To some judges, fraudulent votes taint democracy much more than reduced participation by legitimate voters, where as other judges might err on the side of access and risk ten fraudulent votes to ensure that legislatures do not exclude a single legitimate voter (much as the "reasonable doubt" standard in the criminal context in theory errs against convicting criminal defendants).

Another question involves whether photo identification requirements are "reasonable" and "non-discriminatory." To the extent that the regulations disproportionately exclude people of color, poorer Americans, disabled Americans, young Americans, or senior citizens, how significant must this demographic skew be before it becomes intolerable? How should judges tackle the thorny problem of disproportionate exclusion if the data shows that the rate of fraud is also disproportionately high among these voters? How about if 100 fraudulent votes were cast and split evenly between the parties (both Republicans and Democrats received 50 fraudulent votes apiece), but a photo identification requirement deterred voting by 90 Democratic voters and no Republican voters?

Statistical data will not answer these normative questions, but such data is necessary for an honest conversation about normative values to occur. Absent data, judges and advocates can avoid a discussion of different normative values by using assumptions, anecdotes, and analogies to paint a factual picture that appears to support their desired outcome.

An "undue burden" legal analysis also requires that a court examine whether less restrictive alternatives of voter identification exist.[167] This Article explores alternatives below in Part V.

B. Photo Identification Fees as Poll Taxes

Many states charge a fee to issue a photo identification card,[168] and better data can establish whether a photo identification requirement to vote violates the Twenty-Fourth Amendment's prohibition on poll taxes.[169]

Georgia's law allowed residents to file an affidavit of indigency to receive a free photo identification.[170] In *Common Cause/Georgia v. Billups*, however, the court found that "very few voters likely will take advantage of the fee waiver affidavit option" due to embarrassment about their poverty or

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[167] To satisfy the most lenient standard of review, rational basis review, a law must only be "reasonable" and "rationally related" to a "legitimate governmental interest." *See e.g.* Lying v. Int'l Union, 485 U.S. 360, 370 (1988). To pass review under strict scrutiny, a law or policy must be justified by a compelling governmental interest and must also constitute the least restrictive means for satisfying that interest. *See e.g.* Denver Area Educ. Telcoms. Consortium v. FCC, 518 U.S. 727, 807 (1996). Under intermediate scrutiny, a regulation must be substantially related to an important government objective. *See e.g.* United States v. Virginia, 518 U.S. 515, 524 (1996).

[168] *See e.g.*, *Common Cause/Ga,* No. 4:05-CV-0201-HLM, at *124 (noting that in Georgia, "The fee for a Photo ID card is $ 20 for a five-year card and $ 35 for a ten-year card.")

[169] U.S. Const. amend. XXIV (asserting that the right to vote in federal elections, "shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax."). The U.S. Supreme Court prohibited poll taxes in state and local elections when it held that "a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard." Harper v. Virginia State Board of Elections, 383 U.S. 663, 666 (1966).

[170] *See* GA. CODE ANN. § 40-5-103 (2005); *Common Cause/Ga,* No. 4:05-CV-0201-HLM, at *126-27 (quoting the affidavit of indigency that Georgians must sign to obtain a free photo identification). Following a court challenge, in 2006 Georgia legislators passed a revised of the law that directs the state to distribute the photo identification for free. *See* GA. CODE ANN. §§ 21-2-417, 40-5-103 (2006); *see also* IND. CODE § 3-11.7-5-2.5(c) (Michie 2005) (allowing indigent individuals unable to afford a photo identification the ability to cast a ballot).

being non-indigent and unwilling to either lie about financial status or pay for a card to vote.[171] The court concluded that the affidavit likely constituted a "material requirement" imposed solely upon those who do not pay a fee for a photo identification card, and thus fell short of compliance with the Twenty-Fourth Amendment.[172] While the court's conclusion may be correct, empirical data on the number of voters likely to complete the affidavit of indigency is more definitive than speculation about the embarrassment and veracity of voters.

A state might also distribute free photo identification to anyone who asks without requiring that individuals declare indigency.[173] As mentioned above, however, after 2007 the Real ID Act prohibits states from issuing photo identification without documentary proof of an applicant's full legal name and date of birth, Social Security number, and citizenship. Depending on the state, a birth certificate costs from $10.00 to $45.00. A passport costs $85.00 and certified naturalization papers cost $19.95.[174] Empirical data would reveal the percentage of the population that lacks ready access to these forms of documentation and would have to purchase them to obtain a state-issued photo identification card to vote.

C. *Abridging Voting Rights Along Racial Lines*

Data is essential in determining whether photo identification requirements disproportionately dilute the voting rights of people of color.

Congress designed Section 2 of the Voting Rights Act to enforce the Fifteenth Amendment's prohibition on racial discrimination in voting. The section provides that no voting procedure shall be imposed that "results in a denial or abridgement of the right to vote" on account of race or color.[175]

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[171] *Common Cause/Ga,* No. 4:05-CV-0201-HLM, at *126-27.

[172] *See* Harman v. Forssenius, 380 U.S. 528, 542 (1965) (holding that a Virginia requirement that those who do not pay a poll tax file a 'certificate of residency' constituted a "material requirement" that abridged the right to vote in violation of the Twenty-Fourth Amendment) (*cited in Common Cause/Ga,* No. 4:05-CV-0201-HLM, at *126-27).

[173] *See* GA. CODE ANN. §§ 21-2-417, 40-5-103 (2006); COMM'N ON FED. ELECTION REFORM, *supra* note 3, at 10.

[174] BRENNAN CTR. FOR JUSTICE & OVERTON, *supra* note 10, at 4.

[175] 42 U.S.C.A. § 1973(a).

While the vast majority of Section 2 cases have featured vote dilution challenges to election district boundaries, Section 2 also applies to challenges to election practices that disproportionately deny voting rights to people of color.[176]

A violation of Section 2 is established if:

> . . . based on the totality of circumstances, it is shown that the political processes . . . are not equally open to participation by [voters of color in that they] have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.[177]

Plaintiffs need not show that the challenged electoral practice was adopted with the "intent to discriminate against minority voters," but simply must show that "as a *result* of the challenged practice or structure plaintiffs do not have an equal opportunity to participate in the political processes."[178]

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[176] *See* Thornburg v. Gingles, 478 U.S. 30, 44-45, n.19 (1986) ("Section 2 prohibits all forms of voting discrimination, not just vote dilution."); ELLEN KATZ WITH MARGARET AISENBREY, ANNA BALDWIN, EMMA CHEUSE, AND ANNA WEISBRODT, VOTING RIGHTS INITIATIVE AT THE UNIVERSITY OF MICHIGAN LAW SCHOOL, DOCUMENTING DISCRIMINATION IN VOTING: JUDICIAL FINDINGS UNDER SECTION 2 OF THE VOTING RIGHTS ACT SINCE 1982 8-9 (2006) (showing that only 36 of 322 Section 2 lawsuits since 1982 challenged election procedures); *see e.g.*, United States. v. Berks County, 277 F. Supp. 2d 570 (E.D. Pa. 2003) (finding that identification requests from Latino voters, hostility of poll officials against Latino voters, and other factors led to an Section 2 violation); Operation Push v. Mabus, 932 F.2d 400 (1991) (finding that Mississippi's dual registration system violated Section 2 of the Voting Rights Act). Dan Tokaji recognizes the inapplicability of the leading Section 2 case, *Thornburg v. Gingles*, to election practices, and proposes a legal test for election practices. *See* Daniel P. Tokaji, *The New Vote Denial: Where Election Reform Meets the Voting Rights Act*, 58 S.C. L. REV. (forthcoming 2006) (recommending a Section 2 test for election procedures in which "a prima facie case could be made by showing that the challenged practice is a but for cause of racial disparity in voting, but the state or local entity would still have the opportunity to demonstrate that this practice is necessary to achieve a compelling government interest.").

[177] 42 U.S.C.A. § 1973(b).

[178] Thornburg v. Gingles, 478 U.S. 30, 44 (1986) (emphasis added). *Cf.* Tokaji, *supra* note 179 (asserting that unlike vote dilution cases, vote denial cases implicate the value of participation rather than representation, do not present significant concerns about proportional representation, and allow for simplicity in measuring disparate impact).

Racial disparities in driver's license and state photo identification applications are important evidence that a photo identification requirement to vote will have a discriminatory impact, but so is data on racial disparities in how voters establish their identity at the polls. Are voters of color more likely to use an affidavit, for example, in states that provide that option? Data on racial disparities in photo identification possession and use at the polls from other states is relevant,[179] but litigants should also commission detailed studies that analyze racial disparities in the state where the voter identification law is challenged.

A showing of a disparate racial impact of photo identification alone, however, is insufficient to establish a Section 2 violation.[180] Courts must also weigh a non-exclusive list of factors, such as the existence of racially polarized voting, the presence of elected officials who are unresponsive to the needs of minority voters, whether the policy underlying the contested election practice is tenuous, and the effects of past discrimination in areas such as education, employment, and heath.[181] "The essence of a §2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives."[182]

Statistical evidence helps establish whether these other relevant factors exist in a particular state, such as the existence of racially polarized voting, disparities in socioeconomic factors such as education and employment, and whether the amount of voter fraud is so minimal that that

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[179] *See, e.g.,* Pawasarat, *supra* note 12.
[180] *See Wesley v. Collins*, 791 F.2d 1255, 1260-61(6th Cir. 1986).
[181] *Thornburg*, 478 U.S. at 44-45. Other Senate factors include, but are not limited to:

> . . .the history of voting-related discrimination in the State or political subdivision . . . the extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting; the exclusion of members of the minority group from candidate slating processes; . . . the use of overt or subtle racial appeals in political campaigns; and the extent to which members of the minority group have been elected to public office in the jurisdiction.

Id. at 44-45.
[182] *Id.* at 47.

the justification for the photo identification requirement is tenuous.[183] These various factors will differ from state to state, and thus the legal status of voter identification laws may vary. A federal court might find that a photo identification requirement to vote in Rhode Island, for example, does not constitute a Section 2 violation, while an identical photo identification requirement in Georgia violates Section 2 because it interacts with Georgia's unique social and historical conditions to produce unequal opportunities for voters of color in that state.

D. *"Individual Responsibility" in the Context of Democracy*

In determining whether photo identification requirements comply with constitutional and statutory provisions, some judges may be tempted to ignore data showing that photo identification requirements would exclude legitimate voters and instead focus on the "opportunity" of individuals to obtain a photo identification card to vote. Photo identification requirements do not constitute a "severe burden" on voting, a poll tax, or a Voting Rights Act violation, a judge might reason, because most people possess a photo identification card and anyone can obtain one.[184]

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[183] Some photo identification advocates assert that a single, uniform photo identification rule protects voters from discrimination, as it is subject to less discretionary interpretation than signature interpretation by pollworkers or a complex list like government documents and bank statements. COMM'N ON FED. ELECTION REFORM, *supra* note 3, at iv ("There is likely to be less discrimination against minorities if there is a single, uniform ID, than if poll workers can apply multiple standards."). This argument has a number of shortcomings. First, the substance of policy is critical, not just uniformity for the sake of uniformity. A voting restriction that uniformly excludes voters, like a uniform poll tax of $20, thwarts fairness. Second, additional hurdles to vote, like a photo identification requirement, increase the authority of pollworkers to use their discretion (both in waiving photo identification requirements for certain voters and in determining whether a voter matches her identification). Third, allowing voters at the polls to enjoy the same right to establish their identity through signature that absentee voters enjoy promotes more uniformity than disparate treatment of these two groups, especially if data shows that absentee ballots are more susceptible to fraud.

[184] The focus on individual responsibility is seen in other election contexts, such as language assistance at the polls, lifetime bans on felon voting, punch card ballots, and laws that allow challengers at the polls. Individuals, the argument goes, have a responsibility to learn English, stay out of trouble with the law, punch a ballot correctly, and establish their eligibility to poll challengers. According to this perspective, the fact that some individuals fail to comply with these norms and that regulations fall the hardest on particular demographic populations and thus have political consequences is not a problem that necessitates concern. *See e.g.*, *Wesley*, 791 F.2d at 1262 (finding that a felon disenfranchisement law does not violate Section 2 of the Voting Rights Act, reasoning that felons are not "disenfranchised because of an immutable characteristic, such as race, but rather because of their conscious decision to commit a criminal act for which they assume the risks of detention and punishment."); Stewart v.

This perspective does not ask how many legitimate voters will actually obtain a fee waiver or return home to retrieve their identification, but instead whether a "fair" process exists that gives an individual the opportunity to vote. The vision focuses on the guilt and responsibility of the individual legitimate voter who lacks photo identification, and does not recognize lowered voter turnout as a harm If an individual voter fails to comply with a state mandate, the individual rather than the state is at fault. Individual fraud stigmatizes elections, according to this perspective, but reduced turnout due to a photo identification requirement does not compromise electoral integrity.[185]

Judges who emphasize individual responsibility avoid issues of vote dilution.[186] As seen in one-person, one-vote cases, "[t]here is more to the right to vote than the right to mark a piece of paper and drop it in a box or the right to pull a lever in a voting booth."[187] While the simple task of bringing a photo identification card to the polls may not appear to be an unreasonable obstacle for an individual voter, judges should examine whether voter turnout is reduced in the aggregate.

The problem with a focus on "individual responsibility" is that politics involves not simply individual rights but also associational and

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Blackwell, 356 F. Supp. 2d 791, 808 (N.D. Ohio 2004) (asserting that there was no "'actual' denial of the right to vote on account of race," through the use of punch card ballots since "[a]ll voters in a county, regardless of race, use the same voting system to cast a ballot, and no one is denied the opportunity to cast a valid vote because of their race.").

[185] *Cf.* Kimberle Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1341-49 (1988) (describing assumptions of expansive and restrictive visions of antidiscrimination law).

[186] *Cf.* Heather K. Gerken, *Understanding the Right to an Undiluted Vote*, 114 HARV. L. REV. 1663, 1666 (2001) (arguing that vote dilution claims cannot be squeezed into the conventional individual-rights framework); Samuel Issacharoff & Richard H. Pildes, *Politics as Markets: Partisan Lockups of the Democratic Process*, 50 STAN. L. REV. 643, 648 (1998) (asserting that the judiciary "invert[s] the focus of constitutional doctrine from the foreground of rights and equality to the background rules that structure partisan political competition"); Daniel R. Ortiz, *From Rights to Arrangements*, 32 LOY. L.A. L. REV. 1217, 1218 (1999) (observing that election law's evolution "has led us away from a largely rights-based, individual-centered view of politics, to a more pragmatic and structural view of politics as a matter of institutional arrangements").

[187] *Reynolds*, 377 U.S. at 555 n.29 (quoting South v. Peters, 339 U.S. 276, 279 (1950) (Douglas, J., dissenting)).

structural concerns.[188] Through associating with others, individual voters create incentives for politicians to respond to their needs.[189] Voting is a "vehicle for self-development and identification, and a means for creating alliances and thus a community among individuals so engaged."[190]

Photo identification requirements that exclude legitimate voters interfere with the ability of citizens to identify with one another as a political community, create alliances with others of different backgrounds, and use the vote instrumentally to enact political change. Despite the emphasis on "individual responsibility," photo identification requirements that exclude legitimate voters dilute the political choices of not only those who are unable to produce a photo identification but also their allies who do produce a photo identification card.[191]

Voting is also structural to the extent that one believes that ascertaining the will of the citizenry as a whole is a central purpose of self-government in a democracy. Individual votes are counted and weighed relative to one another, and thus a rule that has a disproportionate impact on a particular demographic group can "fix" an outcome. Photo identification advocates recognize the structural elements inherent in the statement that "voters are disenfranchised by the counting of improperly cast ballots or outright fraud" or that a close election could be determined by fraudulently cast votes.[192] Judges should not ignore questions of democratic structure and skewed results by substituting the "opportunity" of all to obtain an

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[188] *Cf.* Samuel Issacharoff & Pamela S. Karlan, *Standing and Misunderstanding in Voting Rights Law*, 111 HARV. L. REV. 2276, 2282 n.30 (1998) (asserting that one-person, one-vote cases like *Reynolds* "should be viewed as cases about group political power . . . rather than purely about individual rights").

[189] Gerken, *supra* note 189 at 1678 ("Vote aggregation helps an individual convey her needs to her representative and creates an incentive for politicians to pay attention to her concerns.").

[190] Ellen D. Katz, *Race and the Right to Vote After* Rice v. Cayetano, 99 MICH. L. REV. 491, 513 (2000).

[191] Gerken, *supra* note 189, at 1669-70 (distinguishing vote dilution claims from claims based on conventional individual rights by observing that with regard to voting: "fairness is measured in group terms; an individual's right rises and falls with the treatment of the group; and the right is unindividuated among members of the group"); James Thomas Tucker, *Affirmative Action and Misrepresentation: Part II--Deconstructing the Obstructionist Vision of the Right to Vote*, 43 HOW. L.J. 405, 414 (2000) ("When an electoral scheme systematically prevents the collective exercise of voting rights for particular groups, the individual right to vote is diminished accordingly.").

[192] FUND, *supra* note 6, at 8.

identification card for a real analysis of the extent to which photo identification requirements actually diminish turnout.

V. PHOTO IDENTIFICATION SUPPLEMENTS AND ALTERNATIVES

In order to assess photo identification requirements, policymakers and judges also need data that measures the comparative effectiveness of other methods of identifying voters in deterring most fraudulent votes but very few legitimate ones.

This Part reviews two groups of alternatives. The first group maintains photo identification as an absolute requirement to vote, but attempts to increase access through measures such as free photo identification cards, mobile photo identification card distribution programs, and Election Day registration. The second set of alternatives provides measures for individuals to vote who arrive at the polls without photo identification, such as affirming their identity by signing an affidavit.

