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S. HRG. 110–545

PROTECTING THE CONSTITUTIONAL RIGHT TO VOTE FOR ALL AMERICANS

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

MAY 20, 2008

Serial No. J–110–96

Printed for the use of the Committee on the Judiciary

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PROTECTING THE CONSTITUTIONAL RIGHT TO VOTE FOR ALL AMERICANS

TUESDAY, MAY 20, 2008

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, Pursuant to notice, at 2:43 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Feingold, and Whitehouse.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. As I am sure you know, we had a roll call vote, and it delayed our opening. This Committee meeting was going to be jointly chaired by myself and Senator Kennedy, who is the most senior member of our Committee and a former Chairman. And the news has been rather shocking this afternoon about Senator Kennedy, and I would hope that each of you would hold him in your thoughts and prayers.

Two years ago, Members of Congress stood together on the Capitol steps to reaffirm our commitment to achieving full democratic participation by reauthorizing the Voting Rights Act, and this Committee played a key role in reinvigorating that landmark law. After nearly 20 hearings in the House and Senate Judiciary Committees, we found that modern-day barriers to voting continue to persist in our country. Now, only months away from an important Federal election, we are here to examine barriers to the ballot box and to look for ways to ensure that the democratic process is open to all Americans. Whether they are supporting the Republican or the Democratic nominee, all Americans have the precious right to vote.

Oftentimes we associate voter disenfranchisement with actions from a foregone era. We all recall the courage and resilience of Americans who were bitten by dogs, sprayed by water hoses, or beaten by mobs simply for attempting to register to vote. They often did not even get to vote. They were attempting to register to vote. We remember a time when stubborn and recalcitrant State officials used discriminatory devices such as poll taxes, grandfather clauses, literacy tests—some literacy tests that most members of this Committee would have a difficult time answering—all done to exclude certain segments of our population from voting. Progress has been made to forge a more inclusive democracy, but new voter disenfranchisement tactics arise every election year. When we reauthorized the Voting Rights Act, there were those who said that

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it was not necessary. Many of us said, of course, it is necessary. We did it to make sure that everybody today can vote. To make sure our children can vote and our grandchildren, all of them, will be able to vote. So this year is no different. We find disenfranchisement tactics.

During the most recent mid-term elections, we witnessed overt threats by armed vigilantes attempting to intimidate Hispanic-American voters at the polls in Arizona. We witnessed cross burnings intended to intimidate African-American voters on the eve of an election in Louisiana. We saw organized efforts in Maryland to deceive minority and low-income voters with false information about polling locations and phony endorsements.

We know from the recent hearing in the Senate Rules Committee that no credible evidence of widespread, in-person voter fraud exists. That lack of evidence, however, has not stopped efforts by Republican State legislators in some States to pass restrictive photo ID laws.

We also know that photo ID laws have already disenfranchised voters this year. Two weeks ago, a dozen elderly nuns in Indiana were turned away from the polls because they did not possess the required photo ID. I understand that several of them held expired photo IDs that were not sufficient under Indiana's restrictive laws. So these elderly nuns were turned away.

Fortunately, last week, the Missouri Legislature opted not to follow Indiana's lead by passing a restrictive photo ID law. And just yesterday, Governor Kathleen Sebelius acted to protect voter access in Kansas. In her veto statement she declared that she could not "support creating any roadblock to prevent our citizens from adding their voices to the democratic discourse that makes our Nation great."

Several members of this Committee recently sent a letter to the Attorney General asking him to direct the Department to vigorously enforce the Voting Rights Act so that novel photo ID laws would not infringe on the voting rights of racial minorities. We look forward to his response and to continuing our oversight of the Civil Rights Division on this issue.

Last week, the White House withdrew the controversial, very controversial nomination of former Department of Justice Civil Rights Division official Hans Von Spakovsky to serve on the important Federal Election Committee. While at the Division, Mr. Von Spakovsky played a critical role in politicizing the Department and moving the Civil Rights Division's focus away from its traditional mission, which, of course, is to ensure voter participation—not to stop voters, but encourage them to participate. I think the Senate's refusal to confirm him to the FEC sends a strong message that we will not reward his efforts at the Justice Department to obstruct the path to the ballot box.

On the brink of an election with record numbers of new voters, our Government has to remain vigilant in protecting people's rights. That means more than ever we need a Justice Department that will work to ensure ballot access for all Americans.

Federal courts are also critical to the protection of voting rights. At key moments in our Nation's history, it was only the Federal courts that acted to protect unfettered access to the ballot box.

When Virginia passed a law four decades ago requiring voters to pay a $1.50 poll tax, the Supreme Court invalidated the law. Simply because the tax would apply to every voter did not make it permissible under the Constitution.

I regret that the current Supreme Court was not as protective of the fundamental right to vote last month when it failed to invalidate a restrictive Indiana law requiring voters to present specific types of photo ID. Had just two Justices been more protective of the right, those nuns, those Sisters of Mercy in Indiana would have been able to vote in the primary election 2 weeks ago. Because the burdensome law was allowed to stand, those sisters and untold others were disenfranchised. At a time when the Justice Department has departed for political reasons from enforcement of voting rights in favor of advancing partisan goals, the Federal courts need to provide the check and balance that the Framers of our Constitution intended.

Our great Nation was founded on the radical idea at that time of a participatory democracy. Our founding document begins with "We, the People..." Successive generations of Americans have come together to amend our Constitution six times to expand the participation of its citizenry in the election of the Government—to former slaves, to women, to young people, to include the direct election of Senators, and to prohibit poll taxes. In this way, "We, the People" have reiterated and affirmed the fundamental importance of the right to vote. We should all remember Judge Wisdom's analysis in the 1963 case of *United States* v. *Louisiana*, where he noted that a law that burdens a citizen from access to the franchise is a wall that must come down. And his words are as true today as they were 45 years ago.

[The prepared statement of Senator Leahy appears as a submission for the record.]

So I look forward to this panel, and I am delighted that Senator Whitehouse has joined me. As I mentioned before, we all know why Senator Kennedy is not here. Senator Kennedy was going to co-chair this with us. Did you have anything to say before we go to the witnesses? Senator Whitehouse has agreed to co-chair it with me.

STATEMENT OF HON. SHELDON WHITEHOUSE, A U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator WHITEHOUSE. Chairman, I appreciate very much that you have called this hearing. I think this is a particularly significant topic as we approach the November elections, and I note that as I sit here, I am sitting in Senator Kennedy's seat. His nameplate is right here in front of me. And I would just like to join you in taking this opportunity to wish him and his family well as they deal with the diagnosis that he has recently received. As many of his friends and admirers in this body have noted, he is one tough fighter. And so he certainly has that going for him. Other than that, I am happy to go to witnesses.

Chairman LEAHY. Thank you.

Our first witness is Mr. John Payton, the new Director-Counsel and President of the NAACP Legal Defense Fund. He is the sixth person to lead the Legal Defense Fund in its 67-year history. He

continues the legacy of an organization started by Thurgood Marshall. He is recognized as one of the premier litigators in the country. His civil rights experience includes Supreme Court arguments defending the use of race-based remedies in the University of Michigan's admissions criteria. He has taught at Harvard, my alma mater Georgetown, and Howard Law School.

Mr. Payton, we are glad to hear from you, and we will go through each one before we open it to questions. Mr. Payton?