A. Supplements That May Enhance Voter Access

Photo identification advocates have proposed several supplements that attempt to mitigate or offset access issues while still requiring a photo identification card as an absolute condition to vote. Rather than simply assuming that the proposals will address all access issues, an empirical analysis of proposals designed to enhance access is needed. A recent "Developments in the Law" in the *Harvard Law Review* that briefly reviewed the federal district court's decision to block Georgia's photo identification law, for example, stated:

> The hurdles that photographic identification proposals face today could diminish in as few as two election cycles if the states take on more of the responsibility of educating voters, ensuring greater access to voter identification facilities, and adhering to HAVA requirements such as cleansing of the voter rolls. These

> efforts would minimize at once both the severity of the proposal's disenfranchising effects and any potential for voter fraud.[193]

This broad statement makes assumptions without providing empirical data, and thus policymakers are unable to assess the statement's plausibility. How do we know, for example, that hurdles would diminish "in as few as two election cycles"? What do studies indicate about government's effectiveness in quickly reducing racial disparities in other contexts? What specific steps must the state take to educate voters and provide access to voter identification facilities, and how does one guarantee that these state efforts will continue into the future? What happens when the Real ID's enhanced requirements of documentary evidence of citizenship, place of birth, and Social Security number after 2007 make obtaining photo identification more difficult?

When policymakers explore supplements to photo identification designed to increase access, they should demand specific data about the effectiveness of such supplements in increasing access—especially if data shows that fraud is minimal relative to the number of legitimate votes that would be excluded.

1. Free Photo Identification

In 2005, Georgia allowed for individuals who completed a form declaring indigency to obtain a free photo identification card,[194] and the Carter-Baker Commission proposal would give free photo identification to all non-drivers.[195] As mentioned above, policymakers should look to data rather than simply assuming that free photo identification programs will resolve all access problems.[196] Some individuals will not take advantage of the

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[193] *Developments in the Law, supra* note 9, at 1154.

[194] GA. CODE ANN. § 40-5-103 (2005). Following a court challenge, in 2006 Georgia legislators passed a revised of the law that directs the state to distribute the photo identification for free. GA. CODE ANN. §§ 21-2-417, 40-5-103 (2006).

[195] COMM'N ON FED. ELECTION REFORM, *supra* note 3, at 10.

[196] *See* Publius, *supra* note 9, at 300 ("Although, as discussed, the claim that minority voters cannot meet such requirements is unsubstantiated, that problem can be easily resolved. For any individual who does not have a driver's license or other photo identification and who needs to obtain one to meet this requirement, states should waive the fee their motor vehicle departments charge for the nondriver's

programs because they do not know of them, do not have the time to apply, are ashamed to admit indigency, or do not have the resources to obtain the supporting documentation necessary to obtain a state-issued photo identification card under the Real ID Act.[197] Others may secure a free photo identification card and lose it, have it stolen, or simply forget to bring it to the polls.

2. *Expanded Photo Identification Distribution Through Mobile Buses and More Photo Identification Offices*

The Carter-Baker Commission proposed that states take an "affirmative role in reaching out to non-drivers by providing more offices, including mobile ones," to provide photo identification cards to voters.[198] In Georgia, the state has commissioned a bus to travel through the state and provide photo identification cards. Data is needed, however, because the effectiveness of mobile buses and other outreach efforts rest upon the details of implementation, which may vary based on written policies, budget priorities, and the dedication and competence of politicians and civil servants.

For example, an estimated 300,000 adults in Georgia lack a driver's license.[199] In 2005, Georgia had a mobile photo identification program that consisted of one bus that traveled to a location for a day or two, and was available during the middle of the day from 9 a.m. until 3 p.m.[200] A spokesperson for Georgia Governor Sonny Perdue acknowledged the shortcomings of using a hand-me-down bus from another agency when she

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license identification cards they issue.").

[197] *Common Cause/Ga,* No. 4:05-CV-0201-HLM, at *107-09 (explaining that the Georgia indigency affidavit was insufficient, and listing the various classes of citizens who would remain without photo identification).

[198] COMM'N ON FED. ELECTION REFORM, *supra* note 3, at 69.

[199] Carlos Campos, *Photo ID Bus Gets Little Use*, ATLANTA J. CONST., Dec. 19, 2005 (observing that the idea of the mobile bus program "was to bring photo IDs to the estimated 300,000 voting age people who don't have driver's licenses"); *see also* Matthew S.L. Cate, *Photo ID Bus Rolls into Northwest Georgia*, CHATTANOOGA TIMES FREE PRESS, Dec. 21, 2005, at NG4.

[200] *See* georgia.gov, *DDS Begins Mobile Licensing Tours & Center Reservations for Photo IDs*, *at* http://www.georgia.gov/00/article/0,2086,4802_4961_41800330,00.html (last accessed Feb. 28, 2006); *see also* Georgia Department of Driver Services, "GLOW Bus Schedule," at http://www.dds.ga.gov/drivers/glowbus.aspx (last accessed Feb. 28, 2006) (showing that in the entire month of March 2006, the bus will be open to the public on only three days).

said, "It may be a bumpy road getting the bus out into the state . . . . We've got to start with the resources we've got and can't spend money we don't have."[201] While the mobile bus had the capacity to issue 200 photo identifications a day, it issued fewer than 500 licenses during the last three months of 2005.[202]

3. *Provisional Ballots Counted When Photo Identification Presented*

The Georgia and Carter-Baker Commission provisions also allow voters who do not bring their photo identification to the polls to cast a provisional ballot, which officials will count if voters present a photo identification card to an elections office within two days of the election. In Georgia, officials presented evidence that in one county, 13 people without photo identification voted provisionally and two of them returned within the 48-hour period following the election with a photo identification card.[203] More comprehensive evidence is needed, however, to determine how many legitimate votes will continue to go uncast or uncounted because (1) voters do not possess photo identification cards or (2) voters do not make the time to return to an elections office.

4. *Election Day Registration*

States that enact a photo identification requirement could also adopt Election Day registration, which allows unregistered, eligible citizens to show up at the polls on Election Day, register, and immediately cast a ballot.

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[201] Nancy Badertscher, *State Bus Will Roll for Voter IDs*, ATLANTA J.-CONST., Aug. 9, 2005, at 1B.

[202] Campos, *supra* note 202; *see also* Matthew S.L. Cate, *Photo ID Bus Rolls into Northwest Georgia*, CHATTANOOGA TIMES FREE PRESS, Dec. 21, 2005, at NG4; *Common Cause/Ga*, No. 4:05-CV-0201-HLM, at *106-07 (asserting that Georgia's mobile bus program was insufficient because it utilized only one bus for 159 counties, voters lacked notice of when the bus would be in their area, and the bus was not wheelchair-accessible). The Georgia governor's spokesperson asserted that this relatively low number proved that "the vast, overwhelming majority of people who want to vote in Georgia already have valid IDs." Campos, *supra* note 202. Michigan has a relatively robust mobile ID program, but ten percent of voting-age citizens in Michigan remain without driver's licenses and non-driver's photo identification cards. Brennan Center, Tel. Conf. with Christopher Thomas, Michigan Director of Elections, Sept. 21, 2004 (estimating that 90 percent of eligible voters in Michigan possess driver's licenses or state-issued ID). Data from 2003 indicates that 90.2 percent of the driving age population in the state of Michigan possess a driver's license. See Fed. Highway Admin, *supra* note 133.

[203] *Common Cause/Ga*, No. 4:05-CV-0201-HLM, at *113-14.

While most states require that voters register ten to 30 days before an election, six states have Election Day registration and have enjoyed a voter turnout increase of nine to 14 percentage points.[204] Some have claimed that Election Day registration invites fraud, but these concerns might dissipate if a state-issued photo identification were required to vote.[205]

Election Day registration may increase turnout by removing registration-deadline barriers for all citizens. Unlike free photo identification and similar programs, however, Election Day registration is not targeted at easing the burden on the specific group of voters who lack photo identification.

B. Alternatives that Allow Voters Who Lack Photo Identification to Cast Ballots

Several methods exist for confirming the identity of voters who lack photo identification at the polls, all of which evoke questions of the effectiveness of such methods to prevent fraudulent votes but not legitimate ones. This section walks through the general contours of various alternatives, and calls for data on each so that policymakers can make an informed comparison with photo identification requirements.

1. Non-Photo Identification

Rather than making a photo identification card an absolute requirement for voting, a state could expand acceptable documentation to include non-photo identification, such as a utility bill or bank statement. As

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[204] The election day registration states are Idaho, Maine, Minnesota, New Hampshire, Wisconsin, and Wyoming. *See supra* note 73.

[205] Instead of election day registration, a state could adopt universal registration, in which it affirmatively registers all voters (not unlike federal officials affirmatively attempt to count all citizens during the U.S. Census). In many other nations around the world, registration is the responsibility of the state rather than individuals or interest groups. The Carter-Baker Commission Report did not call for universal registration, but it did state that states should "play an active role in registering as many qualified citizens as possible." COMM'N ON FED. ELECTION REFORM, *supra* note 3, at 9. Election day registration may be less expensive and more feasible than universal registration, however, because government is not charged with affirmatively registering all voting-age citizens.

discussed in Part I, this is currently the law for all who vote at the polls in ten states, and for first-time voters who registered by mail in all states.

Many people without photo identification would likely have such documentation, but some would not or would forget to bring it to the polls. The exclusionary impact of this option might be assessed through analyzing affidavit data in states such as Connecticut, Delaware, Kentucky, and Tennessee that allow either photo or non-photo identification to vote, but also accommodate voters without such documentation by providing an affidavit exception.

Photo identification advocates would likely argue that non-photo documentation allows for more fraud than photo documentation.[206] Statistical study is needed, however, to establish the extent to which improper impersonation using non-photo documentation occurs.

2. *Requiring Photo Identification at Registration Rather than at the Polls*

Another alternative would require photo identification at registration rather than at the polls. Photo identification at registration would primarily enhance access for people who have obtained photo identification but later fail to bring it to the polls. The restriction might reduce access because it would prevent those who lack a photo identification card from registering.

3. *Signature Comparison*

Most states without documentation requirements currently require that all voters establish their identity by signing a poll book. In many states, the signature at the polls is compared with a photocopy of the signature the voter provided when he registered. Any assessment of the costs and benefits of this procedure should consider the extent to which poll workers detect fraudulent signatures and prevent fraud, and the extent to which poll workers erroneously allege fraud and block access.

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[206] *See* Publius, *supra* note 9, at 288-89 (asserting that "it is obvious that allowing documents without photographs is not an acceptable security measure for our voter registration and voting process,").

4. Affidavits

In affidavit states, voters who do not provide photo identification may sign an affidavit attesting to their identity under penalty of perjury. An alternative option would require that voters using affidavits cast provisional ballots that election officials count only after they electronically match the affidavit signature against the signature the voter provided during registration. Studies should investigate the extent to which affidavits mitigate access concerns (bureaucratic mismanagement might hinder access by some voters) and the extent to which affidavits reduce voter fraud.[207]

5. Indelible Ink

In Iraq, voters dipped their thumbs in indelible ink when they cast a ballot. Indelible ink would not prevent voting by persons ineligible to vote who impersonate a registered voter, but it would prevent multiple voting by these individuals.

6. Government Maintains Digital Picture/Biometric/Thumbprint

Government rather than voters could bear the burden of identification by obtaining a photograph, biometric information, or a thumbprint from citizens when they register to vote. Officials would make this information available at polls so that poll workers could confirm the identity of those who lack photo identification by looking at the voter photograph on file (either printed on the voter registration rolls or accessible via laptop computer) or by verifying the voter's identity through a biometric or thumbprint device.[208] Empirical studies should examine the extent to which these solutions would

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[207] *See* Adam Cohen, *Indians Face Obstacles Between the Reservation and the Ballot Box*, NEW YORK TIMES, June 21, 2004 (observing that in South Dakota election, some officials failed to offer affidavits to American Indians without photo identification cards).

[208] *See, e.g.*, Edward B. Foley, Is There a Middle Ground in the Voter ID Debate?, *at* http://moritzlaw.osu.edu/ electionlaw/comments/2005/050906.html (last accessed Mar. 12, 2006) (proposing that officials obtain a picture of voters at registration); Hasen, *supra* note 9, at 969-70 (proposing that officials obtain biometric data at time of registration); LARRY J. SABATO & GLENN R. SIMPSON, DIRTY LITTLE SECRETS: THE PERSISTENCE OF CORRUPTION IN AMERICAN POLITICS 322 (1996) (proposing that officials obtain a thumbprint of voters at registration).

hamper voter registration, and further normative discussion is necessary regarding privacy issues implicated by the proposals.

7. Better Election Administration Practices

Election officials could deter fraud by creating a statewide voter registration database that is regularly updated and compiling statistics on voter fraud to observe trends and enforcement efforts.

Photo identification advocates often argue that voting rolls are filled with dead people and voters who have moved away, and that these inactive voting files facilitate voter fraud.[209] The Help America Vote Act requires that each state develop a single, comprehensive, computerized, statewide voting list that any election official in the state can access at any time.[210] To keep their lists current, states are required to coordinate with state agencies to ensure that voters who die or lose their right to vote through felony conviction are removed from the list.[211] Moreover, the states are directed to actively cull their lists by removing any voter who does not vote in two consecutive general elections for federal office and who fail to respond to a notice (although "no registrant may be removed solely by reason of a failure to vote").[212] We would need data on how much list cleansing would diminish access, however, as an overinclusive purge could erroneously remove legitimate voters from voting lists.[213]

State officials should also compile and maintain statistics on charges and convictions of voter fraud. Such information could identify which tools are best tailored to prevent voter fraud.

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[209] See Part II.B for a more detailed review of this argument.

[210] 42 U.S.C. § 15483(a).

[211] *Id.* at § 15483(a)(2)(A)(ii).

[212] *Id.* at § 15483(a)(4)(A); BRENNAN CTR. FOR JUSTICE & OVERTON, *supra* note 10, at 11.

[213] *Cf.* SPENCER OVERTON, STEALING DEMOCRACY: THE NEW POLITICS OF VOTER SUPPRESSION (forthcoming June 2006) (noting that in Florida in 2004, a Republican Secretary of State erroneously purged about 22,000 African-American voters and 2,100 former prisoners who had successfully applied for restoration of their voting rights).

Finally, rather than simply focusing on voters, anti-fraud measures should scrutinize government officials and others who manage elections. Election officials have much greater opportunity than individual voters to determine the outcome of an election through fraud, and partisan election officials often have greater incentives to commit fraud. A program of regular and unannounced independent audits of polling places, county election boards, Secretary of State offices, and private vendors should examine voter registration and polling place procedures, voting machines, vote-tabulation systems, software, purge processes, and other procedures. Such anti-fraud measures pose little risk of discouraging legitimate voter participation and are less likely than photo identification requirements to improperly skew election outcomes.

CONCLUSION

Rather than continuing to rely on unsubstantiated factual assumptions, election law scholars and policymakers should look to empirical data to weigh the costs and benefits of various types of election regulations. Existing data suggests that a photo identification requirement would disenfranchise 20 million Americans while deterring minimal voter fraud. Policymakers should place a moratorium on photo identification proposals until they obtain a better empirical understanding of the extent and nature of voter fraud and the effect of the proposals on access by legitimate voters.

The CHAIRMAN. Ms. Chen.

STATEMENT OF CHRISTINE CHEN

Ms. CHEN. Thank you, Mr. Chairman, Ranking Member and distinguished members of the Committee on House Administration. I am Christine Chen, the Executive Director of the Asian and Pacific Islander American Vote. I appreciate the opportunity to present to you the views of APIAVote regarding identification requirements in U.S. elections.

I am privileged to represent organizations, partners and volunteers from my community who continue to promote democracy by expanding access to the electoral process by submitting testimony before the committee this morning.

APIAVote is a national, nonpartisan, nonprofit organization that encourages and promotes civic participation of Asian Pacific Islanders in the electoral and public policy processes at the national, State and local levels. By working with national and local partners, APIAVote focuses on coordinating activities related to voter registration, education, outreach, mobilization and voting rights and advocacy. We have been able to build and establish relationships in communities where voter turnout as been traditionally low.

Participating in the electoral process is a relatively new concept for the Asian Pacific Islander community. It was only with the enactment of the 1952 McCarren-Walter Act, also known as the Immigration and Nationality Act, that racial barriers and ethnic barriers to naturalization were listed to allow Asian immigrants to be naturalized for the first time in history.

As a largely immigrant community, APIA's were deeply impacted by the anti immigrant sentiment during the legislative wave of 1996. Awakened to the need to become a politically engaged force, electoral organizing in the APIA community hit groundbreaking levels. Between 1990 and 2000 Asian American voters grew from less than a million to 1.98 million, a 118 percent growth; and in 2004 3.2 million APIAs registered to vote, with an 85 percent turnout rate.

But the Asian Pacific Islander community still faces many challenges in accessing and understanding the electoral system. In 2004, 6.3 million Asian Americans were eligible to vote but only 3.2 million registered. The APIA community has not historically been reached out to by mainstream voter mobilization activities, and the capacity of many nonprofits and volunteers working with the APIA and largely immigrant community is very low. This is one of the main challenges that APIAVote faces as we focus on building the capacity to outreach to the community and help them access the ballot box.

Our partners across the country have implemented common practices and successful strategies to register potential voters by implementing voter registration drives at community events and festivals. Many of these first-time registrants were people filling out registration forms onsite and were not likely to be carrying around passports, birth certificates and naturalization papers. H.R. 4844 would have a chilling impact on similar outreach activities in the future and ultimately depress Asian Pacific Islander voter registration.

In addition, these voter registration efforts are implemented by members of our community, most of whom are volunteers. These nonprofit organizations do not have the equipment and resources to obtain a photocopier and outdoor power source to make copies of these documents. In addition, these volunteers are not document experts and may not know what documents are required to comply with this proposed legislation.