STATEMENT OF JOHN PAYTON, PRESIDENT AND DIRECTOR-COUNSEL, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., NEW YORK, NEW YORK

Mr. PAYTON. Thank you very much. Before I begin, I want to join both of you in wishing Senator Kennedy all the best. He is a special champion for justice and equality and has championed all the things that I personally stand for and that LDF stands for. So I just thought I simply had to say that.

Thank you for this opportunity to appear at this very important hearing.

Mr. Chairman, as you noted, our history is littered with disgraced efforts to prevent significant portions of otherwise eligible voters from voting. Initially, of course, virtually all African-Americans were denied the vote, and more. They were denied virtually all rights. And even after the Civil War amendments, which were passed to address the exclusion of African-Americans from the political process, we witnessed intricate legislative and other actions designed to suppress the African-American vote.

So the history of our progress, as you noted, as a democracy is marked by measures designed to eliminate those burdens on the exercise of the most important political right that we have—the right to vote.

Recently, we have seen a very disturbing turn in the opposite direction. On its face, the idea that Indiana would require a Government-issued photo identification for registered voters seeking to vote may initially seem sound and reasonable to some. But just a little probing exposes the harm that it causes without any corresponding benefit it may provide.

As Justice Stevens said in his lead opinion upholding the law, when he was discussing and describing the law as addressing in-person voter impersonation fraud, as he said, "The record contains no evidence of any such fraud actually occurring in Indiana at any time in its history."

Let me be blunt. Nothing was broken that this law is designed to fix. Nothing.

Obviously, we now have to look at what are the burdens, and the burdens are quite considerable. Obviously, initially voter identification requirements do not pose a challenge for those Americans who already possess some form of Government-issued identification. But for all the other people who do not possess a Government-issue photo identification—and those are the people who are on the margins of our economy and on the margins of our society, those people who are less mobile and who do not rely upon such IDs in their normal day-to-day lives, for those people obtaining this kind of identification, such as, you know, a passport or a driver's license,

requires them to get documents that they simply do not have, like a birth certificate or other documents that are not easily obtained, will cost money, and will take a lot of time, hassle, and annoyance.

Now, some people think that this is really not that big a deal, but I think the entire country had some insight into what it means to live on the margins of our society just 4 years ago, in 2005 with Hurricane Katrina. As the full horror of Hurricane Katrina unfolded before our eyes and we saw tens of thousands of African-Americans trapped in New Orleans' Lower 9th Ward and other places by the flood waters, some wondered why they had simply not gotten into their cars and driven away to safety. The stark reality of grinding poverty for those who live on the margins of our economy is that they did not have cars, they did not have credit cards, they did not have ATMs, and many of them did not have driver's licenses. All of them were part, as you said, Mr. Chairman, of "We, the People," and all of them should have the right to participate in our democracy. The Indiana law, which was enacted 5 months prior to Katrina and the *Crawford* decision, all but ignored this.

At the Indiana primary 2 weeks ago, LDF had a team of lawyers on the ground. Here is what they saw: Voters without qualifying identifications were turned away. Indiana does not keep track of how many were turned away at all, so we do not really know the total numbers. LDF provided assistance to some of those and helped them, in fact, go get their identifications. If we had not been there, they would not have been able to do that.

Poll workers, most disturbingly, poll workers told LDF that those voters who showed up without IDs were not routinely told that they could cast a provisional ballot. That was the safety net the Supreme Court relied on. It is not enough to say that just because some voters managed to vote in spite of these burdens that we should overlook the effect that these burdens have on other voters. Some people, after all, managed to get away from the Lower 9th Ward and the flood waters of Katrina. But we also know that no one wanted to be trapped there. These are real and consequential burdens on our most important critical right—the right to vote.

Democracy thrives when it is practiced, and it suffers when practice is prevented. The challenge we now face is determining how to structure the political process in a way that is more inclusive and provides affirmative opportunities for broad and meaningful participation, and I hope this Committee and this Congress will take up that mantle and see that we have greater voter participation and oppose all efforts that result in lower voter participation. This is a crucial moment.

[The prepared statement of Mr. Payton appears as a submission for the record.]

Chairman LEAHY. Thank you very much, Mr. Payton.

We have been joined by Senator Feingold of Wisconsin. Did you want to say anything before we go to Mr. King?

STATEMENT OF HON. RUSSELL D. FEINGOLD, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator FEINGOLD. If I could, I want to join in expressing my concern about the news about Senator Kennedy's health, and my

thoughts and prayers are with him and his family. It is a little odd on a day like this to continue with our work as if nothing has happened, and particularly on an issue like this, where Ted Kennedy has been at the center of the Senate's work on this entire issue. But, obviously, the Senator has—

Chairman LEAHY. If the Senator would just yield on that, I announced at the beginning this was a hearing that Senator Kennedy had requested we were going to co-chair. I considered canceling, and I thought out of respect for Senator Kennedy, we would go forward.

Senator FEINGOLD. Obviously, Senator Leahy, you know this history much better than I do. But in the 16 years I have been here, every time there has been a hearing on this issue, it is related to the work of Senator Kennedy.

Mr. Chairman, I just want to also thank the witnesses for joining us today for this important hearing. I was deeply disappointed by the Supreme Court's decision in the *Crawford* case. The expansion of the right to vote is one of the most important parts of our country's history, and I fear the decision will lead to the disenfranchisement of many citizens. We cannot simply be disappointed. The Supreme Court now stands on the wrong side of history. It is incumbent on us to now act.

Congress's responsibility to protect the right to vote remains intact, and the Supreme Court's recent decision urgently compels us to fulfill that duty. It is part of that duty to ensure that the executive branch abides by and enforces our election laws: the Voting Rights Act, the National Voter Registration Act, the Uniformed and Overseas Citizens Voting Act, and the Help America Vote Act. And it is our duty to pass further legislation that strengthens the integrity of the electoral process, like Senators Schumer and Obama's Deceptive Practices and Voter Intimidation Act, and Senator Whitehouse's Caging Prohibition Act, both of which I am pleased to cosponsor.

I also believe that we must attempt to address the low voter turnout that has plagued this country for the last 40 years. So 2 weeks ago, just days after the Court issued its decision, I introduced the Election Day Registration Act of 2008. I believe that nationwide election day registration is the single most effective reform we can implement to fulfill the promise of full participation in our electoral system by all eligible citizens. This system has worked very well in my State of Wisconsin.

Let *Crawford* be a clarion call to the forces of progress and reform. Senator Bob La Follette of Wisconsin once said, "We are slow to realize that democracy is a life and involves continual struggle. It is only as those of every generation who love democracy resist with all their might the encroachments of its enemies that the ideals of representative government can even be merely approximated."

Mr. Chairman, it is our duty, as you well know and show tremendous leadership on, to move forward after *Crawford* to protect the right to vote of all citizens, even or especially if the Supreme Court seems to be headed in the other direction.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Our next witness is J. Bradley King. Mr. King has served as co-director of the Indiana Election Division of the Office of the Secretary of State for 7 years. Is that correct, Mr. King?

Mr. KING. Yes, sir.

Chairman LEAHY. He is responsible for advising and assisting county election officials, candidates, and political party officials in Indiana. From 1999 to 2002, Mr. King served as State Elections Director for the Secretary of State of Minnesota.

Mr. King, please go ahead.

STATEMENT OF J. BRADLEY KING, CO-DIRECTOR, INDIANA ELECTION DIVISION, OFFICE OF THE SECRETARY OF STATE, INDIANAPOLIS, INDIANA

Mr. KING. Thank you, Mr. Chairman and members of the Committee. I am here to present information on Indiana's voter ID law and its effect on voter turnout. Before I begin, if I could, Mr. Chairman, I would like to join the sentiments expressed by yourself and the other members of the Committee with regard to the concern that the voters of Indiana share with regard to Senator Kennedy. We recognize he has been a strong voice in the Senate and the Nation for nearly 50 years. We honor him for that and wish him well.

Indiana's law requires voters to present a photo ID before casting a ballot. An ID must meet four requirements to be acceptable for voting: it must display the voter's photo, the voter's name, an expiration date, and be issued by the U.S. Government or the State of Indiana.

The Indiana law includes many provisions which safeguard the right of an eligible voter to cast a ballot. A voter is not required to present ID if casting an absentee ballot by mail. A voter who is indigent and unable to obtain an ID without paying a fee may cast a provisional ballot. If the voter executes an affidavit before the county, the ID law does not permit the voter's claim of indigency to be disputed or denied. The voter's provisional ballot will be counted.

Likewise, a voter who has a religious objection to being photographed may cast a provisional ballot. If the voter executes an affidavit before the county, the ID law does not permit the voter's claim of religious objection to be disputed or denied. The voter's provisional ballot will be counted.

The law also includes an exemption for voters whose ID has recently expired, giving these voters a grace period of up to 2 years. Voters who forget to bring ID to the polls have safety net. Voters can leave the polls, retrieve the ID, and return to the polls to vote. If a voter cannot present the ID before the polls close, the voter may cast a provisional ballot. If the voter then provides ID to the county, the voter's provisional ballot will be counted. This voter can even obtain an ID after election day and present that ID to the county within 10 days. The Indiana Bureau of Motor Vehicles issues free IDs and provides extended hours to serve voters.

With these and other safeguards, in the eight elections conducted since the adoption of the law, there have been no reports of widespread disenfranchisement of voters. Initial reports from the recent Presidential primary are consistent with the striking lack of evidence that the law has disenfranchised any significant number of

Hoosier voters. The State's voter information hotline had more than 1,300 calls received during the 2008 primary. Only two of these calls related to the ID law.

The media advised the State of another ID issue that has been referenced regarding 12 members of the Order of the Sisters of the Holy Cross. Indiana's Secretary of State said, "The voter ID law applies to everyone. From all accounts, the sisters were aware of the photo ID requirements and chose not to follow them. They could have cast a provisional ballot and received assistance in obtaining the proper photo ID within 10 days. They also could have voted an absentee ballot by mail."

Indiana's provisional ballot voting indicates the law has not suppressed voter turnout. Provisional ballots may be cast for reasons totally unrelated to the voter ID law, such as when a voter attempts to cast a ballot in a precinct where the voter is not registered. In 2004 and 2006 general elections, only two-tenths of 1 percent of voters cast provisional ballots in Indiana for any reason. For the 2008 primary election, preliminary information indicates that, once again, provisional ballots were two-tenths of 1 percent of the total cast.

Following the enactment of the Indiana law in 2005, the number of provisional ballots cast has fallen, and the percentage of provisional ballots cast has remained the same.

Finally, voter turnout increased dramatically when comparing the 2004 to 2008 primaries. Turnout information provides no evidence that significant numbers of voters are choosing not to participate due to the law. The 2008 primary turnout percentage was almost double the 2004 primary and equal to the November 2006 general election. Despite this remarkable increase in turnout between 2004 and 2008, there were no increase in reports of voters disenfranchised by the law.

Achieving the goal of protecting the constitutional right to vote of all Americans is not impeded by the Indiana voter ID law. Instead, ensuring that each eligible voter casts one, but only one, ballot is fundamental in protecting our right to vote.

Thank you for the opportunity to address the Committee today.

[The prepared statement of Mr. King appears as a submission for the record.]

Senator WHITEHOUSE. [Presiding.] Thank you, Mr. King.

We will next hear from Professor Karlan.

STATEMENT OF PAMELA S. KARLAN, KENNETH AND HARLE MONTGOMERY PROFESSOR OF PUBLIC INTEREST LAW, STANFORD LAW SCHOOL, STANFORD, CALIFORNIA

Ms. KARLAN. Thank you very much, Senator Whitehouse. I, too, want to say something about Senator Kennedy, because the last time I was in front of this Committee was testifying in a hearing that he chaired as one of, as Senator Leahy noted, the 20 hearings that established a massive record before Congress re-enacted the Voting Rights Act of 1965. Contrast those 20 hearings and the thousands of pages of records there with the complete absence of any record of any fraud in in-person impersonating voters, and you will see the difference, I think, between what this Congress has done and what the State of Indiana has done.

Now, you have my prepared testimony, and so I want to focus on three issues that are highlighted there.

The first of them is the impact of the Supreme Court's decision, which is because the Court was split three ways, what we have is three—and you must think of them as the good, the bad, and the ugly. Three of the Justices said that the law was unconstitutional and they would strike it down and, I think it is safe to say, most of the in-person ID laws. Three of the Justices would uphold these laws regardless of their impact on individual Americans, which I find a kind of shocking change in how we think about the constitutional right to vote. And then three of the Justices, in Justice Stevens's controlling opinion, said that they would be prepared to entertain an as-applied challenge to the law but not a facial challenge.

I just want to identify for you one of the reasons why I think legislation is important here, and that is that as-applied challenges are going to be devilishly difficult to litigate in the context in which they are going to arise, which is they are going to happen after close elections in which perhaps hundreds of voters have been told that they lack ID; some of them will have been turned away from the polls and there will be no record, as Mr. Payton pointed out; some of them will have cast provisional ballots but will be unable to get the required documentation or unable to make it down to the courthouse to satisfy them. And then you are going to have to litigate these challenges in the context of a hotly contested election.

We all saw what happened in 2000 when there were 537 votes separating the two Presidential candidates in Florida. Just imagine what is going to happen this time around if we have voter ID laws that have disenfranchised some number of individuals.

We already know that Indiana more nuns were disenfranchised in one election than all the examples of in-person vote fraud in Indiana's history stretching back to the 19th century. So I think there is going to be a serious problem with these as-applied challenges brought after the elections.

The second point I wanted to make is the point about the fact that there are two ways in which the integrity of the political process can be impaired. One of them is what voter ID laws are ostensibly directed at, so-called false positives—that is, cases where an individual who is not entitled to vote nonetheless casts a ballot. But there is another thing that can threaten the integrity of elections just as much, and that is false negatives—that is, people who are prevented from voting who are entitled to vote. And they are not just prevented from voting by voter ID laws when they show up at the polls, and there are really lots of people who will not satisfy these laws.

If you listened to Mr. King's testimony, there are two points there that I just wanted to highlight. One of them is the point about indigent voters, which is they can go and they can execute an affidavit of indigency and then be permitted to vote. But they have to do this in every election. The State does not say once you have proved you are indigent, we will give you a card so you can vote again without having to show up at the county clerk's office. And so think about the burden. If you are too poor to spend the money to get an ID, you are certainly not going to have a lot of

money to go traipsing around the county so that you can satisfy the right to vote.