Proof of citizenship places onerous requirements on voters as well as voter registration and voter engagement organizations. A citizenship requirement to register and a photo ID to vote are so unrealistic and administratively burdensome that civic engagement will be the only activity effectively discouraged. These requirements undermine the legislative intent behind both the MVRA and HAVA, who sought to minimize barriers to vote and facilitate access to the ballot. Further election reform will promote greater participation in and turnout for elections.

APIAVote understand and advocates that we maintain the integrity of the United States electoral process, but we also understand that current law laws are extremely tough on individuals who try to vote illegally. It is already a Federal offense for falsely claiming citizenship and for voting fraud.

In addition, ever since U.S. immigration laws were reformed in 1996, noncitizens who try to vote are automatically given a one-way ticket out of the country, with no criminal conviction necessary.

These nonprofits must decide whether or not the goal to promote democracy outweighs potential criminal penalties. Instead, civic participation organizations should be encouraged to support methods that strengthen democracy and ensure that the voice of every American is heard.

So with that, APIAVote stands in strong opposition to requirements for proof of citizenship documents and the barriers to voting that this law will create for all Americans.

So, Mr. Chairman, Ranking Member and the members of the committee, thank you for providing me this opportunity to present.

[The statement of Ms. Chen follows:]

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STATEMENT OF
CHRISTINE CHEN, EXECUTIVE DIRECTOR,
ASIAN AND PACIFIC ISLANDER AMERICAN VOTE (APIAVOTE)

COMMITTEE ON HOUSE ADMINISTRATION HEARING
YOU DON'T NEED PAPERS TO VOTE?" - NON-CITIZEN VOTING
AND ID REQUIREMENTS IN U.S. ELECTIONS

THURSDAY, JUNE 22, 2006

Chairman Ehlers, Ranking Member Millender-Mcdonald, and distinguished members of the Committee on the House Administration: I am Christine Chen, Executive Director of Asian and Pacific Islander American Vote (APIAVote). I appreciate the opportunity to present to you the views of APIAVote regarding identification requirements in U.S. elections.

I am privileged to represent organizations, partners and volunteers from my community who continue to promote democracy by expanding access to the electoral process by submitting testimony before the Committee this morning.

APIAVote is a national nonpartisan, nonprofit organization that encourages and promotes civic participation of Asian Pacific Islander Americans in the electoral and public policy processes at the national, state and local levels. By working with national and local partners, APIAVote focuses on coordinating activities related to voter registration, education, outreach, mobilization and voting rights advocacy. APIAVote also prioritizes strengthening local capacity by serving as a clearinghouse for information and providing resources & trainings. Within the last ten years, this historic grassroots effort ultimately formed partnerships with more than 150 local organizations and over a dozen national organizations across the country. We have been able to build and establish relationships in communities where voter turnout has been traditionally low.

VOTER REGISTRATION

Participating in the electoral process is a relatively new concept for the Asian Pacific Islander community. It was only with the enactment of the 1952 McCarren-Walter Act

(also known as the Immigration and Nationality Act) that racial and ethnic barriers to naturalization were lifted to allow Asian immigrants to be naturalized citizens for the first time in history. As a largely immigrant community, APIAs were deeply impacted by the anti-immigrant sentiment during the legislative wave of 1996. Awakened to the need to become a politically engaged force, electoral organizing in the APIA community hit groundbreaking levels. Between 1990 and 2000, Asian American voters grew from less than a million to 1.98 million, a 118% growth. In 2004 3.2 million APIAs registered to vote with an 85% turnout rate.

But the APIA community still faces many challenges in accessing and understanding the electoral system. In 2004, 6.3 million Asian Americans were eligible to vote, but only 3.2 million registered. The APIA community has not historically been reached by mainstream voter mobilization activities, and the capacity of many nonprofits and volunteers working with the APIA and largely immigrant community is very low. This is one of the main challenges that APIAVote faces as we focus on building the capacity to outreach to the community and help them access the ballot box.

H.R. 4844, the Federal Election Integrity Act of 2006, *may sound* like a good idea. But H.R. 4844 is a misguided approach that would disenfranchise large numbers of legal voters. Congress and the states are already successful in accomplishing the important task of preventing noncitizens from voting and ensuring voters are who they claim to be. Instead of safeguarding elections, H.R. 4844 would suppress access to the building blocks of our democracy, the right to vote for U.S. citizens.

BUREAUCRATIC BARRIER

According to APIAVote's national post-2004 election conference held last year, our partners across the country implemented a common practice and successful strategy to register potential voters by implementing voter registration drives at community events and festivals. Many of these first time registrants were people filling out their registration form onsite and were not likely to be carrying around passports, birth certificates, and naturalization papers. H.R. 4844 would have a chilling impact on similar outreach activities in the future and ultimately depress APIA voter registration. In addition, these voter registration efforts are implemented by members of the community, most of whom are volunteers. These nonprofit organizations do not have the equipment and resources to obtain a photo copier and an outdoor power source to make copies of these documents. In addition, these volunteers are not document experts, and they may not know what documents are required to comply with this proposed legislation.

Proof of citizenship places onerous requirements on voters as well as voter registration and voter engagement organizations. A citizenship requirement to register and a photo ID to vote are so unrealistic and administratively burdensome that civic engagement will be the only activity effectively discouraged. These requirements undermine the legislative intent behind both the NVRA and HAVA, which sought to minimize barriers

to vote and facilitate access to the ballot. Further election reform should promote greater participation in and turnout for elections.

NATURAL AND/OR PERSONAL DISASTERS

Other barriers include individuals and families who were recently impacted by natural disasters such as Hurricane Katrina. In Biloxi, Mississippi where 5.11% of the community are Asian American and Pacific Islanders (AAPIs) and in New Orleans, Louisiana where over 462, 269 AAPIs reside are citizens struggling to rebuild their lives. Many are in the process of trying to obtain copies of all their legal documents that were lost in the disaster. We must not penalize these communities by taking away their voice and power of their individual vote in their time of need.

LANGUAGE BARRIER

According to the National Korean American Service & Education Consortium (NAKASEC), Korean Americans now numbering over 1.3 million and representing the 7th largest group of immigrants at close to a million. An estimated 520,000 are naturalized citizens. The majority are immigrant and Limited English Proficient voters with language access needs.

If H.R. 4844 is enacted, it will be very difficult for LEP voters to understand new requirement. Even for those jurisdictions with Section 203 coverage, this new requirement will take time for AAPI LEP voters to understand and comply. And in addition, many counties will not have resources to explain and reach out to Limited English speaking voters of the new requirements. The result is that many voters will be disenfranchised for several elections. Further, many will feel fed up with the additional requirements and not bother to vote.

ECONOMIC BARRIER

Additionally, according to Southeast Asia Resource Action Center (SEARAC), over 85,000 Southeast Asians reside mostly in the Twin cities region of Minnesota. Voter participation has increased recently with the election of two Hmong former refugees into the Minnesota State Legislature and where voters in precincts with large APIA communities utilized the same-day voter registration option at higher rates than average. Between Hennepin and Ramsey Counties, 56,996 voters in precincts with large APIA communities registered on election day. That represents almost one-fifth of total voters in APIA precincts that were able to cast a ballot on election day.

At the same time, the Asian Americans and Pacific Islander population in this region have a per capita income of $15,536, far below that of the Twin Cities area income average of $26,219. For communities who are financially struggling, requiring a photo

ID of voters is the equivalent of a poll tax. By mandating that voters provide photo identification, H.R. 4844 would require voters to pay for a photo ID or documentation such as a passport, if they don't already have it.

For example, a birth certificate usually costs $10 to $15. According to the Department of Bureau of Consular Affairs, only 25-27% of eligible Americans have passports, which now cost $97. Naturalization papers, if they are lost or damaged and need to be replaced, cost $210. Not all eligible voters in this country can afford to purchase such identification, and H.R. 4844 does not provide remedies to help them get one. This simply means that many people will no longer be able to "afford" to exercise their constitutional right to vote.

This bill simply creates additional barriers to voter participation.

MISTRUST IN GOVERNMENT

An APIAVote study released after the 2004 elections reveals a plurality of APIAs (27%) registered to vote through the mail. This contrasts with Non-Hispanic Whites and Blacks who favored going to government elections offices.

If H.R. 4844 was to be enacted, it will decrease the number of AAPI's registered through Vote by Mail. Many AAPI's will not send their identification in the mail for the fear of their identification will be misused and or stolen. The additional requirement for identification will increase voter's fear and their distrust in their government.

Asian and Pacific Islanders immigrated to the United States because we are a democratic nation. Many members of the Asian community traditionally come from countries that do not believe in the democratic process and did not integrate individuals into the electoral and decision making process. We are no longer a democracy when the majority of eligible voters are hindered and discouraged from participating due policies that create barriers instead of breaking them down.

APIAVote is able to register eligible individuals to vote and complement voter outreach efforts by local and state election officials. We help facilitate and develop trust amongst those engaged in civic and voter participation. It is commonly understood that officials need more resources to administer elections, and as partners in the administration of elections, voter registration groups facilitate access to communities that have been historically less active in voting. Our efforts should be focused on promoting democracy and advancing the goal to increase civic engagement an voter turnout.

Instead of discussing ways to create barriers and discourage civic participation, perhaps we should be talking about ways to increase participation. For example, APIAs are more likely to use alternative methods of voting when available. In Clark County, Nevada, a majority of voters in APIA precincts chose "early voting" or "vote-by-mail" methods to cast their ballots. For APIA precinct voters in Hennepin and Ramsey Counties,

Minnesota, almost 20% registered and voted under the "same day registration" provisions.

VOTER IDENTIFICATION

APIAVote has serious concerns regarding how the voter identification law would be implemented. According to the Asian American Legal Defense and Education Fund who conducted the largest nonpartisan exit poll of Asian Americans, nearly 70% of Asian voters were asked for ID in states where no ID was required. In the 2004 elections, nearly 3,000 Asian American voters reported to AALDEF that were improperly required to present identification to vote, sometimes in the form of naturalization certificates. AALDEF poll monitors also found that Asian American voters were racially profiled at the polls and that demands for naturalization certificate were only made upon Asian American voters, and no other voters.

We believe that even if photo identification is available, many eligible voters will be turned away. A large number of poll workers are usually overworked, underpaid, and not properly trained. Deciding whether a voter matches or does not match the photo in an ID card is a very subjective process.

In addition, volunteer ballot observers from VNTeamwork in Houston, Texas noted that since many Vietnamese and Asian names seem similar for those not familiar with these surnames, they are often entered incorrectly into the system. Also, many Asian names place the last name before the first name which can be confusing and entered incorrectly as well. As a result, the record does not accurately match the name on the identification and documentation.

H.R. 4844 does not explain how disputes over the validity of an ID card would be handled, and because it would keep voters who don't have "valid" ID from obtaining provisional ballots, it could easily open the door to widespread racial and ethnic discrimination at polling places.

According to the Chinese Progressive Association in Boston, Massachusetts, first time voters with limited English proficiency were sometimes sent back 2-3 times to obtain improper ID. It was observed that poll workers didn't even bother trying to speak with voters directly to get their names to look them up in poll books but instead demanded identification. Some voters were turned away form voting. It is important to note that because of these problems the US Department of Justice filed a lawsuit against the City of Boston in 2005 for anti-Asian voter discrimination which resulted in a settlement requiring fully translated Chinese and Vietnamese ballots.

An example of how improper handling of documents increases racial and ethnic discrimination is illustrated with the implementation of the Immigration Reform and Control Act of 1986 (IRCA). Under IRCA, employers may hire only persons who may legally work in the U.S. The employer must verify the identity and employment

eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9), but in many cases, employers asked for additional documentation than necessary from Latinos, Asians, and anyone that could be perceived as foreign. In a study conducted in March of 1990, GAO found that IRCA had created a widespread pattern of discrimination throughout the country, and it was most prevalent in areas with the greatest numbers of Latinos and Asians. This study also showed that over 891,000 employers, who by their own admission, adopted discriminatory hiring practices as a result of employer sanctions.

Since 2004, APIAVote helped build a model of mentoring and organizing to get out the vote among APIA youth. For the first time in history, APIA sororities and fraternities joined a coordinated effort to mobilize 20,004 APIA youth to vote. By working closely with the Asian Pacific Islander student organizations and networks, such as the South Asian American Voting Youth, Asian Greek Alliance and the National Asian American Student Conference, APIAVote, participation increased. APIAVote is weary of how H.R. 4844 would be implemented seeing that legitimate voters with Photo ID could be turned away for benign reasons such as a driver's license not containing the voter's current address. Many college students change addresses multiple times within their college career. For example in Wisconsin, 97% of all students do not have their current address on their photo ID. H.R. 4844 could undermine the important safety net under the Help America Vote Act. If an eligible voter does not bring proper ID, H.R. 4844 would keep him or her from registering and voting.

CONCLUSION

APIAVote understands and advocates that we maintain the integrity of the United States electoral process, but we also believe that current laws are already extremely tough on individuals who try to vote illegally. It is already a federal offense for falsely claiming citizenship and for voting fraud. In addition, ever since U.S. immigration laws were reformed in 1996, non-citizens who try to vote are automatically given a one-way ticket out of the country, with no criminal conviction necessary. Proof of citizenship requirements will only penalize U.S. citizens who want to exercise their right to vote.

We believe that the type of fraud cited in support of photo ID requirements – individual voters who misrepresent their identity at the polls – is nothing but an anomaly. For example, despite the accusations of fraud as support for the new Georgia law, Secretary of State Cathy Cox stated that in her ten-year tenure, she could not recall one documented case of voter fraud involving the impersonation of a registered voter at the polls. ID requirements passed at the state level are already having a chilling effect on voter registration groups around the country.

Some states have enacted laws that create criminal penalities that may be applied to organizations conducting voter registration. As a result, these nonprofit organizations must decide whether or not the goal to promote democracy outweighs potential criminal

penalties. Instead, civic organizations should be encouraged to support methods that strengthen democracy and ensure the voice of every American is heard.

APIAVote stands in strong opposition to H.R. 4844 and the barriers to voting this law will create for all Americans.

Mr. Chairman, Ranking Member Millender-McDonald, and Members of the Committee, thank you for providing me with the opportunity to testify today. I will be happy to answer any questions that you may have.

The CHAIRMAN. Thank you very much.

It is striking in listening to your testimony and all the testimony we have heard today what incredible diversity we have across this country and dramatically illustrating the difficulty in establishing one national procedure; and I think that is why the point was made with the previous panel about accommodating these differences are important.

The bells have just rung and we have votes. We have approximately 15 minutes to get there to vote so we will try to proceed rapidly. I doubt if we can finish before we have to go vote, although it would be nice. We always have the option of sending you questions by mail, if necessary, but we will proceed as rapidly as possible.

Dr. Calingaert, just a quick question about the Carter-Baker Commission that you served on. There were what, 20 members?

Dr. CALINGAERT. Twenty-one.

The CHAIRMAN. Twenty-one. Was it evenly split between the two parties, or where did the extra one come from?

Dr. CALINGAERT. It was about a third independent, and the Democrats and Republicans were otherwise evenly split.

The CHAIRMAN. Okay. On this issue of an ID you took a vote, do you recall what that was?

Dr. CALINGAERT. Well, there was a dissent that Spencer Overton authored, and two other members of the commission signed on to that dissent.

The CHAIRMAN. So the other 18——

Dr. CALINGAERT. Eighteen out of 21 approved the recommendation on voter ID.

The CHAIRMAN. I see. Thank you.

Mr. Overton, I have a question for you which—I am not trying to negate what you have said, but I want your comment on it.

In September 2005 an article appeared in the Atlanta Journal Constitution when Andrew Young, former Atlanta mayor, civil rights pioneer—I am sure you know him; I know him—wrote, "At the end of the day a photo ID is a true weapon against the bondages of poverty. Anyone driving through a low-income neighborhood sees the ubiquitous check-cashing storefronts, which thrive because other establishments, such as supermarkets and banks, won't cash checks without a standard photo ID."

Why not enfranchise the 12 percent of Americans who don't have driver's licenses or government-issued photo ID's. Won't those who don't currently have ID's benefit from getting them?

I wanted to give you a chance to respond to that.

Mr. OVERTON. Thank you very much. I would like to point out that 18 members did not vote for a photo ID. Certainly a majority were in favor of it but we didn't have a vote. And there were several members who felt uncomfortable, frankly, dissenting from a President who did not join our dissent.

But there were not 18 members of the commission; indeed there were some Republicans who did not support photo ID in terms of our commission and our commission's recommendations.

In terms of your particular question——

The CHAIRMAN. Just a quick question. You mentioned the President. Was that President Carter or President Ford?

Mr. OVERTON. President Ford was an earlier commission. Ours was chaired by President Carter and Secretary of State Baker.

The CHAIRMAN. Yes.

Mr. OVERTON. In terms of your particular question, Mr. Chair, my understanding is that actually Andy Young has retracted and pulled back from some of his statements; and in addition to that, certainly it is good for everyone to have an ID. It is not a situation where we want to say, well, your incentive to get an ID has to be for us to condition your right to vote on that ID.

Again, widespread participation is key, Mr. Chair.

We have heard about the perception of corruption here, and fraud, but again, just a lack of data in terms of how that perception of fraud reduces voter turnout; indeed, perception of voter suppression is maybe just as likely to discourage people from participating.

We have heard about one case of fraud determining a close election, and from the data that we have, a photo ID is more likely to erroneously determine an election than a lack of photo ID because we are excluding so many legitimate voters.

And then it is just so easy to get a photo ID. In USA Today they reported that using the Internet, anyone willing to break a few laws can be a mass producer of fake IDs. I have got a headline here that says, quote, "Bush daughter used fake ID to buy alcohol."

Certainly legitimate voters may be restricted, but criminals would still be able to vote with a photo ID requirement.

The CHAIRMAN. Thank you. You have made your point, clearly, both before and now.

In the interest of time, I will stop and yield time to the ranking member.

Ms. MILLENDER-MCDONALD. Thank you, Mr. Chairman.