The second is the requirement that the ID have on it not just an expiration date, but also the voting address—now, I voted in Connecticut for many years when I lived there. I lived there and I also went to college there, but I did not go to college the same place I lived. My driver's license had my parents' home address on it. I voted where my college was. I could not have satisfied the voter ID law. And that is going to be true for lots of college students who are entitled by law to continue their driver's licenses in their place of permanent residence and to vote where they live. So there are going to be lots of people for whom this law is going to have a burdensome effect.

And when you think about the level of burden here, it is going to occur election after election, and it seems to me that if we are concerned about the integrity of the voting system, we should be as worried about people who are prevented from voting—prevented from voting by voter ID laws, prevented from voting by intimidation at the polls, prevented from voting by efforts to deter people from showing up at the polls as, for example, happened in Orange County, where 14,000 voters in largely Latino neighborhoods received mailings telling them that immigrants cannot vote, which is false—of course, immigrants can vote if they are citizens—and the like. And so it seems to me that we should be as concerned that the people who are prevented from voting as we are about the kind of phantom example of in-person voter fraud.

I would just like to end with a quotation from Justice Brandeis' concurrence in *Whitney* v. *California*, where he was talking about laws that suppress speech. And he said, "Men feared witches and burned women." And what we have here is people fear impersonating voters, and what they do is they disenfranchise the poor, the disabled, the elderly, the retired, and students instead. And I think it would be a tribute to Senator Kennedy for the Committee to think about how it wants to respond to the scourge of voter ID laws.

Thank you very much.

[The prepared statement of Ms. Karlan appears as a submission for the record.]

Senator WHITEHOUSE. Thank you, Professor Karlan. We appreciate your testimony.

Ms. Mitchell, please proceed.

STATEMENT OF CLETA MITCHELL, PARTNER, FOLEY & LARDNER LLP, WASHINGTON, D.C.

Ms. MITCHELL. Thank you, Senator Whitehouse. I, too, want to join in commenting upon Senator Kennedy and wish his family and the Senator best health. I was a Fellow at the Institute of Politics at Harvard University in 1981, nominated by Senator Kennedy, so my acquaintance with him goes back many years.

My name is Cleta Mitchell. I am an attorney specializing in the political law. I represent conservative issue organizations, Republican candidates and party committees, and citizens and donors all across the country interested in participating in the political process. I am honored to be here today to discuss with the Committee

the integrity of America's elections and voting process. I can assure you that every organization, every entity, every campaign, and every candidate with which I am involved is dedicated to one principle, which is assuring that our voting systems are secure, that only legally eligible voters cast ballots, and that every legally cast ballot is counted to the highest degree of certainty and accuracy.

But there are people and activist groups in this country who contend that there is no voter fraud and that those of us who try to say something or do something to protect the integrity of the voting process must be idiots or, worse, that we must be racists. I contend, I absolutely reject that contention. I resent it, and I reject it. And I must say I am sorry that Senator Leahy left because I want to take a moment to defend Hans Von Spakovsky, who has been much maligned and mistreated by many activist groups and by the Senate of the United States during these months and years of his nomination to the Federal Election Commission.

What Mr. Von Spakovsky did as a member of the—as a career attorney at the Justice Department was that he refused, he along with others refused to interject the Department into the legislation that had been enacted by the State of Georgia requiring voter identification, and they refused to deny preclearance to the State of Georgia for that law. That was litigated in Federal court, and after 2 years, when the plaintiffs could not produce evidence, credible evidence, of a disparate burden on minorities, the Federal judge dismissed the case. And now the Supreme Court of the United States has upheld the legal position that Mr. Von Spakovsky took. So I think that it is time to stop castigating Mr. Von Spakovsky just because we disagree with him.

I reject the premise that we are engaged in any effort to deny any person the right to vote simply because we want to assure that there are voting safeguards. In 1993, President Clinton signed the motor-voter law, the National Voter Registration Act, which allows individuals who apply for public assistance or driver's licenses to allow those applications to be used as well as voter registration applications. Since the time that that was done, what we have seen is a massive swelling of the voter rolls in the United States without a commensurate increase in voter turnout or participation.

In 2001, Dr. John Samples of the Cato Institute testified before the Senate Rules Committee, and he said, "We should not be surprised that the registration rolls throughout the Nation are enormously inaccurate. In some places, the voting roll numbers are bigger than the voting age population." There is more, and the fact of the matter is what we have now in our country is a situation where people deny that there is voter fraud and, therefore, we do not need any safeguards.

So we want people to be able to not have to show identification, yet when they register to vote, we cannot require that they must demonstrate proof of identity or residence. And now then, in trying to clean up the voter registration rolls, Senator Whitehouse, you and others have introduced legislation to make that impossible because we have now come up with a new term of "vote caging," where sending letters to try to ascertain whether or not people actually live where they say they live when they register to vote, to see whether that is true.

It is a moving target, and the bottom line is that these efforts to deny the existence of voter fraud—and in my written testimony, I included a number of instances of vote fraud. And anyone with 15 minutes and access to Google can find plenty of evidence of voter fraud.

Now today, as I say, we have a moving target. Now today we are supposed to talk about in-person voter fraud and if there is no in-person voter fraud. I would question, How would we ever know? You cannot take photographs to try to ascertain that somebody is presenting himself or herself as someone who they are not. That is illegal. And so how are we supposed to demonstrate that there is in-person voter fraud. It is, as Professor Karlan may say, trying to prove a positive or a false negative, or whatever it is. But the fact is all of the safeguards that should be in place to assure that every person who is legally eligible to vote should be allowed to vote, that those votes are counted, that they are properly counted, and to assure and affirm that people's confidence that the voting system is not disrupted and not destroyed by fraudulent activities of those who would seek to destroy the integrity of our voting process.

Thank you.

[The prepared statement of Ms. Mitchell appears as a submission for the record.]

Senator WHITEHOUSE. Thank you, Ms. Mitchell. We appreciate your testimony.

Mr. Goldman?

STATEMENT OF JONAH H. GOLDMAN, DIRECTOR, NATIONAL CAMPAIGN FOR FAIR ELECTIONS, LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, WASHINGTON, D.C.

Mr. GOLDMAN. Thank you, Senator Whitehouse. I want to join the chorus of sympathy for Senator Kennedy. The entire voting rights community owes our inspiration to his example, his fight, and his accomplishments. And truly I think that the entire civil rights community would not be here without his leadership, so we all have him in our thoughts.

I want to thank you for inviting me here today and for holding this hearing on the foundational issue of our great democracy—the fundamental right to vote. My name is Jonah H. Goldman, and I am the Director of the National Campaign for Fair Elections at the Lawyers' Committee for Civil Rights Under Law, which spearheads election protection, the leading nonpartisan voter protection coalition.

The Congress has a constitutional duty found in the 1st, 14th, and 15th Amendments to protect the rights of all eligible Americans to cast a meaningful ballot. This primary season, almost 50 million voters have already cast ballots. Unfortunately, this civic exuberance has put tremendous weight on a crumbling election infrastructure. In a general election, up to 6 million real, eligible voters may be prevented from exercising the right to vote because our election administration system is poorly funded and decentralized.

During this year's primaries, Election Protection identified four themes that lead to eligible voters being disenfranchised: undertrained poll workers, voting technology malfunctions, inaccurate

voter registration lists, and problems with voter identification requirements.