When we speak about the Carter-Baker Commission and their photo ID that they brought forth, irrespective of the fact that many of those on that commission did not vote for it, the use of their REAL ID would allow a driver's license to double as a voting card, so it was not as draconian as what we are talking about today.

And, Dr. Calingaert, when we speak about the driver's license doubling as a voting card, Mr. Hyde's bill asks for a photo ID, it does not speak about a driver's license, but a driver's license does not present itself as proof of citizenship. So how are we going to deal with the whole notion of this REAL ID that can double as a driver's license and Mr. Hyde's bill that says and speaks to a photo ID, and, of course, a driver's license is not a proof of citizenship?

Dr. CALINGAERT. Under the REAL ID Act, a driver's license would, in effect, require proof of citizenship.

Ms. MILLENDER-MCDONALD. So one would have to get an additional photo ID even with this REAL ID that your commission spoke of?

Dr. CALINGAERT. Well, the commission's recommendation is different from the Hyde bill.

By essentially piggy-backing on REAL ID, the process of obtaining a REAL ID card would entail proof of citizenship and we would use that exact same process as a voter registration; and it also means that you have a one-step process of registering to vote and getting the required voter ID card.

Ms. MILLENDER-MCDONALD. You can see how difficult this will be for the average citizen having to go through all of these hoops. You are talking about this, but then you are talking about that you have to have photo ID even though you have a driver's license with a picture on it.

If we talk about the Hyde bill again, the Hyde bill will trump provisional ballots that are required through the HAVA Act. Again, do we need unnecessary legislation when we have legislation already on the books? It is a matter of enforcement, would you agree with that?

Dr. CALINGAERT. First, if I could just comment very quickly.

Ms. MILLENDER-MCDONALD. Provisional ballots.

Dr. CALINGAERT. For provisional ballots, what the Carter-Baker Commission recommends is that voters who don't have the required ID should be allowed to cast a provisional ballot, and until 2010, if the signature matches the signature in the voter registration data base, that that provisional ballot would be counted.

I just want to clarify on the earlier comment, the Carter-Baker Commission piggy-backs on the REAL ID Act because it is already enacted into law, and so—under current law, obviously, the regulations for implementation are still being developed, but under the REAL ID Act, individuals who get a driver's license that is recognized by the Federal Government will have to prove citizenship and will have to provide these documents.

We are not calling for an additional requirement for voting, we are simply saying, since citizens will already have to do that under the REAL ID Act, let's simply use that card as a voting card.

Ms. MILLENDER-MCDONALD. I want to get to others. It is so convoluted, extremely convoluted, here.

Mr. Stein, you are over the Federation for American Immigration Reform. Here we are trying to get an immigration—comprehensive immigration reform. Why aren't you helping all of us with that, as opposed to this that certainly does go at the core of discriminatory practices in the bill that Mr. Hyde has? Why aren't you working on a comprehensive immigration law that we sorely need? We sorely need that.

Mr. STEIN. I am glad you asked me that question because we have been working on that for almost 30 years now; and we have been actively involved in working with many Members of the House, and we would welcome an opportunity to work with you on comprehensive legislation which fundamentally is somewhat different from what the Senate passed, candidly.

Ms. MILLENDER-MCDONALD. Those are the key issues that are before us now that the voters are asking for, calling on all the time. I get hundreds of calls with people asking about a comprehensive immigration bill. And to me these are the critical issues that we have before us, and certainly not anything that a law, where other laws are already on the books. But we are talking about enforcement of laws that are already there.

Mr. STEIN. We are never going to get this problem solved, the immigration issue, unless we deal with the document demolition derby going on in this country. This is a step forward.

Ms. MILLENDER-MCDONALD. We must have immigration reform.

Mr. Overton, he has given me the red light. I don't want him to gavel me, as he has done before, and so I am quietly trying to get back and sit quietly in my seat and be respectful as the ranking member.

The CHAIRMAN. Thank you. I appreciate that.

We will have to recess and return. I hope you will be able to stay—we should be back in 15 minutes. I would hope we would wrap up shortly after 1:00.

With that, the committee stands in recess.

[Recess.]

The CHAIRMAN. I apologize for the interruption of the votes, plus I have a meeting in the room next door, which I will, of course, interrupt for this because this is the highest priority.

Our next questioner is Ms. Lofgren. I yield 5 minutes for her questions.

Ms. LOFGREN. Thank you, Mr. Chairman and thanks to the witnesses for your patience in allowing us to run off for more than 15 minutes to continue our voting.

Getting back to our failure on the Voting Rights Act yesterday, I can't separate in my own mind some of the issues that have merged here today, and that unfortunate circumstance.

And I was wondering, Professor Overton—you are an expert on voting, as I understand it; and I didn't know you had written a book. I will probably go get a copy of it and read it.

I am wondering, taking a look at some of the facts that are in the Wisconsin report that we have offered into the record—I mentioned the fact that African American men, 78 percent in an age group, don't have a license and there is other information in that report that indicates a differential based on race on who would be subject to the requirements in the Hyde bill.

For example, to reregister—when you move you have to reregister. So who is moving and going to be subject to that provision is of interest. According to this study, 60 percent of African American adults in Wisconsin are without a car or truck, so that is a differential.

But also the differential on who moves when is very high. African Americans, 63 percent moved in the 5-year period studied, and Asian Americans, 75 percent, whereas Anglos, only 44 percent.

In your knowledge of the Voting Rights Act, would the fact that what appeared to be, on its face, race-neutral actually trip up this act because of its application and the fact that we are aware of as it is being proposed?

Mr. OVERTON. Well, let me start out by noting that section 2 of the Voting Rights Act applies nationwide, and a possible section 2 claim could be brought against a photo ID requirement in, let's say, Wisconsin if that was passed on a State level. But section 5, which is expiring, or will expire in 2007, does not apply at this time to Wisconsin.

Ms. LOFGREN. I knew that, but it is like a poll tax.

I remember back in 1964–65 our ranking member's father marched with Martin Luther King. I was out in California, and we joined and tried to provide support for the fight of African Americans to gain the right to vote; and one of the issues was, what is wrong with a literacy test, except that the people who didn't have

access to education because of discrimination were the ones that would not be permitted to vote.

Wouldn't this be the same type of thing?

Mr. OVERTON. I do think that there is a close tie here. The question is, why can't these people bring ID? Everyone has ID. Voting is not a test. The objective of voting is to obtain the will of the people, to hear from everyone here, the will of all citizens, not just some, government of, by and for the people.

Representative, when we look at McDonald's and we look at Starbucks, they don't say, well, why don't our customers just bring photo ID to use their credit card? They know they will lose money, but they will go out of business if they erect barriers. They try to make things easy for people to participate. Even though there might be some danger of fraud, they know they will lose more money by excluding legitimate customers.

The existing data suggests that is going to be the case, and it is a slippery slope. At first we said, oh, ID is reasonable. Well, certainly many people thought, we need to pay for elections and, therefore, we need a poll tax. Some folks thought, well, we want intelligent voters to make intelligent decisions; it is reasonable to have a literacy test.

So it certainly is a slippery slope.

Just a note in terms of Mr. Bettencourt from the earlier panel, he mentioned that they did a registration list match, and out of 1.9 million registered voters there were 35 foreign nationals that were found. Well, if we were to use a photo ID to determine those people, rather than the match that he did, we would end up excluding about 5,400 legitimate voters for every single non-citizen who was voting.

So that is antidemocratic, yes.

Ms. LOFGREN. It just seems to me—I used to teach immigration law, and one of the things I have noticed is that most people who come over here, they are not sneaking across the border to vote; they are sneaking across the border for a job.

If they felt that any kind of compromise on this would make it harder for them, that is the last thing you want.

I see my red light is on. You have been very indulgent. I appreciate it.

The CHAIRMAN. Thank you very much.

We have kept you a very long time here, and I would like to wrap this up. I am willing to forgo my further questions and submit them in writing if the rest of the panel is willing to do the same. I see Members nodding.

The CHAIRMAN. So given that, I want to thank you very, very much for your participation. I can't speak for the entire panel, but I have to say for myself it has been very, very enlightening, the entire hearing, from the two Members with different viewpoints to the first panel, to the second panel; and I really appreciate your contributions.

I even more deeply appreciate your conviction that we have to do the right thing on this. I refer to all of you on that point. I am delighted that you spent that much time studying it because clearly Members of Congress can't afford that much time, although our staff does. But all of you have added to the mix here.

We have some serious things to think about here. And in particular, what I have become impressed with is our responsibility as a government that whatever we do, we have to try to make it easy to do.

And I think, Mr. Overton, you said something like this in your report as part of the Carter-Baker Commission, something to the effect that our job as a government is to ensure that everyone who wishes to vote, may vote. And also it is our responsibility to ensure that everyone who does vote, votes legally.

Those are both admirable goals. Those have always been my goals.

But I also understand that there can be a conflict there, and our job then is to mediate that to make sure we achieve both goals in the most fair and equitable manner possible and that would be my objective on this committee, and I believe that is shared by all the Members as well.

So thank you again for being here. I thank my committee Members for being here and I have some formalities to go through.

Ms. MILLENDER-MCDONALD. Mr. Chairman.

The CHAIRMAN. Just one moment. Did you have a question to ask?

Ms. MILLENDER-MCDONALD. I wanted to ask unanimous consent to submit some letters from members for the record and to also state that if we may have 7 legislative days during which to submit testimony, comments and extraneous matters for the record.

The CHAIRMAN. I will be taking care of that right now. I have thanked everyone here.

I ask unanimous consent that members and witnesses have 7 calendar days to submit material for the record, including additional questions of the witnesses, which I presume you would answer, and for those statements and materials to be entered into the appropriate place in the record. Without objection, the material will be so entered.

[The information follows:]

Statement of U.S. Representative Rush Holt
To the Committee on House Administration
Hearing on June 22, 2006:
"You don't need papers to vote?" Non-Citizen Voting and ID Requirements in U.S. Elections

Mr. Chairman, Ranking Member Millender-McDonald and respected Members of the Committee, I wished to speak before you today because, while I am pleased that the Committee is considering the issue of fraud in U.S. elections, I am disappointed that your emphasis today is the possibility that dishonest voters will cheat, rather than the possibility that honest voters will be disenfranchised. I do not say that because I think voters will never cheat; I simply say it because evidence that they are doing so to any significant degree appears to be lacking.

For the past three years, I have been documenting to the House Membership the substantial risks that our votes may not be counted as cast on paperless electronic voting machines, that paperless electronic voting devices cannot be independently audited, and that time and again, such systems have been shown to have lost, added, changed, or miscounted our votes. I thank the Chairman again for holding this hearing on election reform today and for the commitment he expressed to me to hold a hearing on the subject of e-voting security and auditability of election systems before the November elections, and I urge him to do so soon.

The unfortunate remark made by Congressional candidate Francine Busby during her race in California's 50th Congressional District, which is memorialized in the title of this hearing, is precisely the sort of "anecdotal" rhetorical device that Professor Overton, who testified to this Committee, has remarked. Will we make policy in this Congress on the basis of anecdotes and sound bites, or on the basis of hard evidence? Did Ms. Busby's remark in fact provoke illegal aliens to vote? Did any aliens actually overcome the already-existing barriers to entry at the polls and succeed in casting an illegal vote? I do not believe the witnesses before the Committee today offered compelling evidence that such problems were rampant in that election or others. I will be very interested see evidence that voters are, to any significant degree, showing up at more than one polling place to vote, or successfully voting without being registered, or trying to vote using someone else's identity.

The Department of Justice (DOJ), in its "Report to Congress on the Activities and Operations of the Public Integrity for 2004," reported that "[a]t the end of 2004, the [Public Integrity] Section was supervising and providing advice on approximately 133 election crime matters nationwide." That is an average of just over 2 cases per State for the entire year – hardly an avalanche. In addition, most of the cases described with specificity in the report concerned campaign finance violations. Only one described a vote-buying scheme, and none referred specifically to non-citizen or double voting. On the other hand, the same Report noted that a total of 1,213 public officials had been federally charged with corruption in 2004, that 1,020 of them had been convicted of corruption, and that 419 cases remained pending. In other words, according to the DOJ's

own findings, the problem of corruption among public officials is at the very least ten times worse than the problem of citizens cheating in elections.

The very passage of the Help America Vote Act (HAVA) indicates that voter disenfranchisement, rather than voter cheating, has been the problem that has required remedying – namely, that too many voters who *were* duly registered and entitled to vote were being wrongfully refused access to the polls. HAVA's requirement that all such voters be given the right to cast a provisional ballot sought to address this well-documented problem.

Shortly after the November 2004 elections, I co-moderated a forum on Capitol Hill sponsored by the Leadership Conference on Civil Rights, The Century Foundation and Common Cause. Entitled "*Voting in 2004: A Report to the Nation on America's Election Process*," the day-long event included reports from experts on every aspect of our electoral system. Endless accounts of various sorts of disenfranchisement of legitimate voters were presented, but I cannot recall any reports of illegitimate voters cheating the system by voting twice, or voting without being registered, or voting in someone else's name. The comprehensive report delivered that day is still available on the Common Cause website, and I commend them to the Committee.

Among its conclusions, Common Cause found that "[p]roblems in the voting process were most often the fault of election officials—not voters. For example, studies show that most of the problems incurred with respect to provisional ballots were caused by errors by election administrators before the election, poorly trained poll workers on Election Day, and a lack of diligence by election officials in verifying the validity of provisional ballots after the election." Indeed, in its "2004 Election Day Survey Results," the Election Assistance Commission (EAC) reported that more than 1.9 million provisional ballots were cast, and that 64% of those were counted. What that means is that 1.2 million voters were told that they were not duly registered, when in fact they were.

Meanwhile, other studies have found that instances of double voting and voting using another's identity are virtually non-existent. A study of 2.8 million ballots cast in Washington State in 2004, for example, showed that only 0.0009 percent of them reflected double voting or voting in the name of deceased individuals.

It is also important to note that, for the most part, the States have not taken action to mandate that photo ID be presented at the polls. As of 2005, approximately two-thirds of the States requested no documentary evidence at the polls other than as already required by HAVA, and instead admitted voters after, for example, having them sign a poll book and comparing their signature to the signature on file. Six states requested some form of documentary evidence at the polls, but allowed voters to submit affidavits attesting to their identity in lieu thereof. Four states requested photo identification but also accepted affidavits or other attestations to identity instead. Only two states mandated photo identification. In contrast, the relative demand by the States for e-voting security measures – specifically voter-verified paper records for each vote cast – is significant.

Currently, 27 states mandate them, and a dozen more have legislation on the subject pending.

Of course, I agree fully that we must ensure the accuracy and integrity of voter registration lists, and ensure that duly registered voters are able to cast votes. Duly registered voters must, indeed, be able to vote. I have introduced legislation that will help ensure precisely that. My legislation, the Electoral Fairness Act (H.R. 4989), recognizes that an honest assessment of elections in the United States reveals vastly more evidence of wrongful disenfranchisement of legitimate voters than of intentional and fraudulent voting by dishonest voters.

My bill would require that all voters, upon being duly registered, be issued a durable voter registration card at no cost to the voter, "which shall serve as proof that the individual is duly registered to vote" at the polling place which services the individual's address listed on the card. The bill also authorizes to the Election Assistance Commission such sums as may be necessary to defray to the States the cost of issuing these cards. Each card may then be used by a voter to prove to election officials that the voter is, in fact, duly registered in the jurisdiction in which the voter is seeking to vote even if the voter's name has been omitted erroneously from the voter registration list.

I want to be very clear – the durable voter registration card contemplated by my legislation is *not* a voter identification requirement. While it may be used to satisfy existing voter identification requirements, it does not add any. Producing it is not a prerequisite to voting. Failure to produce it results in no penalty or detriment to the voter.

The purpose of this card is to protect voters who are removed from the voter rolls erroneously. It mandates that voters be provided, for free, durable proof that they are duly registered, and allows them to use this proof to vote via regular ballot if they have been wrongfully or erroneously removed from the voter registration list. The benefit to our democracy and to election officials is that duly registered voters will be able to prove that they are so by producing the card at the polls. These voters will be entitled to cast a regular ballot – as they should be – in instances of wrongful or erroneous removal of their names from the list. As a result, the need for and use of provisional ballots should decrease. If photo ID were to be required at the polls, on the other hand, thousands if not millions of voters who cannot afford the time or money to obtain one would be added to the ranks of the disenfranchised, all to solve what appears to be a virtually non-existent problem.

I would like to thank the Committee again for taking up the issue of election reform, and I urge it to consider the full range of critical issues that face our electoral system as expeditiously as possible. Thank you.

June 21, 2006

The Hon. Vernon Ehlers
Chair
House Administration Committee.
1309 Longworth House Office Bldg.
Washington, DC 20515

The Hon. Juanita Millender-McDonald
Ranking Member
House Administration Committee
1216 Longworth House Office Bldg.
Washington, DC 20515

Dear Chairman Ehlers and Ranking Member Millender-McDonald:

On behalf of the Service Employees International Union's (SEIU) 1.8 million members, I urge you to oppose the "Federal Election and Integrity Act of 2006" (H.R. 4844) sponsored by Representative Henry Hyde. This bill overreaches in its attempts to deal with the surprisingly rare problem of voters misrepresenting their identity at the polls. H.R. 4844 proposes extreme solutions that would result in the disenfranchisement of thousands of voters and will undermine confidence in election outcomes.