There are over 1.4 million poll workers across the country. The overwhelming majority are committed to doing their job by volunteering up to 18 hours on election day. However, voters are turned away because poll workers lack training and guidance on how to effectively administer an election. Many voters cannot stand in long lines caused by too few poll workers or because polling places open late or close early.

Problems with voting equipment also lead to eligible voters being disenfranchised. In addition to technological glitches, both poll workers and voters are confused about how new voting technology works. Many jurisdictions do not have adequate safeguards for when voting technology breaks down.

This year, more than 3.5 million new voters have registered. That is up 65 percent from the same period 4 years ago. We should all be proud of this powerful chorus of new voices engaging in the process. Unfortunately, eligible voters who submit timely registration applications find their names are not on the registration rolls. Americans who have been voting for years are missing from the rolls because of irresponsible or discriminatory purges.

Voters in every State are also being turned away because of confusion over voter identification requirements. Poll workers are confused about when voters need to show ID and what is required by State law.

Unfortunately, the debate over voter ID has distracted us from a productive discussion of how to solve the real problems voters face. As this Committee has heard, there are no shadow bands of ineligible voters roving from polling place to polling place to impersonate eligible voters and affect election results. And no wonder, penalties are quite high—up to 10 years in prison and a fine of up to $10,000—and the prospects of affecting election outcomes are quite low. As they should, every State has a process for verifying voters' identities. Most accomplish that goal without sacrificing the votes of eligible citizens, which is what restrictive ID requirements do.

During this year's Indiana primary, Election Protection volunteer John Borkowski walked into a polling place on the campus of St. Mary's College in South Bend. Students from the college were being turned away because they only had ID from the college, which is a private institution, as opposed to Government-issued photo identification with an expiration date, as required by Indiana law. While talking to one of the poll workers, Sister Julie McGuire, John discovered that many of the nuns who lived in the convent that housed the polling place were also victims of this misguided policy. Many of the sisters who did not have ID did not attempt to vote, and this is the true scope of the tragedy: the millions of eligible voters across the country without ID who will not show up at the polls because they know they will be turned away.

Mr. Chairman, there are real problems with our election system that prevent real, eligible voters with a deep desire to participate in the proud tradition of our democracy from having their voices heard. It is critical that Congress act to make it easier, not harder, for eligible citizens to participate by implementing common-sense

solutions to the real problems voters face. We should move toward universal registration by implementing election day registration. We should prevent the real fraud that happens in elections like offensive deception and take away the tools of intimidation and dirty tricks like voter caging. We need to provide a real infrastructure for training poll workers and thoughtfully arrive at the best voting technology. Americans believe Government should provide the best election system, and we deserve it.

As the Supreme Court has said for over a century, the right to vote is the most fundamental right because it preserves all of our other rights and freedoms. Our noble experiment in providing each citizen a voice in the destiny of her country, constantly evolving and made better through expanding the voices of those able to participate, is now the template for freedom around the world. We must honor this spirit by providing the most responsive, advanced infrastructure available. We owe our history, our future, and our country no less.

Thank you.

[The prepared statement of Mr. Goldman appears as a submission for the record.]

Senator WHITEHOUSE. Thank you very much, Mr. Goldman.

While I appreciate very much the testimony of all the witnesses, I seem to have you all to myself right now, so I have plenty of opportunity for questions, and often new Senators are at the tail end of the questioning and I have 4 or 6 minutes. So this is a luxury for me, and I am very happy to be with you.

One of the things that strikes me is that there are different views as to what problems face our voting system. Some see our voting system as one that simply needs to be protected from people who are not the real person. Others see it as the locus where very organized, very strategic efforts to make comprehensive efforts to deter voters—not necessarily a particular individual, but a group of individuals—in order to influence an election outcome in which all that play takes place. And the evidence that I have seen convinces me that that is the bigger problem.

We have some examples that we have gathered of efforts to educate voters in various places. Here is a flyer from something called the Milwaukee Black Voters League. "Some warnings for election time: If you have already voted in any election this year, you cannot vote in the Presidential election. If you have ever been found guilty of anything, even a traffic violation, you cannot vote in the Presidential election. If anybody in your family has ever been found guilty of anything, you cannot vote in the Presidential election. The time to register for voting has expired. If you have not registered, you cannot anymore. If you violate any of these laws, you can get 10 years in prison, and your children will get taken away from you."

That is helpful.

Then we have from the Franklin County Board of Elections an election bulletin: "Because of confusion caused by unexpected heavy voter registration, voters are asked to apply to the following schedule: Republican voters are asked to vote at your assigned location on Tuesday. Democratic voters are asked to vote at your assigned

location on Wednesday." Got it? "Thank you for your cooperation and, remember, voting is a privilege."

Here is another one to the same effect from McCandless Township, Allegheny County, Pennsylvania: "Attention, Voters. Due to the immense voter turnout that is expected on Tuesday, November 2nd, the State of Pennsylvania has requested an extended voting period. Voters will be able to vote on both November 2nd and November 3rd. In an attempt to limit voter conflict, Allegheny County is requesting that the following actions be made: Party-Republican, Voting date November 2nd. Party-Democrat, Voting date November 3rd. Thank you for cooperating with us in this endeavor to create a peaceful voting environment."

And then here is another good one, from the Students for Magnum: "Vote Tuesday, November 2nd." At least they got the day right. "Vote at the polling place of your choice."

Now, obviously, those are worse than the average effort, but I do not think that vote caging efforts are very much different than them in terms of their effects. I would like to mention to Ms. Mitchell, who was concerned about the vote caging bill that I have sponsored, it does not prevent proper Government officials from trying to keep the polling lists clean. It only deals with private actors and political entities that come in with vote challenges. So county officials can continue to go ahead and try to keep their voter lists clean. The problem with vote caging has been outside groups that send mail into heavily minority districts and for a variety of reasons—everything from typographical errors to people in the military to kids in college—are able to generate mail coming back that purports to indicate that the person is a regular voter, then you challenge them, then they are out, and, you know, the effect that you wish to create has been effected.

I know that Mr. Goldman has reviewed the vote caging legislation. Do you have further thoughts on that aspect of it?

Mr. GOLDMAN. Well, Senator Whitehouse, I and the Lawyers' Committee want to thank you for taking this bold step. Voter caging is something that goes back for over 50 years and had always been used to target specific populations and to try to basically make sure that it is more difficult for particular populations to participate in our democracy.

In 1990, when vote caging sort of got its kind of modern renaissance, it was through a caging program done by Senator Jesse Helms' campaign that was either focused on exclusively minority voters, African-American voters, or on precincts that I believe were about 92 percent African-American. That was the low number.

Basically what happens with caging is that you see a system that is flawed in so many ways because, number 1, the lists, the original lists, are frequently flawed. Voter registration lists, as we know, as I testified and as we reported in a number of different documents that we put out at the Lawyers' Committee, voter registration lists are often flawed. The mails do not often get to the place where they are supposed to go. There are multigenerational households. There are a number of different reasons why these are poor risks, so we really, again, thank you for your leadership in introducing this bill.

Senator WHITEHOUSE. That is why some State parties are actually under court order, consent agreement to cease and desist from continuing vote caging practices, correct?

Mr. GOLDMAN. That is right, Senator.