ANDREW L. STERN
International President

ANNA BURGER
International Secretary-Treasurer

MARY KAY HENRY
Executive Vice President

GERRY HUDSON
Executive Vice President

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Voter Fraud: A Surprisingly Rare Problem

There is no question that election misconduct exists, including improper purges of eligible voters, distributing false information about when and where to vote, stuffing of ballot boxes, and tampering with registration forms. **But there is no evidence that the type of fraud cited in support of photo ID requirements – individual voters who misrepresent their identity at the polls – is anything but an anomaly.**

- In Ohio, a statewide survey found four instances of ineligible persons voting or attempting to vote in 2002 and 2004, out of 9,078,728 votes cast – a rate of 0.00004%.
- Despite the invocation of fraud as support for the new Georgia law, Secretary of State Cathy Cox stated that in her ten-year tenure, she could not recall one documented case of voter fraud involving the impersonation of a registered voter at the polls.
- Nationwide, since October 2002, 52 individuals have been convicted of federal crimes relating to election fraud (including several offenses not remedied by ID requirements), while 196,139,871 ballots have been cast in federal general elections.

Photo ID Requirements: Discouraging Voters, Enabling Discrimination

Photo ID requirements disproportionately impact people of color, rural voters, young people, the homeless, low-income people, the elderly, individuals with disabilities, frequent movers, and persons in large households. A recent study by the Georgia Secretary of State found that nearly 700,000 Georgians – 1 in 7 voters – do not have either a driver's license or a non-driver state issued ID and the Department of Transportation estimates that

between 6-12% of voters nationally do not have a government issued photo ID. A University of Wisconsin study found that nearly 50% of African American and Latino men in Milwaukee do not have government issued photo identification.

Requiring photo ID of voters is the equivalent of a poll tax. By mandating that voters provide photo identification, H.R. 4844 would require voters to pay for photo ID, if they don't already have it. Getting photo ID, such as drivers' licenses and passports, costs money and time. The same is true of the supporting documents required to obtain photo ID. Not all eligible voters in this country can afford to purchase such ID, and H.R. 4844 doesn't suggest helping them out.

Even if they have photo ID, many eligible voters will be turned away. Photo ID requirements place an inordinate amount of discretion in the hands of overworked (and usually unpaid) poll workers. Deciding whether a voter matches or does not match the photo in an ID card – which can often be many years old – is a very subjective process and easily prone to mistakes or worse. Because H.R. 4844 does not explain how disputes over the validity of an ID card would be handled, and because it would keep voters who don't have "valid" ID from obtaining provisional ballots, it could easily open the door to widespread racial and ethnic discrimination at polling places. Even without H.R. 4844, ID provisions are often implemented in a discriminatory way. According to the nation's largest nonpartisan exit poll of Asian Americans, nearly 70% of Asian voters were asked for ID *in states where no ID was required.*

Voters with photo ID will likely be turned away for more benign reasons as well. If an ID card such as a driver's license does not contain the voter's current address, for example, which is true of millions of Americans, he or she is likely to be turned away from the polls. In Wisconsin, 97% of all students do not have their current address on their photo identification. If an eligible voter forgets to bring identification, H.R. 4844 would keep him or her from obtaining a provisional ballot and proving his or her identity on a later date before the ballot is counted. As such, it would undermine an important "safety net" established under the Help America Vote Act.

Current laws target voting fraud–new proof of citizenship requirements do not.

Proof of citizenship requirements are working --to keep *legal* voters from registering. In the first six months of 2005, as a result Arizona's Proposition 200, more than 5,000 Arizona citizens had their voter registrations rejected for failing to provide adequate proof of citizenship.[1] In Pima County, 60 percent of new registrants – **all eligible voters** – were initially rejected. The similar proof of citizenship requirement in H.R. 4844 would result in eligible voters being turned away on a nationwide scale.

Current laws are already extremely tough on noncitizens who try to vote. Falsely claiming citizenship and voting fraud have long been federal offenses. In addition, ever since U.S. immigration laws were reformed in 1996, immigrants who try to vote are automatically given a one-way ticket out of the country, with no criminal conviction necessary. Proof of citizenship requirements will only penalize U.S. citizens who want to exercise their right to vote.

[1] Elvia Diaz and Robbie Sherwood, Prop. 200's Effect Minimal, ARIZONA REPUBLIC, Jan. 5, 2005.

Americans believe strongly that Election Day provides an opportunity to actively engage their leaders and voice their concerns. **Risking the foundation of our democracy is too great a cost to pay when the evidence does not substantiate the claims the "Federal Election and Integrity Act of 2006" purports to fix.**

SEIU is available to work with the Committee to address real reforms that would help improve our elections systems. Please contact, Stephanie Luongo, at 202-730-7365, with any questions.

Sincerely,

Alison Reardon

Alison Reardon
Director of Legislation

AR:SL:gmb

opeiu#2
afl-cio, clc

June 27, 2006

The Honorable Juanita Millender-McDonald
Ranking Member
House Administration Committee
1309 Longworth House Office Building
U.S. House of Representatives
Washington DC 20515

Dear Representative Millender-McDonald:

AARP submits this letter for the record of your Committee hearing on June 22, 2006, regarding voter ID requirements for elections. AARP has a longstanding commitment to full citizen participation in the democratic process at the federal, state and local level, and for that reason AARP has supported electoral reform at the federal level -- i.e., enactment of the National Voter Registration Act (NVRA), the Help America Vote Act (HAVA), the Bipartisan Campaign Reform Act (BCRA), and reauthorization of the Voting Rights Act (VRA). AARP also conducts extensive voter education efforts in each of the 53 U.S. states and territories in which it has offices.

In addition, AARP attorneys represent U.S. citizens aged 50+ who are in danger of disenfranchisement at the federal or state level, and AARP has participated in various advisory capacities to support citizen empowerment through meaningful opportunity to exercise the franchise.

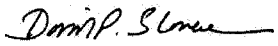
AARP attorneys are currently serving as one of the counsel for plaintiffs in lawsuits challenging burdensome and unreasonable state laws in Georgia (GA) and Arizona (AZ). These laws will, in effect, limit rather than expand citizen participation in the electoral process through unnecessarily restrictive requirements. In these jurisdictions, state legislatures or ballot initiatives have sought to enact laws that have elevated proof requirements for voters to register (AZ) and to vote in person (GA and AZ). These laws are based on assertions of a threat of fraud which lack concrete basis in fact and unfortunately serve to heighten tensions among voters divided by race, language and ethnicity. These new state laws and implementing rules will significantly limit opportunities to register and/or vote. Many persons who are qualified to vote but do not have ready access to documents – such as birth certificates, driver's licenses and passports -- that never have been deemed necessary in the past may lose the fundamental right to vote.

AARP is particularly concerned that such rules will prevent many eligible older voters, voters with disabilities (who may be unable to obtain the requisite photo or citizenship ID) and low income voters (who may not be able to afford such ID) from exercising their right to vote. For example, an estimated 675,000 registered voters in GA have no driver's license, according to Georgia's Secretary of State. Such laws adversely affect older voters who (1) no longer drive and do not need licenses; (2) do not now travel or never did and therefore have no passport; or (3) are persons without birth certificates (e.g., Southern blacks or some Native Americans who

National Office | 601 E Street, NW | Washington, DC 20049 | 202-434-2277 | toll-free 1-888-OUR-AARP (1-888-687-2277)
toll-free TTY 1-877-434-7598 | Erik D. Olsen, President | William D. Novelli, Chief Executive Officer | www.aarp.org

were not allowed in white hospitals that provided documentation). At a time when democratic elections are being conducted for the first time in many nations throughout the world, any unnecessary erosion in access to the ballot in the world's oldest electoral democracy should be unacceptable. On behalf of older Americans who have largely shaped the values of our democracy, we urge great care to ensure that the basic right to vote is not trampled in an effort to address unproven allegations of voting abuse.

Sincerely,



David P. Sloane
Senior Managing Director
Government Relations and Advocacy

6/26/06

TO: Chairman Vernon Ehlers
Ranking Member Juanita Millender-McDonald
House Administration Committee

Dear Representatives Ehlers and Millender-McDonald:

We, the undersigned groups, are writing to communicate our opposition to the bill introduced by Representative Henry Hyde, H.R. 4844, the "Federal Election Integrity Act of 2006." which would require a national ID in order to be able to vote.

This bill is a "solution" in search of a problem. No election-fraud research has pointed to a significant problem vis-a-vis illegal aliens attempting to vote.

However, this bill does include a number of provisions that will diminish the ability of American citizen to legitimately participate in the voting process. In states with Election Day Registration—which enjoy higher than average voter turnout—this would prove to be an enormous bureaucratic headache, as clerks and registrars are forced to assess the validity of citizenship papers, a task for which they are not currently trained.

The requirement to present a national identification card when voting turns election workers, the vast majority of whom are temporary employees or volunteers, into a virtual police force empowered to bar Americans from exercising their right to vote. Lines outside polling places would become much longer, ultimately driving down turnout, as those who cannot devote several more hours of their day to voting simply will not vote at all. Additionally, the requirements in this bill would also abridge the independence of states in setting their own ID requirements.

There is no federal statute allowing states to demand voters disclosure their Social Security numbers. Forcing Americans to get a photo ID (state drivers' licenses are invariably tied to an SSN) to vote is akin to requiring Americans disclose their SSN to vote -- which would be a clear violation of Section 7 of the federal Privacy Act of 1974.

If someone or some group is motivated enough to want to participate illegally in a US election, chances are they will find a way of getting the necessary documents. Meanwhile, Americans will struggle to find long-ago issued social security cards, birth certificates, or even get

fingerprinted by the local DMV under orders from Homeland Security. Let us not forget the 9/11 hijackers were in this country legally, and had legally obtained documents.

With a huge number of U.S. citizens already choosing not to vote, it seems counterproductive to put even more hurdles in their way. There are better ways to get a handle on the immigration problem than forcing Americans and state governments to jump through even more regulatory hoops.

Sincerely,

American Policy Center
The Multiracial Activist
Ohio Taxpayers Association & OTA Foundation
Fairfax County Privacy Council
Velvet Revolution
Cyber Privacy Project
Republican Liberty Caucus
The Rutherford Institute
Computer Professionals for Social Responsibility (CPSR)
Concerned Foreign Service Officers
Common Cause

www.libertycoalition.net

www.commoncause.org

"Requiring US citizens to prove citizenship in order to vote is a solution in search of a problem. There is not a single documented instance of a non-citizen attempting to vote. As elected Representatives of the American people, we would be derelict in our duties to squander scant tax dollars addressing a non-existent issue – particularly in times of record deficits. Perversely, efforts such as this have actually barred legally registered voters – often naturalized immigrants and the poor – from exercising their franchise. Aswe move to renew the Voting Rights Act – and we must – we cannot regress to the dark days of poll taxes and reading tests which denied the vote to the most vulnerable and weakest amongst us."

Congressman Mike Honda

Congress of the United States
Washington, DC 20515

June 21, 2006

The Honorable Vernon J. Ehlers
Chairman
Committee on House Administration
1309 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Ehlers:

On behalf of the Democratic Women's Working Group, we write to bring to your attention an unintended consequence of various proposals before your Committee, which are intended to eliminate fraud in Federal elections.

We strongly favor anti-fraud provisions which ensure the integrity of Federal elections. It is important, however that such provisions do not place unnecessary obstacles or undue burdens on ordinary citizens -- particularly women. Unfortunately, the likely outcome of the various proposals before your committee would be to unnecessarily obstruct legitimate participation by women voters in Federal elections.

For example, a woman who, upon marriage, takes the last name of her husband, would have to produce more documents than her husband in order to register or reregister to vote. A married woman who, upon divorce, uses her birth name thereafter, would potentially have an even greater burden. A poor woman born in a rural setting outside of a hospital might never have received a birth certificate. A woman head-of-household, whose home and records are destroyed by fire, flood, hurricane, or other disaster, may be unable to produce the necessary records to register or vote – not because she is not a citizen – but because of the obstacles these various proposals put in her way. If that working mother had to choose between spending available time and resources obtaining documentation so that her children could attend school, and using the time to document herself so that she can register or vote, she would be forced to sacrifice her own fundamental voting right as an American.

These are not speculative obstacles or situations – they are real and are repeated year in and year out. While preventing fraud in elections is a worthy goal which we support, the Committee must find a way to preclude fraud without

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obstructing citizens, particularly women, from exercising their Constitutional rights. Obstructing these rights, in the pursuit of a perfect system of election administration, harms women as surely as denying women the right to vote in the first place.

Thank you for taking our views into consideration as your committee proceeds with this issue.

Sincerely,

HILDA L. SOLIS
Chair, Democratic Women's Working Group

LOIS CAPPS
Vice Chair, Democratic Women's Working Group

CC: The Honorable Juanita Millender-McDonald, Ranking Member, Committee on House Administration

The Honorable Vernon Ehlers
Chairman, House Administration Committee
1714 Longworth House Office Building
Washington, DC 20515

The Honorable Juanita Millender-McDonald
Ranking Member, House Administration Committee
2445 Rayburn House Office Building
Washington, DC 20515

June 21, 2006

Dear Chairman Ehlers and Ranking Member Millender-McDonald:

On behalf of the Mexican American Legal Defense and Educational Fund (MALDEF), and the Southwest Voter Registration Education Project (SVREP), we write to express our strong opposition to the "Federal Election Integrity Act of 2006" (H.R. 4844), sponsored by Rep. Henry Hyde (R-IL). MALDEF is a national legal organization dedicated to protecting and promoting the civil rights of Latinos in the United States, and SVREP educates Latino communities about the democratic process, the importance of voter registration, and voter participation. Our organizations have grave concerns that the proposed legislation would deny the franchise to untold numbers of American citizens otherwise eligible to vote, and that its burdens would be borne disproportionately by the poor, the elderly, and racial and ethnic minorities.

H.R. 4844 would require, for federal elections beginning in 2006, proof of citizenship from every voter who registers through the National Voter Registration Act (NVRA), who votes in a state that does not require registration, or who registers in a state that allows same-day voter registration. The legislation would also require voters to present photo identification before receiving a ballot, including a provisional ballot.

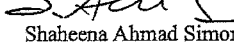
Given the cost and difficulty of obtaining citizenship and identification documents such as passports, birth certificates, or driver's licenses, legislation mandating these documents to register or to vote amounts to an impermissible "poll tax;" it would require otherwise qualified voters to essentially pay a fee as a condition of voting, in violation of the Twenty-Fourth Amendment to the U.S. Constitution. The U.S. Supreme Court, in *Harper v. Virginia State Bd. of Elections*, noted that voting requirements run afoul of the Constitution whenever they make "the affluence of the voter or payment of any fee an electoral standard. Voter qualifications have no relation to wealth."

While the cost of citizenship and identification documents may seem negligible to some, it represents a real burden for many Americans, Americans who are no less entitled than other voters to cast a ballot on Election Day. For the poor, elderly, and for racial and ethnic minorities, H.R. 4844 would erect significant obstacles to participation in the democratic process. Naturalized citizens face particular hurdles: a lost or damaged naturalization certificate costs $210 to replace, and may require a wait of up to six months for processing by the Department of Homeland Security.

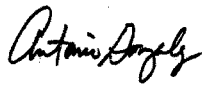
Requiring voters to purchase documents in order to exercise the franchise is as much an affront today as it was when the Supreme Court issued its *Harper* ruling forty years ago. H.R. 4844 presents an unacceptable risk of denying the vote to otherwise eligible voters. At the same time, there is simply no good evidence that voter fraud by non-citizens constitutes a genuine or widespread problem – and certainly not on a scale to justify a response that is so costly, heavy-handed, and discriminatory in effect. In Arizona, where we have filed a legal challenge to a state ballot initiative requiring certain forms of identification at the polls, there is not a single documented case of a non-citizen intentionally and fraudulently registering to vote.

H.R. 4844 would impermissibly burden the fundamental right to vote, the basis of our democratic system. On behalf of those Americans who would disproportionately bear this burden, we urge you not to support this damaging proposal.

Sincerely,



Shaheena Ahmad Simons
Acting D.C. Regional Counsel
MALDEF



Antonio Gonzalez
President
Southwest Voter Registration Education Project

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The Honorable Vernon Elders, Chair
The Honorable Juanita Millender-McDonald, Ranking Member
Committee on House Administration
United States House of Representatives
Washington, D.C. 20515

Dear Representative Ehlers and Representative Millender – McDonald,

On behalf of the Lawyers' Committee for Civil Rights Under Law, I write in opposition to Representative Henry Hyde's so-called "Federal Election Integrity Act of 2006," because it will sacrifice the most fundamental right guaranteed to all American citizens by our constitution – the right to vote. Contrary to its title, the bill will undermine the integrity of our democratic process by making federal elections less responsive to the will of eligible American voters. At a time when our brave men and women are sacrificing their lives to ensure that Iraqis experience the national pride of a fair democratic process, patriotic responsibility demands that we insist on nothing less for our own citizens. H.R. 4844 needlessly requires proof of citizenship when eligible voters register to vote and photo identification when citizens cast a ballot. These may seem like innocuous provisions, but in reality they will create an unprecedented regime of disenfranchisement targeting our nation's traditionally underrepresented voters.

For over forty years, the Lawyers' Committee for Civil Rights Under Law has fought the poisonous specter of discrimination through litigation, advocacy, and organizing. Our foundation rests on ensuring that all eligible voters have the opportunity to cast a meaningful ballot. Our legacy is why we are committed to opposing unnecessary restrictions that disenfranchise voters such as Congressman Hyde's bill. In Georgia and Arizona, the Lawyers' Committee is counsel for eligible citizens who will be disfranchised by similar, state initiated, provisions.

Representative Hyde's bill is undemocratic, unfair, and unconstitutional because it:

- Places an unconstitutional burden on the fundamental right of eligible citizens to participate equally in the democratic process;
- Constitutes a poll tax;
- Unfairly removes eligible voters from the electoral system, primarily from traditionally disfranchised communities;
- Is impossible for states to administer; and
- Attempts to address a problem that does not exist.