Senator WHITEHOUSE. I am interested in the National Voter Registration Act, and not the motor-voter provision, which is the famous provision of the law. But in Section 7, that required that there be voter registration at locations that provide State public assistance, the information I have is that voter registration at State public assistance agencies fell from a high of 2.6 million voters registered in 1995 to 1996 to just 550,000 in 2005–06, the most recent information we have available, which is a decrease of 79 percent over that period. In Missouri alone, Section 7 registration fell from 143,000 in 1995–96 to less than 16,000 in 2005–06, which is nearly 1 in 10.

There does not appear to be any corresponding decline in public assistance caseloads, and, thus, it appears that non-compliance with Section 7 is interfering with the opportunity for many folks who are eligible for public assistance to have this opportunity.

I note that the Department of Justice, which has enforcement authority over Section 7, filed suit in 2002 against Tennessee. Before the suit, in 1999 to 2000, Tennessee had received 49,636 voter registration applications through public assistance agencies. After settlement of the suit in 2003 to 2004, when they got more seriously about their business, that number jumped to 173,927. As a result of that, 20 percent of all public assistance registrations in the entire country took place in Tennessee, which seems like a significant signal that this is a real opportunity to increase voter eligibility and voter awareness.

Several of us wrote to the Department a little while ago urging them to enforce Section 7, and just recently, DOJ announced an agreement to bring Arizona's Department of Economic Security into compliance with Section 7.

I am interested in whether the information that you all have is that you expect this to continue in other States or is this, do you think, just an isolated incident of enforcement. Ms. Mitchell?

Ms. MITCHELL. Senator, I do not have Dr. Samples's entire testimony before me, but it is in the record of his appearance before the Senate Rules Committee in 2001. And, frankly, while I understand and appreciate the statistical information that you have presented, I would commend his testimony to you and the studies that are referenced in there, in his testimony, because what has been demonstrated—and his testimony was in 2001, so we cannot really blame the Bush administration for this. But the fact is that, notwithstanding the dramatic increase in registration, the participation and actual turnout did not substantially increase. So that the stated goal of the law to increase voter turnout and participation has not been achieved. However, the other section that I talked—

Senator WHITEHOUSE. It is hardly logical, however, to encourage voter participation by not facilitating voter registration. It is a logical step in the right direction, isn't it?

Ms. MITCHELL. Well, one would think so. I think it is important to look—

Senator WHITEHOUSE. Don't you think so as a professional that the more people are registered, the more people are available to vote?

Ms. MITCHELL. All I am saying is that the statistics have not proven that one begets the other. I think all of us thought that that would be the case, but that has not necessarily proven to be the case. What I thought you were going to address was the other section of the motor-voter law, which has to do with making it more burdensome and more difficult for jurisdictions to clean their voter rolls, which I think that has lent itself to the potential for increased voter fraud because you have in many jurisdictions more people on the voter rolls than you have voting age population.

So I think that all of these things matter. I think that what would be useful for us is to look at the facts and not to just assume that certain things are going to be true or are true when the facts do not support that.

Senator WHITEHOUSE. If I may, let me ask Professor Karlan quickly about this, because she mentioned in her testimony a sort of astonishing statistic, and that is that there were more nuns disenfranchised in Indiana during the last election than all of the proven in-person vote fraud cases in the history of the State of Indiana. And I am wondering what your reaction is to the information that there are voter rolls that have names on them that are no longer effective voters. Does that correlate with a high incidence of in-person voter fraud?

Ms. KARLAN. No, it does not correlate with in-person voter fraud, and if I can just make an observation about the opinion in *Crawford*. The example of in-person voter fraud that Justice Stevens pointed to is an 1896 municipal election in New York, and the reason for that is not exactly an accident. If you wanted to commit voter fraud in 1896, the only way of doing it was to have individuals go to the polls and vote again and again and again.

Today, if you were inclined to engage in vote fraud, you would commit it through absentee voting because it is cheaper, faster, more reliable, and you are less likely to be caught. And the fact that States do not seem to be doing much to deal with either their voting rules themselves or with the possibility of absentee fraud versus fraud at the polls I think is no accident. It is like that old joke about the drunk who is looking for his keys under the lamppost. And they say, "Well, did you lose them here?" "no, but the light is easier here."

And Judge Posner was kind of frank about this in the Seventh Circuit arguments in the *Crawford* case, where he said, look, you cannot check the ID of people who are voting absentee, so you do not have to check their ID, but you can check the ID of people at the polls. And so I think—

Senator WHITEHOUSE. The light is better.

Ms. KARLAN. Yes, the light is better there. So if you were thinking about how would you have a system that has a great deal of integrity, well, one thing is you would comply with the parts of HAVA that deal with computerizing the voter rolls and making them more updated and more reliable. You would comply with the parts of the NVRA that require notification when people notify the

DMV. That should notify the Boards of Elections and the like. And that is how you would clean up the rolls.

What you do not want to do as a way of cleaning up the rolls is to put more burdens on people when they show up at polling places or to do things like draw up kind of predecessors to vote caging. I worked on a case in Louisiana in the 1980's, the kind of predecessor to some of the problems that John was talking about, which was our clients were getting knocked off the voting rolls in Louisiana because mail was being returned "Addressee unknown." And we later found out that a lot of our clients lived in the Desire Housing Project. You know, the Streetcar Named Desire does not exist anymore, but it used to go to the Desire Housing Project. And the postal workers were afraid to go into the project because it was so dangerous so they just tossed the mail on the floor. They would kind of run up, toss the mail on the floor, and run out again. And so our clients were not responding to notices from the Government because they were never getting the notice. And that is some of what you actually worry about.

To make a point off of your observation on Section 7, Senator Whitehouse, when the Government actually wants to find people, and when the Government actually wants to make people participate in important parts of our governing process, they do a much better job of it. So, for example, we want all 18-year-old men in the United States to register for Selective Service. Well, we do things like say you are not going to get student loans. We put the forms in post offices. We put up signs everywhere. They are told about it in school. And we get pretty good levels of registration. When it comes to jury service, we send out summonses to people and we send out a second summons and occasionally actually even go and try and figure out why they are not showing up.

And we do not do any of that when it comes to voting because we really—unlike most other democracies, we do not treat voting as something that we expect everybody to be doing and that it is the Government's job to facilitate. And that is why even if people register, they often do not show up at the polls because we do not make voting easy and attractive for them. And if we did, we might see much higher levels of turnout.

Senator WHITEHOUSE. Mr. Payton, you wanted to say something.

Mr. PAYTON. I did. On your point about the requirement that States create opportunities and take advantage of the opportunities so that poorer people get registered, I think the data you cited are not exceptions, and I think they are appalling. We want more people to be registered to be able to participate in our democracy. That is actually crucial, I would say, to the health of our democracy. And so I think we ought to do more things to make sure people get registered in ways that Pam just described.

But the reason we are here today is that even if you do those things and you are marginalized like the people that we saw in Katrina—and that is largely who you are talking about, who would be identified in the means you were just describing—the reason we are here today is that some States have added an additional burden when those people who actually were registered that way show up and try to vote. Many of them do not have the Government-issued photo ID. And so when they show up, they are told, well,

you are registered, that is your address, your name is here, but you do not have a Government-issued photo ID. And I hear the response from Mr. King, who says, you know, there is a complete safety net. Just execute an affidavit saying that you are indigent, and you get a provisional ballot.

Here is the really odd and, I would say, perverse reality. You are given a provisional ballot, and then you are told that in order to perfect it, you must travel within the next 10 days to the county seat. If you were in Gary, you would have to go to Crown Point, about 30 miles round trip. And the only purpose is the burden—that is, if there was some other purpose, if you just wanted that affidavit executed, you could have asked for it to be executed right there on election day at the polling place. But instead, we simply add a burden for its own sake. You must travel to the county seat to execute the affidavit that just says, "I am indigent." And as he said, no one goes behind the affidavit.

It is really important that people who are marginalized in our society be brought into the political process and be registered. But that is not of any value if they do not get to vote.

Senator WHITEHOUSE. Mr. Payton, what statistics do you have regarding minority elderly or other voters without Government-issued photo IDs? Who is likely to be swept up in a system that requires Government-issued photo IDs? Who is likely to be left out? And is there any information out there about what the population is of the Government-issued photo ID-less individuals? I mean, I can think of people in, you know, Woonsocket who are 70, 80 years old, who live in a tenement house, who walk to the pharmacy to pick up their medication, who walk to the market to pick up their food, who live in their neighborhoods, who do not have a car, who have no reason whatsoever to get a driver's license, who do not have a Government-issued photo ID, and yet are thoroughly legitimate, welcome, contributing citizens of Rhode Island, people who have dedicated their lives to the State, who have worked hard and paid taxes, and why on Earth—you know, so there is one example. How much more can you fill us in on who—

Mr. PAYTON. I have two related points. In my prepared testimony, on page 4, we have some data that shows that 25 percent of African-Americans of voting age do not have the ID compared to 8 percent of white voting age citizens who do not have the IDs. But there is a more significant point here, which is how much of a burden it is for people who are actually in lower socioeconomic status to get it.

So it is more difficult to get it, and the burdens that I am discussing, they are not trivial. When you are poor, these are not trivial burdens. These are real burdens. And no one would argue that non-trivial burdens do not have an effect. They have an effect. They do not cause everybody not to go get their ID, but they cause some people not to go get their ID, and that is not an effect we want in a healthy democracy.

Senator WHITEHOUSE. I will give Ms. Mitchell a chance to reply, but I noted in her testimony she said, "I cannot claim my luggage from the bellman without producing my photo identification, and I cannot rent a pull cart from my golf club at Hains Point public golf course without surrendering my driver's license until I return the

pull cart." And I guess my question is: Isn't it true that the people who are targeted for exclusion from voting by voter ID laws are not likely to be out golfing and are not likely to be staying at the kind of hotels where there is a bellman to keep an eye on your luggage? It seems like they are two different populations here that we are talking about. That is sort of the purpose of the exercise. Ms. Mitchell?

Ms. MITCHELL. May I?

Senator WHITEHOUSE. Please.

Ms. MITCHELL. Have you been to Hains Point recently? I mean, this is not exactly a luxury facility. It is a public golf course in the District of Columbia. But let me just say this: I do not think it is trivial to—I do not think this is a trivial issue. And I realize that there are people who live different lives. I also would note that in my testimony you cannot get into the United States Capitol to have a meeting with a Senator or a House Member without producing a photo ID.

Ms. KARLAN. I did not produce one today.

Ms. MITCHELL. To the United States Capitol, in the Capitol. You have to produce a photo ID.

I guess my question is—I do not think those things are trivial. Here is what I also do not think is trivial. I do not think it is trivial that in Missouri in the general election of 2000 that there were—when they went back and looked at the general election results and studied what had happened, that more than 1,200 people had voted illegally, including people who voted twice, possibly more than twice, deceased persons who had voted, persons who were registered at vacant lots where there were multiple names at registered at the same address that were not multi-family dwellings, nursing homes, hospitals, or group homes.

I do not think it is trivial that in Washington State in the gubernatorial election of 2004, where the election was decided by fewer than 2,000 votes, that there was evidence introduced in court that showed that more than 1,000 people voted illegally in that race, including deceased voters, double voters, and others whose identities could not be established even after the election.

So what I am saying is all of these things matter, and it is not trivial that there are people such as in ACORN, who go into these communities that you are talking about, who have had—in November of 2007 in Seattle, where ACORN workers pleaded guilty to the most massive—according to the news reports, the most massive voter registration fraudulent scheme that had ever been perpetrated and prosecuted in the State of Washington; where ACORN volunteers, unpaid representatives, pleaded guilty in Kansas City to engaging in a fraudulent voter registration scam.

So I do not think that is trivial either. I realize you trivialize what I put in my testimony about the requirement for everyday production of photo ID by the vast majority of the population. But I also think it is not trivial that there are people out there who do want to try to use the system, abuse the system, and organize and cast illegal votes. And I think that is a threat to the system, to our whole electoral process.

Senator WHITEHOUSE. Well, it strikes me that what is not trivial is if in addressing the problem of the occasional self-motivated,

fraudulent voter, the person who has not gotten their identification or does not live where they say they do, you put into effect a remedy that allows entire populations to be put at greater risk and to face greater difficulties in exercising their franchise than otherwise. That to me is what is unbalanced and unfair.

Mr. Goldman, you had your hand. You wanted to respond?

Mr. GOLDMAN. Thank you, Senator. A few things.

I think it is important, first of all, to note that all of the examples that Ms. Mitchell said about actual voters who were impersonating other voters, upon further inspection turned out to be not the case at all. In fact—and Justin Levitt and a couple of other folks from the Brennan Center have done some really good work on what matching protocols actually need to be in order to be responsible in elections and how frequently it is when you take a relatively small size of voters to see how many of them have the exact same name and birth date. It is actually quite large.

Vacant lots, often homeless voters are actually registered at vacant lots. Those are very real, eligible voters who are on the rolls and who are participating, as they should be.

Often people who live in multiple—who have multiple names—I mean, I live in a household that is not a nursing home or a multifamily dwelling, and we have multiple people who have multiple names.

So, really, when you look at this, we are still talking about a situation where 11 percent of voters, up to 21 million voters, may be taken out of the electorate if we actually implement something like this nationwide, versus none. And, really, we are talking none for over 100 years of credible evidence of this type of fraud actually happening. It just does not happen, and it does not happen for a reason.

We have to think about what this means practically. What this means is somebody who is intending to do this type of mischief has to, number 1, know that there is another voter on the voter registration rolls who is not the person, obviously; number 2, know that that voter has not voted early, has not voted absentee; number 3, that person has to present him-or herself to a board of folks, of poll workers, with other voters around. There are plenty of witnesses in that situation. They have to know that that person who is administering the polling place does not, number 1, know the person who you are imitating and also does not know you, and then also you have to make sure again that that person has not voted. And then you get one vote. So that is just one vote. And if any of those things go wrong, that is 10 years in prison, a $10,000 fine.

These things do not happen. It is just—there are real problems that disenfranchise real voters, and we are talking about millions and millions of real voters, and the responsibility of Congress and the States and the local jurisdictions is to remedy those problems and not to fixate on these phantoms of fraud.

Senator WHITEHOUSE. Mr. King, you are an official in the Indiana Secretary of State's office. You all have just had a primary. In the past primary held under the Indiana photo ID law, how many people did you catch impersonating other voters?