While ID requirements will lead to unprecedented national disenfranchisement, proof of citizenship requirements are even more unworkable. To date, Arizona is the only state that has implemented a proof of citizenship requirement for voter registration and the results are devastating. Maricopa County, the largest county in the state, routinely rejects 30% of all voter registrations because they lack a proof of citizenship. In addition to being discriminatory, this lacks common sense. Americans are not in the habit of carrying proof of citizenship. In fact, many of us do not even have it. According to the Bureau of Consular Affairs, only 25-27% of eligible Americans have passports, the most common proof of United States citizenship. Those who cannot afford the $97 it costs to obtain a passport must be able to produce a valid, state issued birth certificate which can cost up to $40. While Americans may not be able to locate their birth certificates, many were never issued one. Many older Americans have never been issued a state birth certificate, particularly African Americans seniors born in the south. Of course, only naturalized citizens receive naturalization papers. Replacing or obtaining any of these documents takes money, time and, frequently, travel – all of which the constitution does not envision as prerequisites voting.

In the past decade, we have seen exceedingly close federal elections. These hotly contested national contests have exposed the crumbling infrastructure of our electoral system. Americans are demanding change and there is plenty that needs to be done, but instead of trying to confuse these feelings with fabricated flaws in the democratic process, it is Congress's responsibility to ensure that we have a model system of choosing our elected officials. We must seriously address the real problems with how we conduct our elections. Instead, passing H.R. 4844 will dishonor the Americans of generations past as well as our heroes of today who have risked their lives to promote our commitment to a responsive democracy around the world. Americans deserve your attention on making the system more dynamic and responsive, not on removing countless eligible Americans in search of phantoms of fraud.

Sincerely,

Barbara R. Arnwine
Executive Director

Congress of the United States
Washington, DC 20515

June 22, 2006

The Honorable Vernon J. Ehlers
Chairman
U.S. House of Representatives
Committee on House Administration
1309 Longworth House Building
Washington, DC 20515

The Honorable Juanita Millender-McDonald
Ranking Member
U.S. House of Representatives
Committee on House Administration
1216 Longworth House Building
Washington, DC 20515

Dear Chairman Ehlers and Ranking Member Millender-McDonald:

As Hispanic Members of Congress, we would like to express our concerns with the hearing entitled, "*You don't need papers to vote? Non-Citizen Voting and ID Requirements in U.S. Elections*." It is regrettable that in selecting this title for the hearing, two non-related issues are now linked in the public's mind – non-citizens and voting fraud, to create controversy where none exists.

We hold a longstanding opposition to identification requirements as part of the voting process. For some time now, we have heard of the need for a photo identification requirement as a necessary tool to combat fraud. However, there is no evidence that widespread fraud occurred in any recent election, in particular any linked to non-citizens voting in federal elections.

While a photo identification requirement at the polls seems entirely reasonable, it is important to note that some people simply do not possess photo identification. For example, in the Latino community, there are many low-income households in which no one possesses a car, and certainly not a driver's license, let alone a passport. There are people in such households who do not even possess alternatives to photo identification, such as utility bills or government checks in their name. For such low-income individuals, the cost of obtaining photo identification is itself a burden, and such a requirement is reminiscent of past barriers to voting.

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Requiring any form of identification at the polling place would inevitably create similar barriers and hurdles for racial and ethnic minority voters and would have a chilling effect on voter participation. Identification provisions have rightfully been prohibited because of the disparate impact they have on minority electoral participation. In addition, it would have a devastating effect on rural voters, as well as the elderly and disabled. As responsible policy makers, we need to consider whether the proposed remedy to a problem will cause greater harm than good.

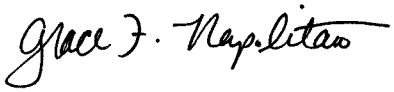
Rep. Hyde's legislation, H.R. 4844, goes further than simply requiring photo identification and seeks to amend the P.L. 103-31, the National Voter Registration Act (NVRA), to make proof of citizenship a federal requirement for voting in states that require registration. This presents several problems in that if improperly implemented, a voter ID law would likely violate other federal voting rights laws such as the Voting Rights Act of 1965 and the Help America Vote Act of 2002. In addition, states would have to create new forms and a new system to capture registrations by mail, otherwise they would be non-compliant with the law the bill intends to amend, NVRA. Moreover, it would fail to stop fraud that could occur via mail-in voting or by the use of absentee ballots.

Currently, federal voter registration forms allow persons to attest to the fact that they are citizens. If H.R. 4844 were implemented, the requirements would be akin to imposing a modern-day poll tax because citizens would now have to pay to secure documents to prove what they have already confirmed via attestation, that they are indeed citizens. For persons of limited means, the prospect of spending $85 for a passport or time locating a birth certificate could easily discourage them from voting at all. In the case of naturalized citizens, who might attempt to register to vote by mail, this requirement would serve as a deterrent. The certificate of citizenship they receive from the Department of Homeland Security, which they would have to submit as proof, says on its face, "IT IS PUNISHABLE BY U.S. LAW TO COPY, PRINT, OR PHOTOGRAPH THIS CERTIFICATE WITHOUT LAWFUL AUTHORITY." Any naturalized citizen would be in violation of one law in an attempt to comply with another. No individual should be put in a position to have to make that choice.

We urge you to consider the risks inherent in identification requirements and to oppose this bill.

Sincerely,

Charles A. Gonzalez
Member of Congress



Grace Flores Napolitano
Member of Congress

Page 3, Letter to House Administration Committee

Ruben Hinojosa
Member of Congress

Luis V. Gutierrez
Member of Congress

Joe Baca
Member of Congress

Raul M. Grijalva
Member of Congress

Hilda Solis
Member of Congress

Linda Sanchez
Member of Congress

Dēmos

A NETWORK FOR IDEAS & ACTION

June 21, 2006

Honorable Juanita Millender-McDonald
Ranking Member, Committee on House Administration
U.S. House of Representatives
1309 Longworth House Office Building
Washington, DC 20515

Via Facsimile

Dear Rep. Millender-McDonald:

Dēmos is a nonprofit, nonpartisan public policy organization working to building a democracy that is robust and inclusive, with high levels of electoral participation and civic engagement, and an economy where prosperity and opportunity are broadly shared and disparity is reduced. We respectfully provide the following views in opposition to H.R. 4844, The Federal Election Integrity Act of 2006 in advance of your consideration of that legislation on June 22, 2006.

Like Rep. Hyde and the co-sponsors of H.R. 4844, Dēmos places the highest value on election integrity. Regrettably, H.R. 4844 would undermine the very integrity that it aspires to advance. While an election with integrity is one that allows every eligible voter an opportunity to cast a ballot and exercise her fundamental right to vote, the most likely impact this legislation will be to suppress the vote of eligible American citizens. The reality is that many Americans do not have ready access to documentary proof of citizenship or photographic identification, that obtaining such documents imposes financial burdens that amount to a modern-day poll tax, and that citizenship and voter ID requirements are often implemented ways that defy reason or fairness. H.R. 4844's extension of proof-of-citizenship and identity requirement to states with Election Day Registration (EDR) will undermine the superior voter participation rates achieved there. Voter turnout was 12 percentage points higher in EDR states than in the rest of the nation in the 2004 presidential election.

Arizona's experience in implementing its new proof-of-citizenship requirement is instructive. In the first six months of the program last year, Arizona rejected the voter registration applications of *more than 5000 U.S. citizens* for failure to provide proof of citizenship. An unknown number of other Arizonans were denied their right to vote by faulty implementation of the law. Last May, the *Tuscan Citizen* reported that Charles Allen, a 57-year-old U.S. citizen, presented his U.S. passport at the polls for the primary election, but was turned away because his passport did not also show his current address.

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H.R. 4844 would likely extend across the nation the disfranchising results reported in Arizona. Determinations of what documents suffice as identification, or whether an individual's visual image matches that captured in a photo ID (which may have been produced years ago) is an exceedingly subjective activity. The bill provides no guidance to the typically-harried election workers who would determine what voter identification is acceptable or how to properly match a voter against the image on her photo ID. Mistakes can and will occur. A national exit poll of 11,000 Asian American voters conducted by the Asian American Legal Defense and Education Fund in the 2004 presidential election found that 66 percent of voters not required to present identification at the polls were nonetheless asked to do so by ill-informed or ill-intended election workers.

H.R. 4844 raises particular concerns for elderly, disabled, poor and minority citizens. The record is clear that these voters are less likely to possess adequate proof of citizenship or photo identification than other Americans. The Georgia Secretary of State reports that nearly 700,000 citizens in her state do not possess either a state driver's license or a state non-driver's ID. The American Association of People with Disabilities has estimated that more than 3 million Americans with disabilities do not possess a driver's license or state-issued photo ID. The AARP of Georgia counted about 153,000 Georgia residents over the age of 60 who voted in 2004 but did not possess a government-issued photo ID, while the AARP of Indiana figures that ten percent of registered over 60 in that state do not have state-issued driver's license. And the University of Wisconsin reported that less than half of African American and Latino adults living in Milwaukee County have valid driver's licenses – as compared to 85 percent of white adults living elsewhere in the state. Obtaining driver's licenses, passports, non-driver's IDs, and requisite supporting documents costs time, money, and last work hours. H.R. 4844 provides no compensation for these added burdens.

The most objectionable aspect of the legislation under consideration by the Committee is that it is grounded in a fundamentally flawed premise. The evidence shows that U.S. elections are *not* being undermined by the registration and voting of ineligible individuals. In *Securing the Vote*, the most extensive study of voter fraud to date (conducted for Dēmos by Barnard College Professor Lori Minnite), research showed that voter fraud at the polls was minimal and unlikely to change election outcomes. Studying the record in California from 1994-2001, Professor R. Michael Alvarez at the California Institute of Technology found little incidence of fraud in that most-populous state. Tellingly, nationwide only fifty-two individuals have been convicted of federal crimes relating to election fraud since October 2002, as compared to almost two million votes cast in federal general elections.

Despite Congress' best efforts in enactment of the Help America Vote Act (HAVA) in 2002, the integrity of U.S. elections continues to lag. Eligible citizens all across the country are prevented from exercising their fundamental right to vote by poorly-administered voter registration procedures, inaccurate voter rolls, understaffed boards of elections, inadequately-trained and over-extended poll workers, lack of reasonable assistance for voters with disabilities and language minority citizens, and organized voter

intimidation and vote suppression campaigns. Some of these errors will be corrected as states move to fully implement the HAVA-mandated computerized, statewide voter registration systems and fully accessible voting machines. Others will require greater public investment and commitment. Congress should increase its appropriations for state election reform, take swift action to reauthorize the Voting Rights Act, and give serious consideration to legislation introduced in the House and Senate to outlaw deceptive practices and voter intimidation (H.R. 4463, S. 1975). The few instances where voter fraud does arise are best addressed by improved public education about voter eligibility and vigorous investigation and prosecution of the few well-founded fraud claims that do arise.

Dēmos appreciates this opportunity to share its views on H.R. 4844 and election integrity. We stand ready to provide any additional information or assistance.

Respectfully,

Miles Rapoport
President, Dēmos

Statement

Electronic Privacy Information Center

House Committee on Administration
Hearing
June 22, 2006

"You don't need papers to vote?"
Non-Citizen Voting and ID Requirements in U.S. Elections

The Electronic Privacy Information Center would like to thank Chairman Ehlers, and Ranking Member Millender-McDonald for their attention to our nation's elections and democratic processes. The Electronic Privacy Information Center ("EPIC") is a public interest research center in Washington, D.C. It was established in 1994 to focus public attention on emerging civil liberties issues and to protect privacy, the First Amendment, and constitutional values. We have a long standing interest in constitutional values and submit this statement to the committee to further the work of EPIC to educate and inform the public, media, and policy makers on pressing issues that impact the privacy rights of residents.

The Electronic Privacy Information Center oppose the implementation of proof of citizenship and photo identification requirements for eligible electors in American elections as the means of assuring election integrity. Recently, several proposals have been advanced at both the federal and state level to change existing election administration regulations to require eligible electors to provide proof of citizenship in order to register to vote and/or a form of photo identification in order to cast a ballot. The approved forms of proof of citizenship or photo identification vary across jurisdictions but, in general, the options are limited to a few, government issued documents.

There are two conditions that must be satisfied to have a public election declared democratic – an international norm that the United States helped to establish. All those who are legally eligible to participate in a public election must be allowed to vote, while at the same time those who are not legally allowed to participate are not allowed to vote. The dispassionate and objective application of voting law precludes looking at an individual voter and making a determination of eligibility. The voter registration process should determine eligibility, and on Election Day the role of the poll worker is to authenticate voters without consideration of their income, language of origin, education, gender, race, or ethnicity.

Initially, Election Day voting poll locations were a good means of authenticating voters because the people within the community are more likely to know the people who

are casting ballots. Today, that is more difficult because of the mobility of the American population and the disconnected nature of neighborhoods and communities.

The question before you is whether ineligible voters who are non-citizens are participating in public elections, and if this is the case, whether a strict voter identification requirement would address the problem. Non-citizens voting in public elections present a number of questions: first where is the research that provides some measure of the problem identified, and second is the supposed non-citizen voter participation isolated to certain states, regions or is it a national issue.

EPIC finds the ideas of proof of citizenship and photo identification requirements an extreme approach to a yet undefined problem that has yet to be acknowledged by election administration professionals or state attorneys generals as a pressing issue. For this reason, EPIC finds the proposal to increase the burden for voter participation in public elections to include restricted identification requirements to be objectionable, a barrier to the right to vote, and unnecessary in the encroachments on voters' privacy rights. We advise rejection of the ideas on the basis that the proof of citizenship and photo identification requirements: (1) are unnecessary and possibly unconstitutional; and (2) show a disregard of voters' privacy rights.

Proof of Citizenship Requirements for Voter Registration and Photo Identification Requirements for Voting are Unnecessary and Possibly Unconstitutional

In order to increase voter participation in federal elections, Congress enacted the National Voter Registration Act of 1993 ("NVRA" or "Motor Voter Act").[1] The act was designed to enhance voting opportunities for every American and makes it easier for all Americans to exercise their fundamental right to vote. Recently, in reply to the Presidential Election of 2000, the federal government attempted to clarify and codify voting rights in the United States for federal elections through the enactment of the Help America Vote Act of 2002 ("HAVA").[2] HAVA, for the first time in the nation's history, established a role for the federal government in public elections held to fill federal elected offices.

Under NVRA and HAVA, states retain control of the election process, but they must meet minimum standards set by statute and federal agencies including a prohibition on states adopting alternative standards that are "inconsistent with … any law described [herein]."[3] HAVA was generally popular among members of Congress, yet received some criticism because it required more stringent voter identification procedures. Dissenters feared that the new requirements would repress voter participation by millions of Americans who have no driver's license.

Many ideas for increased voter identification requirements allege to further the principle goals of NVRA and HAVA. Yet, most proposals do the very opposite,

[1] 42 U.S.C. § 1973gg.
[2] 42 U.S.C. § 15301, *et seq.*
[3] 42 U.S.C. § 15484.

stripping from the list of acceptable forms of identification several documents HAVA specifically permits, including: a current utility bill, bank statement, government check or paycheck, or other government documents showing the voter's name and address. Moreover, increased voter identification requirements would disproportionately burden minorities, elderly, physically challenged, and the poor by presenting a significant financial and practical hurdle to poll access. Historically, basing such prerequisites on a desire to facilitate the voting process has been merely pretextual, such as was the case with poll taxes.

EPIC has previously explained in the analogous context of voter registration; voter registration was designed to deny suffrage to those groups that were deemed not to be worthy of equal participation in the democratic process.[4] From generation to generation the list of the outcasts of American Democracy included women, new citizens, minorities, young adults, first time voters, poor people, and the homeless.[5] We believe ideas that further increase voter identification requirements, by preventing certain citizens from accessing the polls, will more likely reduce rather than enhance voting integrity. Although we recognize the interest in verifying voter identity, we believe that compelling eligible electors to acquire and present proof of citizenship to register to vote and photo identification to cast a ballot represents an unjustified privacy infringement.

The goal should be to keep the balance of furthering legitimate voter access, while ensuring that only those who may participate in the election do so. The voter access document in the form of voter registration should be the document needed to assure access to the ballot box. The role of that process is to make the necessary checks of identity and assure that those checks are based on real measures that reflect the needs of public election participation. However, the documents that can offer some proof of citizenship could include a birth certificate or a federal government issued passport, however, neither of these documents contain any relevant information for voter registration purposes. A place of birth does not indicate whether someone is a current resident of a community, or answers other questions about eligibility for participating in a public election. The passport is solely for the purpose of identifying citizens are they travel to and from the country and provides even less information that could be used for voter registration purposes.

Nor can ideas for increased voter identification requirements be said to remedy voter fraud, accusations of which have, in recent years, centered on charges of fictitious registration.[6] HAVA was passed partly on the grounds that requiring identification at the time of registration, rather than at the time of voting, would remedy this very problem.[7] Moreover, while multiple registrations have occurred in some instances, these incidents

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[4] DENNIS R. JUDD & TODD SWANSTROM, CITY POLITICS: PRIVATE POWER AND PUBLIC POLICY 86 (Addison-Westley Education Publishers Inc.) (2d ed. 1998).
[5] See ACLU & Dēmos, Purged! How a Patchwork of Flawed and Inconsistent Voting Systems Could Deprive Millions of Americans of the Right to Vote (Oct. 2004), available at http://www.aclu.org/Files/OpenFile.cfm?id=16844.
[6] CNN.com Online News Law Center, Mary Poppins prompts investigation, http://www.cnn.com/2004/LAW/10/18/mary.poppins.registers.to.vote/
[7] See Robert Pear, The 2002 Campaign: Ballot Overhaul: Congress Passes Bill to Clean Up Election System, N.Y. TIMES, Oct. 16, 2002, at A1 (quoting Sen. Bond (MO) as saying, "If your vote is canceled by the vote of a dog or dead person, it's as if you did not have the right to vote.").

do not necessarily reflect an intention by the voter to cast multiple ballots; lack of understanding and poor administration of the registration process itself may induce honest persons to register multiple times in an effort to try to ensure registration.[8] Another documented reason for multiple registrations is poor governmental recordkeeping.[9] Regardless of the cause of the problem, compelling voters to present state-issued identification at the polls is unlikely to resolve voter fraud.

Each election there is a small percentage of votes that are cast which raise questions about voter fraud. However, many of these ballots probably do not fit the typical profile most people would expect, they may be voters with residences in more than one state i.e. retirement or vacation homes and a permanent residence. They may be people who initially vote absentee and then find that they can vote on Election Day and do so. There are also concerns about people without the capacity to cast an independent, and informed vote i.e. those in assisted living or nursing homes who may have absentee ballots cast in their names. To be truthful the biggest opportunity for rampant voter fraud are absentee ballots, but little attention is placed on that process.[10] In any regard the evidence of rampant illegal vote casting is just not there.

Mandating presentation of state-issued documents as a condition to the exercise of the right to vote – unquestionably the most fundamental of all democratic freedoms[11] – represents a sharp departure from national precedent. Requiring voters to carry such documents could compromise the historic distinction between the United States and those nations requiring citizens to present papers as a condition to free passage. Identity cards have historically been a hallmark of injustice; they were essential to South Africa's apartheid system and proved useful in the Nazi and Rwandan genocides, for which they were powerful tools to identify members of targeted groups.[12] Requiring citizens to present non-voting-related documents, such as a driver's license, at voting polls is akin to demanding citizens to present government-issued food-rationing cards for unrelated purposes, a practice that prompted rebellion in World War II Britain.[13]

Requiring voters to provide the state with information that is unnecessary to verify their identity or citizenship, such as the voter's address and fingerprints, may also raise questions of whether the vote itself is being cast in secret. Such concerns of voters are particularly acute in jurisdictions that use electronic voting machines, such as the State of Georgia.[14] Whenever the state mandates disclosure of personal information, the

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[8] Dennis J. Willard & Doug Oplinger, Figures Don't Add Up, AKRON BEACON J., Oct. 2, 2004, at 8A.
[9] Too Close to Election to Purge Voter Rolls, Editorial, INDIANAPOLIS STAR, Aug. 27, 2004, at A12; Brad Schrade & Anne Paine, and Bloated Registration Rolls Might Mean Long Lines at Polls, TENNESSEAN, June 28, 2004, at 1A.
[10] Maria A. Morales, Karen Branch & David Lyons, *Carollo Headed Back to Court, Commissioners Don't Act to Fill Mayor's Seat*, THE MIAMI HERALD, March 6, 1998, at 1A (documenting the confusion caused when a judge calls a new election due to massive absentee voter fraud).
[11] "Other rights—even the most basic—are illusory if the right to vote is undermined." Wesberry v. Sanders, 376 U.S. 1, 18 (1964).
[12] Daniel J. Steinbock, National Identity Cards: Fourth and Fifth Amendment Issues, 56 FLA. L. REV. 697, 708-09 (Sept. 2004).
[13] Id. at 708.
[14] Georgia uses a touch-screen, direct recording electronic (DRE) voting system, which requires an access card to unlock the voting machine. Significantly, the Secretary of State Elections Web site includes the following statement about the card: "It contains no personal information about you or your vote." Georgia Secretary of State Cathy Cox, Elections, Frequently Asked Questions, http://www.sos.state.ga.us/elections/electronic_voting/faqs.htm (last visited July 25, 2005). For an overview of security of electronic voting in Georgia, see Britain J. Williams, Security in the Georgia Voting System, Apr. 23, 2003, http://www.votescount.com/georgia.pdf.

possibility arises that the data will be collected, stored in a centralized database to which subjects lack direct access and used for unknown purposes. Such a scheme of identification may thus chill rather than enhance popular confidence in election integrity. As one scholar notes, a system of mandatory identification by documentation raises fears that, "[a]ll human behavior would become transparent to the State, and the scope for nonconformism and dissent would be muted to the point envisaged by the dystopian novelists."[15] Innocent voters may feel especially intimidated if their information is checked against a database as they have, "no way of knowing the contents of the database against which their identification is being run, whether these contents are accurate or not, or what further impositions might be triggered by the information linked to their identity card. This uncertainty will turn every identification demand into cause for apprehension."[16]

In *Burson v. Freeman*,[17] the Supreme Court described voter privacy as a means of preventing voter fraud while ensuring against undue coercion. Upholding, under strict scrutiny analysis, a Tennessee statute that prohibited political candidates from campaigning within 100 feet of a polling place entrance, the plurality stated:

> [A]n examination of the history of election regulation in this country reveals a persistent battle against two evils: voter intimidation and election fraud. After an unsuccessful experiment with an unofficial ballot system, all 50 States, together with numerous other Western democracies, settled on the same solution: a secret ballot secured in part by a restricted zone around the voting compartments. We find that this widespread and timetested consensus demonstrates that some restricted zone is necessary in order to serve the States' compelling interests in preventing voter intimidation and election fraud.[18]

Thus, voting and privacy work in tandem: the latter gives meaning to the former. Compelling voters to present photo identification and to reveal more information than is absolutely necessary to affirm identity before allowing them into the restricted zone will chill voters' sense of seclusion and infringe on the sanctity of the private vote.

Judicial precedent advises against giving a state wide latitude in the use of personal information for administrative purposes in elections. In *Greidinger v. Davis*,[19] the Fourth Circuit limited the scope of use of Social Security Numbers in the administration of elections after a Virginia citizen seeking to register to vote challenged the state's publication of the Social Security Numbers in the public voting roles. While allowing the use of Social Security Numbers for the limited purpose of preventing voter

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[15] Steinbock, supra note 19, at 809 (quoting Roger Clarke, Human Identification in Information Systems: Management Challenges and Public Policy Issues, 7 INFO. TECH. & PEOPLE, (No. 4) 6, 34 (1994), available at http://www.anu.edu.au/people/Roger.Clarke/DV/HumanID.html).
[16] Steinbock, supra note 19, at 734 (citations omitted).
[17] 504 U.S. 191 (1992).
[18] *Id.* at 206.
[19] 988 F.2d 1344 (4th Cir. 1993).

fraud, the Fourth Circuit held that publishing Social Security Numbers placed an impermissible burden on the right to vote.[20]

In *Harman v. Forssenius*,[21] the U.S. Supreme Court struck down a Virginia statute requiring voters to submit an affidavit of residence six months before Election Day as an alternative to paying the customary poll tax. Finding that the statute violated the Twenty-Fourth Amendment, the Court rejected the state's argument that the law was necessary to prevent voter fraud: "[C]onstitutional deprivations may not be justified by some remote administrative benefit to the State.... Moreover, ... the State has not demonstrated that the ... requirement is in any sense necessary to the proper administration of its election laws."[22]

The administrative challenge with increased voter identification requirements is the development of lists of approved forms of proof of citizenship. Naturalization papers are clear proof of citizenship but natural born citizens have no equivalent. Birth certificates or passports, under some circumstances, can prove the citizenship of an individual. However, proof of birth at an American hospital may not equate to American citizenship. Every year resident working or student aliens deliver children in American hospitals who will never become citizens of the United States. In addition, members of the American military serving abroad regularly deliver children who are natural born American citizens in foreign hospitals. A passport requires proof of citizenship to obtain but can only be acquired at a cost, a possible violation of the Twenty-Fourth Amendment.

Approved lists of forms of photo identification also have administrative challenges. Although most Americans hold a valid drivers license, many departments of motor vehicles ("DMVs") around the country are no longer issuing new licenses when citizens relocate within a state. Some DMVs do not collect old drivers licenses when a driver changes address. Because of that, many voters may have a photo ID with an outdated address or have several valid drivers licenses with different addresses. In addition, most DMVs charge a processing fee for an individual to obtain a license, to require presentation of a drivers license in order to cast a ballot may be a possible violation of the Twenty-Fourth Amendment.

Proof of Citizenship Requirements for Voter Registration and Photo Identification Requirements for Voting Disregard Voters' Privacy Rights

Increased voter identification requirements as proposed are often equally onerous, requiring voters to obtain at least one form of identification for which the state typically collects a monetary charge. Some states allow persons who cannot afford a card to obtain one for free; however, this, requires not only documented proof of identity, state residency, and citizenship but also submission of proof of indigence and income. Moreover, such applicants are often required to apply for such cards well in advance of an election and to have a current mailing address, an impossibility for the indigent.

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[20] *Id.* at 1344.
[21] 380 U.S. 528 (1965).
[22] *Id.* at 542-43.

Consideration of increased voter identification requirements should also be informed by the reasoning in *Hiibel v. Sixth Jud. Dist. Court of Nev., Humboldt County*, in which the Supreme Court declined to hold that law enforcement can mandate that citizens produce documents proving their identity.[23] In that case, the Court upheld a Nevada statute that required a person stopped by police to disclose his or her name when reasonable, articulable suspicion of a crime was present. The Court reasoned that the statute did not violate the Constitution because "[t]he request for identity has an immediate relation to the purpose, rationale, and practical demands of a Terry stop."[24]

No such reasonable relation exists here. Increased voter identification requirements would require all citizens presenting themselves at the poll – the vast majority of whom presumably arouse no suspicion whatsoever – to disclose not only their names but also all information that appears on their identification cards. Further, the requirements would require citizens to present the cards not to police but to poll workers, most of whom are neither professionally licensed in law enforcement nor permanent governmental employees. Furthermore, the requirements would mandate self-identification not in the context of criminal apprehension – a state interest that, although strong, must be balanced vis à vis Fourth Amendment rights[25] – but as a condition to an innocent person's exercise of the constitutional right to vote.[26]

The disclosure of personal information mandated by the increased voter identification requirements could be considerable. The most common form of identification likely to be used – a driver's license – includes not only the voter's name and photographic likeness but also may include such information as the voter's age, height, weight, driver's license number, restrictions owing to disability or impairment (such as for imperfect vision or a prosthetic limb), and fingerprints. Furthermore, the State, and not the voter, would have sole control over the information placed into a state-issued identification card, and the applicant for such identification cannot choose to withhold certain data. Changes in the design and content of driver's licenses and other state-issued identification are also at the discretion of the government rather than the data subjects.

The cumulative effects of what many would deem a minor burden on voter rights would be substantial over time because checking papers has "an additional subjective effect on a grand scale: the psychic harm to free people of having to 'show your papers'.... Not only would people forced to go through identity checkpoints experience some degree of fear and surprise, but also knowing that this has become a permanent part

[23] 542 U.S. 177 (2004) (upholding Nevada statute because "[a]s we understand it, the statute does not require a suspect to give the officer a driver's license or any other document. Provided that the suspect either states his name or communicates it to the officer by other means—a choice, we assume, that the suspect may make – the statute is satisfied and no violation occurs.").
[24] Id. at 177.
[25] See, e.g., Muehler v. Mena, 125 S. Ct. 1465, 1470 (2005) (holding that no Fourth Amendment violation occurred where officers handcuffed suspect during lawful search: "Inherent in [the] authorization to detain an occupant of the place to be searched is the authority to use reasonable force to effectuate the detention.").
[26] The U.S. Constitution places no such restriction on the right to vote and specifically excludes several restrictions. See U.S. Const. art. XIV, § 2; U.S. Const. amend. XIV, U.S. Const. amend. XV; U.S. Const. amend. XIX; U.S. Const. amend. XXIV; U.S. Const. amend. XXVI.

of the social fabric would diminish their sense of liberty."[27] Such effects are certainly immeasurable, but there can be no question that the effects are compounded where the right at issue – voting – is the very heart of democratic liberty.

We should not assume that all identification requirements would fall equally upon all citizens. One of the largest sources of voter disenfranchisement is poll worker errors, which could be compounded with additional voter identification requirements. In the recent Indiana primary elections Veterans were denied their right to vote because their VA identification cards were not one of few forms of identification approved by the new state law.

Conclusion

According to the CalTech MIT study, *Voting: What Is, What Could Be*, between 4 and 6 million votes were lost in the 2000 election.[28] The study attributed the loss in part to problems with voter registration and polling place practices. In 2004, EPIC identified two general problem areas with voter registration during the elections: lack of transparency and voter privacy regarding the public administration of voter registration.[29] The solutions to voter registration and Election Day problems lie not in additional legal barriers between American voters and the ballot box but in increased training and funding for local election administration. There is no evidence that local election administrators face drastic challenges to the identification of voters and registering to vote and the act of casting a ballot must, by law, cost nothing to the voter. Therefore, and for the reasons state above, increased voter identification requirements are unnecessary, possibly unconstitutional, and disregard voters' privacy rights.

Thank you,

Marc Rotenberg
Executive Director
EPIC

Lillie Coney
Associate Director
EPIC

D. Richard Rasmussen
Law Clerk
EPIC

[27] Steinbock, supra note 19, at 740.
[28] THE CALTECH/MIT VOTING TECHNOLOGY PROJECT, VOTING, WHAT IS, WHAT COULD BE (California Institute of Technology and The Massachusetts Institute of Technology Corporation) (2001) available at http://www.vote.caltech.edu/media/documents/july01/July01_VTP_Voting_Report_Entire.pdf.
[29] Ralph Vartabedian, LOS ANGELES TIMES, *State Laws Unjustly Bar Voters, ACLU Says;* Oct 19, 2004, at A16.

The CHAIRMAN. I also move that we enter the Department of Justice report that I referred to earlier into the record. Without objection, so ordered.

[The information follows:]

CRIMINAL DIVISION
PUBLIC INTEGRITY SECTION
UNITED STATES DEPARTMENT OF JUSTICE

ELECTION FRAUD PROSECUTIONS & CONVICTIONS
BALLOT ACCESS & VOTING INTEGRITY INITIATIVE
OCTOBER 2002 B SEPTEMBER 2005

DISTRICT OF ALASKA (2000, 2002, 2004-Voting by Ineligibles), *United States v. Rogelio Mejorada-Lopez,* Case No. 05-CR-074: Involves a Mexican citizen, Rogelio Mejorada-Lopez, who completed several voter registration applications to register to vote in Alaska and who thereafter voted in the 2000, 2002, and 2004 general elections. On August, 15, 2005, the defendant was charged by Information with three counts of voting by a non-citizen in violation of 18 U.S.C. ' 611.

United States Attorney: Timothy A. Burgess (907) 271-5071
District Election Officer: Deborah A. Smith
Assistant United States Attorney: Retta Randall

STATUS: 1 person charged by information.

DISTRICT OF COLORADO (2004-Voting by Noncitizen), *United States v. Shah,* Case No. 04-CR-00458: On November 1, 2004, Ajmal Shah was indicted on charges of providing false information concerning U.S. citizenship in order to register to vote in violation of 18 U.S.C. ' ' 911 and 1015(f). On March 1, 2005, the defendant was convicted on both counts.

United States Attorney: William J. Leone (303) 454-0100
District Election Officer: Tom O=Rourke

STATUS: 1 person indicted; 1 person convicted.

NORTHERN DISTRICT OF FLORIDA (2002-Registration Fraud), *United States v. Chaudhary, a/k/a Usman Ali,* Case No. 04-CR-00059: On November 9, 2004, an indictment was returned against Chaudhary charging misuse of a social security number in violation of 42 U.S.C. ' 408 and making a false claim of U.S. citizenship on a 2002 driver=s license application in violation of 18 U.S.C. ' 911. A superseding indictment was returned on January 4, 2005, charging the defendant with falsely claiming U.S. citizenship on a driver=s license application and on the accompanying voter registration application. On May 18, 2005, the defendant was convicted by a jury of the false citizenship claim on his voter registration application.

United States Attorney: Gregory Robert Miller (850) 942-8430
District Election Officer: Len Register
Supervisory Assistant United States Attorney: Karen Rhew

STATUS: 1 person indicted; 1 person convicted.

NORTHERN DISTRICT OF FLORIDA (2000-Voting by Non-citizen), *United States v. Mohsin Ali*, Case No. 4:05-CR-47: On September 26, 2005, a misdemeanor information was filed against Mohsin Ali charging him with voting by a non-citizen in violation of 18 U.S.C. ' 611.

United States Attorney: Gregory Robert Miller (850) 942-8430
District Election Officer: Len Register
Supervisory Assistant United States Attorney: Karen Rhew
Assistant United States Attorney: Winifred NeSmith

STATUS: 1 person charged by information.

SOUTHERN DISTRICT OF FLORIDA (Voting by Noncitizen), *United States v. Velasquez*, Case No. 03-CR-20233: On March 20, 2003, Rafael Velasquez, a former candidate for the Florida legislature, was indicted on charges of misrepresenting U.S. citizenship in 1998 in connection with voting and for making false statements in 2001 to the Immigration and Naturalization Service, in violation of 18 U.S.C. ' ' 911, 1015(f) and 1001. On September 9, 2003, the defendant was convicted by a jury on two counts of making false statements on his nationalization application to the INS concerning his voting history.

United States Attorney: R. Alexander Acosta (305) 961-9100
District Election Officer: Karen Rochlin

STATUS: 1 person indicted; 1 person convicted.

SOUTHERN DISTRICT OF FLORIDA (Voting by Noncitizen), *United States v. McKenzie*, Case No. 04-CR-60160; *United States v. Francois*, No. 04-CR-20488; *United States v. Exavier*, No. 04-CR-60161; *United States v. Lloyd Palmer*, No. 04-CR-60159; *United States v. Velrine Palmer*, No. 04-CR-60162; *United States v. Shivdayal*, No. 04-CR-60164; *United States v. Rickman*, No. 04-CR-20491; *United States v. Knight*, No. 04-CR-20490; *United States v. Sweeting*, No. 04-CR-20489; *United States v. Lubin*, No. 04-CR-60163; *United States v. Bennett*, No. 04-CR-14048; *United States v. O=Neil*, No. 04-CR-60165; *United States v. Torres-Perez*, No. 04-CR-14046; *United States v. Phillip*, No. 04-CR-80103; *United States v. Bain Knight*, No. 04-CR-14047: On July 15, 2004, fifteen noncitizens were charged with

voting in various elections beginning in 1998 in Broward, Miami-Dade, St. Lucie, Martin, or Palm Beach County in violation of 18 U.S.C. ' 611, and four of these defendants were also charged with making false citizenship claims in violation of 18 U.S.C. ' ' 911 or 1015(f). Ten defendants were convicted, one defendant was acquitted, and charges against four defendants were dismissed upon motion of the government

United States Attorney: R. Alexander Acosta (305) 961-9100
District Election Officer: Karen Rochlin

STATUS: 15 persons indicted; 10 persons convicted; 1 person acquitted; 4 cases dismissed.

SOUTHERN DISTRICT OF ILLINOIS (2002-Ballot Forgery), *United States v. Brooks*, Case No. 03-CR-30201: East St. Louis election official Leander Brooks was indicted on October 24, 2003, on charges of submitting fraudulent ballots in the 2002 general election in St. Clair County in violation of 42 U.S.C. ' ' 1973i(c), 1973i(e), 1973gg-10(2)(B), and 18 U.S.C. ' ' 241 and 371. The defendant pled guilty to all charges on February 12, 2004.

United States Attorney: Ronald J. Tenpas (618) 628-3700
District Election Officer: Hal Goldsmith

STATUS: 1 person indicted; 1 person convicted.

SOUTHERN DISTRICT OF ILLINOIS (2004-Vote Buying), *United States v. Scott,* Case No. 05-CR-30040; *United States v. Nichols,* No. 05-CR-30041; *United States v. Terrance Stith*, No. 05-CR-30042; *United States v. Sandra Stith*, No. 05-CR-30043; *United States v. Powell, et al.,* No. 05-CR-30044: On March 22, 2005, four Democratic precinct committeemen in East St. Louis, St. Clair County, were charged by information with vote buying in the 2004 general election in violation of 42 U.S.C. ' 1973i(c). All four pled guilty the same day. Also on March 22, a grand jury indicted four additional Democratic precinct committeemen and one precinct worker on conspiracy and vote buying charges in violation of 18 U.S.C. ' 371 and 42 U.S.C. ' 1973i(c). A jury convicted all five defendants on June 29, 2005.

United States Attorney: Ronald J. Tenpas (618) 628-3700
District Election Officer: Hal Goldsmith

STATUS: 5 persons indicted; 4 persons charged by information; 9 persons convicted.

DISTRICT OF KANSAS (2002 & 2000-Double Voting), *United States v. McIntosh*, Case No. 04-CR-20142: A felony information was filed on October 28, 2004, against McIntosh for voting in both Wyandotte County, Kansas, and Jackson County, Missouri, in the general elections of 2002 and 2000 in violation of 42 U.S.C. ' 1973i(e). A superseding misdemeanor information

was filed on December 15, 2004, charging McIntosh with causing the deprivation of constitutional rights in violation of 18 U.S.C. ' 242, to which the defendant pled guilty on December 20, 2004.

United States Attorney: Eric F. Melgren (316) 269-6481
District Election Officer: Leon Patton

STATUS: 1 person charged by information; 1 person convicted.

EASTERN DISTRICT OF KENTUCKY (1998-Vote Buying), *United States v. Conley*, Case No. 03-CR-00013; *United States v. Slone,* No. 03-CR-0014; *United States v. Madden*, No. 03-CR-00015, *United States v. Slone, et al.*, No. 03-CR-00016; *United States v. Calhoun*, No. 03-CR-00017; *United States v. Johnson*, No. 03-CR-00018; *United States v. Newsome, et al.,* No. 03-CR-0019: Six persons were indicted on March 28, 2003, and four more persons were indicted on April 24, 2003, on charges of buying votes in connection with the 1998 primary in Knott County in violation of 42 U.S.C. ' 1973i(c). Five of the ten defendants pled guilty, two were convicted at trial, and three were acquitted. One defendant has appealed his conviction.

United States Attorney: Gregory F. Van Tatenhove (859) 233-2661
Criminal Chief/District Election Officer: James A. Zerhusen
Public Integrity Section Trial Attorney: Richard C. Pilger

STATUS: 10 persons indicted; 7 persons convicted; 3 persons acquitted.

EASTERN DISTRICT OF KENTUCKY (2002-Vote Buying), *United States v. Hays, et al.,* Case No. 03-CR-00011: On March 7, 2003, ten defendants were indicted on charges of conspiracy and vote buying for a local judge, John Doug Hays, in Pike County in the November 2002 general election in violation of 42 U.S.C. ' 1973i(c) and 18 U.S.C.' 371. Five defendants were convicted, one defendant was acquitted, and charges against four defendants were dismissed upon motion of the government.

United States Attorney: Gregory F. Van Tatenhove (859) 233-2661
District Election Officer: James A. Zerhusen
Assistant United States Attorney: Ken Taylor

STATUS: 10 persons indicted; 5 persons convicted; 1 person acquitted; 4 cases dismissed.

EASTERN DISTRICT OF KENTUCKY (2000-Vote Buying & Mail Fraud), *United States v. Turner, et al.,* Case No. 05-CR-00002: A grand jury indicted three defendants on May 5,

2005, for vote buying and mail fraud in connection with the 2000 elections in Knott, Letcher, Floyd, and Breathitt Counties in violation of 42 U.S.C. ' 1973i(c) and 18 U.S.C. ' 1341.

United States Attorney: Gregory F. Van Tatenhove (859) 233-2661
Criminal Chief/District Election Officer: James A. Zerhusen
Assistant United States Attorney: Ken Taylor
STATUS: 3 persons indicted.

MIDDLE DISTRICT OF LOUISIANA (2002-Perjury, Registration Fraud), *United States v. Braud*, Case No. 03-CR-00019: On March 6, 2003, Tyrell Mathews Braud was indicted on three counts of making false declarations to a grand jury in connection with his 2002 fabrication of eleven voter registration applications, in violation of 18 U.S.C. ' 1623. Braud pled guilty to all counts on May 2, 2003.

United States Attorney: David R. Dugas (225) 389-0443
District Election Officer: James Stanley Lemelle

STATUS: 1 person indicted; 1 person convicted.

WESTERN DISTRICT OF LOUISIANA (2002-Registration Fraud), *United States v. Thibodeaux*, Case No. 03-CR-60055: St. Martinsville City Councilwoman Pamela C. Thibodeaux was indicted on December 10, 2003, for conspiring to submit false voter registration information, in violation of 18 U.S.C. ' 371 and 42 U.S.C. ' 1973i(c). The defendant pled guilty to both charges on April 12, 2005.

United States Attorney: Donald W. Washington (337) 262-6618
District Election Officer: William Flanagan

STATUS: 1 person indicted; 1 person convicted.

WESTERN DISTRICT OF MISSOURI (2004, 2002, & 2000-Double Voting), *United States v. Scherzer,* Case No. 04-CR-00401; *United States v. Goodrich,* No. 04-CR-00402; *United States v. Jones,* No. 05-CR-00257; *United States v. Martin,* No. 05-CR-00258: On December 13, 2004, two misdemeanor informations were filed charging Lorraine Goodrich and James Scherzer, Kansas residents who voted in the 2002 and 2000 federal elections in both Johnson County, Kansas and Kansas City, Missouri, with causing the deprivation of the constitutional right to vote for federal candidates by casting spurious ballots in violation of 18 U.S.C. '' 242 and 2. Goodrich pled guilty on January 7, 2005, and Scherzer pled guilty on March 28, 2005.

On July 19, 2005, similar misdemeanor informations were filed charging section 242 violations in the 2004 general election by Tammy J. Martin, who voted in both Independence and

Kansas City, Missouri, and Brandon E. Jones, who voted in both Raytown and Kansas City, Missouri.

On September 8, 2005, Brandon E. Jones pled guilty to voting in both Raytown and Kansas City, Missouri, on November 4, 2004.

United States Attorney: Todd P. Graves (816) 426-3122
District Election Officer: Dan Stewart
STATUS: 4 persons charged by information; 3 persons convicted.

DISTRICT OF NEW HAMPSHIRE (2002-Civil Rights), *United States v. Raymond,* Case No. 04-CR-00141; *United States v. McGee,* No. 04-CF-00146; *United States v. Tobin,* No. 04-CR-00216; *United States v. Hansen,* No. 05-CR-00054: On June 21, 2004, two informations were filed charging Allen Raymond, former president of a Virginia-based political consulting firm called GOP Marketplace, and Charles McGee, former Executive Director of the New Hampshire State Republican Committee, with conspiracy to commit telephone harassment using an interstate phone facility in violation of 18 U.S.C. ' 371 and 47 U.S.C. ' 223. The charges stem from a scheme to block the phone lines used by two Manchester organizations to arrange drives to the polls during the 2002 general election. Raymond pled guilty on June 20, 2004, and McGee pled guilty on July 28, 2004.

On December 1, 2004, James Tobin, former New England Regional Director of the Republican National Committee, was indicted on charges of conspiring to commit telephone harassment using an interstate phone facility in violation of 18 U.S.C. ' 371 and 47 U.S.C. ' 223. On
April 7, 2005, an information was filed charging Shaun Hansen, the principal of an Idaho telemarketing firm called MILO Enterprises which placed the harassing calls, with conspiracy and aiding and abetting telephone harassment in violation of 18 U.S.C. ' ' 371 and 2 and
47 U.S.C. ' 223. On May 9, 2005, the information against Hansen was dismissed upon motion of the government, and on May 18, 2005, a superseding indictment was returned against Tobin charging conspiracy to impede the constitutional right to vote for federal candidates in violation of 18 U.S.C. ' 241 and conspiracy to make harassing telephone calls in violation of 47 U.S.C.
' 223. Trial is set to begin December 6, 2005.

Computer Crimes and Intellectual Property Section (CCIPS), Criminal Division
Chief: Martha Stansell-Gamm (202) 514-1026 (CCIPS)
Trial Attorneys: Andrew Levchuk (CCIPS)
Nicholas Marsh (Public Integrity Section)

STATUS: 1 person indicted; 2 persons charged by information; 2 persons convicted.

WESTERN DISTRICT OF NORTH CAROLINA (2002 & 2000-Voting by Noncitizen), *United States v. Workman*, Case No. 03-CR-00038: On April 7, 2003, a ten-count indictment was returned charging Joshua Workman, a Canadian citizen, with voting and related offenses in the 2002 and 2000 primary and general elections in Avery County in violation of 18 U.S.C. ' ' 611, 911, 1001, and 1015(f). On June 30, 2003, the defendant pled guilty to charges of providing false information to election officials and to a federal agency.

United States Attorney: Gretchen C.F. Shappert (704) 344-6222
District Election Officer: Richard Edwards

STATUS: 1 person indicted; 1 person convicted.

WESTERN DISTRICT OF NORTH CAROLINA (2002-Vote Buying), *United States v. Shatley, et al.*, Case No. 03-CR-00035: On July 30, 2003, a grand jury returned a nine-count indictment charging Wayne Shatley, Anita Moore, Valerie Moore, Carlos ASunshine@ Hood and Ross AToogie@ Banner with conspiracy and vote buying in the Caldwell County 2002 general election in violation of 42 U.S.C. ' 1973i(c) and 18 U.S.C. ' 371. Anita Moore pled guilty on March 12, 2004. Valerie Moore pled guilty on April 28, 2004, and cooperated in the investigation. Wayne Shatley, Carlos ASunshine@ Hood, and Ross AToogie@ Banner were convicted by a jury of all counts on May 14, 2004.

United States Attorney: Gretchen C.F. Shappert (704) 344-6222
District Election Officer: Richard Edwards

STATUS: 5 persons indicted; 5 persons convicted.

WESTERN DISTRICT OF PENNSYLVANIA (Voter Intimidation), *United States v. Stewart*, Case No. 05-CR-00127; *United States v. Schiralli*, No. 05-CR-00126: On May 3, 2005, two sheriff=s deputies in Allegheny County, Richard A. Stewart, Jr., and Frank Schiralli, were indicted on charges of making false declarations to the grand jury in violation of 18 U.S.C. ' 1623.

United States Attorney: Mary Beth Buchanan (412) 644-3500
First Assistant United States Attorney: Robert Cessar
District Election Officer: A. Elliott McLean
Assistant United States Attorney: Stephen S. Stallings

STATUS: 2 persons indicted.

SOUTHERN DISTRICT OF WEST VIRGINIA (2004, 2002, & 2000-Vote Buying), *United States v. Mendez*, Case No. 04-CR-00101; *United States v. Porter,* No. 04-CR-00145; *United States v. Hrutkay,* No. 04-CR-00149; *United States v. Stapleton,* No. 04-CR-00173; *Thomas E. Esposito,* No. 05-CR-00002: A felony information was filed on May 7, 2004, charging Logan County Sheriff Johnny Mendez with conspiracy to defraud the United States in violation of
18 U.S.C. ' 371. Mendez pled guilty on July 19, 2004. On July 30, 2004, a felony information was filed charging former Logan County Police Chief Alvin Ray Porter, Jr., with making expenditures to influence voting in violation of 18 U.S.C. ' 597. Porter pled guilty on December 7, 2004. On August 10, 2004, Logan County attorney Mark Oliver Hrutkay was charged by information with mail fraud in violation of 18 U.S.C. '1341. Hrutkay pled guilty on January 7, 2005.

On September 9, 2004, Ernest Stapleton, Commander of the local VFW, was charged by information with mail fraud. Stapleton pled guilty on October 29, 2004. Finally, on January 10, 2005, an information was filed charging Thomas E. Esposito, a former Mayor of the City of Logan, with concealing the commission of a felony in violation of 18 U.S.C. ' 4.

Acting United States Attorney: Charles T. Miller (304) 345-2200
District Election Officer: Larry Ellis
Assistant United States Attorney: Booth Goodwin

STATUS: 5 persons charged by information; 4 persons convicted.

SOUTHERN DISTRICT OF WEST VIRGINIA (1990-2004 Vote Buying), *United States v. Adkins, et al.*, Case No. 04-CR-00162: On August 25, 2004, Jackie Adkins was indicted for vote buying in Lincoln County in 2002 in violation of 42 U.S.C. ' 1973i(c). A superseding indictment was returned on November 16, 2004, which added Wandell ARocky@ Adkins to the indictment and charged both defendants with conspiracy to buy votes in violation of 18 U.S.C. ' 371 and additional substantive vote buys. A second superseding indictment was returned on May 5, 2005, which added three additional defendants, Gregory Brent Stowers, Clifford Odell AGroundhog@ Vance, and Toney AZeke@ Dingess, to the conspiracy and vote buying indictment.

Acting United States Attorney: Charles T. Miller (304) 345-2200
District Election Officer: Larry Ellis
Assistant United States Attorney: Karen George

STATUS: 5 persons indicted.

EASTERN DISTRICT OF WISCONSIN (2004-Registration Fraud), *United States v. Davis,* Case No. 05-MJ-00454; *United States v. Byas,* No. 05-MJ-00455; *United States v. Ocasio,* No. 05-CR-00161; *United States v. Prude,* No. 05-CR-00162; *United States v. Sanders,* No. 05-CR-

00163; *United States v. Alicea,* No. 05-CR-00168; *United States v. Brooks,* No. 05-CR-00170; *United States v. Hamilton,* No. 05-CR-00171; *United States v. Little,* No. 05-CR-00172; *United States v. Swift,* No. 05-CR-00177; *United States v. Anderson,* No. 05-CR-00207; *United States v. Cox,* No. 05-CR-00209; *United States v. Edwards,* No. 05-CR-00211; *United States v. Gooden,* No. 05-CR-00212: On June 23, 2005, criminal complaints were issued against Brian L. Davis and Theresa J. Byas charging them with double voting in violation of 42 U.S.C. ' 1973i(e). Five days later indictments were returned against convicted felons Milo R. Ocasio and Kimberly Prude, charging them with falsely certifying that they were eligible to vote in violation of 42 U.S.C. ' 1973gg-10(2)(B), and against Enrique C. Sanders, charging him with multiple voting in violation of 42 U.S.C. ' 1973i(e). On July 12, 2005, five more indictments were returned charging Cynthia C. Alicea with multiple voting in violation of 42 U.S.C. ' 1973i(e) and convicted felons Deshawn B. Brooks, Alexander T. Hamilton, Derek G. Little, and Eric L. Swift with falsely certifying that they were eligible to vote in violation of 42 U.S.C. ' 1973gg-10(2)(B).

On August 16, Indictments were filed against Brian L. Davis and Theresa J. Byas charging them with double voting in violation of 42 U.S.C. ' 1973i(e). In addition, on the same day four more Indictments were returned charging convicted felons Ethel M. Anderson, Jiyto L. Cox, Correan F. Edwards, and Joseph J. Gooden with falsely certifying that they were eligible to vote in violation of 42 U.S.C. ' 1973gg-10(2)(B).

On September 16, 2005, Milo R. Ocasio pled guilty and on September 21, 2005, Kimberly Prude was found guilty by a jury. On September 22, 2005, the court declared a mistrial in the case of the *United States v. Sanders.* On September 23, 2005, USA Biskupic filed a motion and order seeking leave to communicate with jurors to assist in determining whether to retry the defendant and permission was granted.

United States Attorney: Steven M. Biskupic (414)297-1700
District Election Officer: Richard Frohling

STATUS: 14 persons indicted; 2 persons convicted.

ELECTION FRAUD PROSECUTIONS SINCE OCTOBER 2002

ELECTION FRAUD OFFENSES	Total Number
PERSONS CHARGED (BY INDICTMENT, INFORMATION, OR COMPLAINT)	95
CONVICTIONS	55
DISMISSALS BY THE GOVERNMENT	8
ACQUITTALS	5

The CHAIRMAN. I ask unanimous consent that staff be authorized to make technical and conforming changes on all matters considered by the committee at today's hearing. Without objection, so ordered.

Having completed our business for today and for this hearing, the committee is hereby adjourned.

[Whereupon, at 1:26 p.m., the committee was adjourned.]