Mr. KING. Senator Whitehouse, the Secretary of State's office did not catch any individuals impersonating voters. Indiana elections

are administered by counties and, as we noted earlier, by precinct election boards. They are the only entities that can detect impostor voters attempting to vote.

Senator WHITEHOUSE. And to your knowledge, they did not catch anyone impersonating another voter?

Mr. KING. I am not aware of any such instance.

Senator WHITEHOUSE. Do you know how many registered voters were turned away at the polls for failure to have a photo ID in the last election?

Mr. KING. No. The only information I have had regarding that is with regard to the testimony of my fellow panelists today.

Senator WHITEHOUSE. Okay.

Mr. KING. So nothing but anecdotal evidence.

Senator WHITEHOUSE. Ms. Karlan, you had your hand up?

Ms. KARLAN. Yes, I just wanted to make two observations. The first is you do not have a constitutional right to play golf or to store your bags in a hotel, but you do have a constitutional right to vote. So I think balancing the burdens is different in those two examples.

The second is suppose that we were even to concede that there is an occasional in-person vote impostor somewhere in the United States. Spencer Overton, who has done a pretty detailed study, has estimated that for every one impostor that you catch, you might deter 6,700 registered voters from casting a ballot. Now, suppose he is off by a factor of 10. Suppose he is off by a factor of 100. Suppose he is off by a factor of 1,000. You would still have a 6:1 ratio. And we think of that—and I said this in my prepared testimony. We think about it in the criminal justice system, there is a burden of proof that is very high before you can convict somebody. And we often use the kind of colloquial phrase, "Better that 100 guilty men go free than that one innocent person goes to jail.

Suppose that we said we can deter in-person vote fraud, but for every in-person impersonator that we deter, six American citizens who are entitled to vote will be prevented from voting. It seems to me that that is an unacceptable trade-off on a constitutional right, especially when there are things that the States could do and things that the Federal Government could do that would decrease in-person vote fraud by cleaning up the voting rolls, by making it easier to have the voting rolls kept up to date, and by vigorously prosecuting if they find examples of in-person vote fraud.

What is kind of striking is that we do not have even prosecutions for in-person vote fraud despite the—you know, and to say we do not have them because it must be so effective seems one of the oddest things. I mean, we would never say there must be a lot of crime out there because we have no reported incidents of a crime. It just seems a very odd way of thinking about things.

Senator WHITEHOUSE. Good. Well, I appreciate the testimony of all the witnesses. I think I am going to call the hearing to its conclusion. Some of you have come a considerable distance. I appreciate it very much. It has been very instructive and helpful for us. I suppose we can look forward to perhaps a revisiting of the *Crawford* decision when we get an as-applied set of facts and perhaps a reconsideration at that time. But in the meantime, I do think that this is an important area for Congress to look at be-

cause, as Chairman Leahy so eloquently said, the foundation of all of the democratic rights we enjoy stands on the vote. And if the access to the vote on behalf of significant portions of America's population is being manipulated or discouraged, that is something that merits our attention.

The record of this hearing will stay open for one more week. If there is anything else that any of the witnesses would like to submit, you are more than welcome to do that, or anyone else, for that matter. And other than that, the hearing will now be adjourned.

[Whereupon, at 3:57 p.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

QUESTION FROM CHAIRMAN PATRICK LEAHY TO MR. JONAH GOLDMAN FOLLOWING THE MAY 20, 2008 HEARING OF THE SENATE JUDICIARY COMMITTEE ON "PROTECTING THE CONSTITUTIONAL RIGHT TO VOTE FOR ALL AMERICANS"

1. **Across the country states have enacted or considered laws that would condition the right to vote or even register to vote on the ability of an individual to produce proof of citizenship. Yet, a recent national survey by the Brennan Center shows that millions of American citizens lack the documents required under these proposals. The study also revealed that proof of citizenship laws have a disparate impact on minority communities. In light of your experience as a voting rights expert, do you believe proof of citizenship laws would disenfranchise eligible citizens? Is there any evidence that such laws have <u>already</u> disenfranchised eligible citizens?**

Proof of Citizenship laws are not only burdensome on Americans wishing to exercise their right to vote, but the law passed in Arizona has already disenfranchised eligible voters during the 2008 primary cycle.

A January 2006 study by the Center on Budget and Policy Priorities, conducted to study the effect of a similar citizenship identification laws on Medicare registration, showed that the eleven million individuals lacking proof of citizenship are disproportionately poor, rural, elderly, and minority citizens. The problem is particularly acute for those African Americans born in the South prior to World War Two. Due to racial discrimination, most African Americans of this generation were born at home and, therefore, were never issued birth certificates. For African Americans born between 1939 and 1940, it is estimated that nearly one-fifth lack a birth certificate. (Donna Cohen Ross and Allison Orris, *Missouri's Proposed Voting Requirement Could Disenfranchise More Than 200,000 US Citizens: Rural, Law Income, and African American Residents Among the Most Affected* 1-3 (Center on Budget and Policy Priorities, 2008))

In Arizona, where Proposition 200 requires that voter registration applicants provide specific types of citizenship identification, over 31, 550 individual registrations have been rejected. In one county, between 23 and 39 percent of registrants were rejected due to lack of citizenship identification.

One such voter, Shirley Preiss, was born in her Kentucky home in 1910. State officials have no record of her birth. Now 97, Preiss, who has voted in every presidential election since 1932, will not be able to vote in 2008 because she lacks the requisite documents to prove her citizenship under Proposition 200.

2. **Proponents of restrictive voter identification laws argue that such laws are necessary to prevent illegal immigrants from affecting the political process. Do you agree? Please explain.**

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Voter identification laws are not necessary to prevent illegal immigrants from affecting the political process. These laws address only one type of voter fraud – in-person voter impersonation. However, states that have adopted voter identification laws have not established any evidence of voter impersonation fraud by non-citizens. *See generally* Amicus Brief for the Lawyers' Committee for Civil Rights Under Law, Service Employees International Union, American Federation of State, County and Municipal Employees, Common Cause, Jewish Council for Public Affairs, National Council of Jewish Women, and American Jewish Committee as Amici Curiae in Support of Petitioners, *Crawford v. Marion County Election Board*, p. 8-9, (available at http://lccr.3cdn.net/add41ab07812b8a7f6_i6m6b54ig.pdf).

The fiction of phantom voters showing up at polling places to influence election results has been frequently repeated, but is still fiction. There is no credible evidence that non-citizens are showing up at the polls to deliberately influence election results. Evidence that non-citizens are voting almost always turns out to be because of either mistakes by the voter or by someone who is doing registration or Get Out the Vote activities. It is no wonder, undocumented people are not going to deliberately present themselves to a government authority in order to commit a felony that will lead to jail time and deportation.

3. Your organization opposed the nomination of Hans van Spakovsky to serve as a commissioner on the Federal Elections Commission. His controversial nomination was withdrawn, in part, over concerns on whether he could fairly and impartially administer the nation's elections laws.

As a political appointee in the Voting Section, Mr. von Spakovsky overruled a nearly unanimous recommendation from career staff in order to preclear a controversial Georgia photo identification law. The career staff found that the Georgia law would likely have a retrogressive effect on minority communities.

At the hearing, Ms. Cleta Mitchell defended Mr. von Spakovsky's role in preclearing the Georgia photo identification law. She testified that Mr. von Spakovsky "has been much maligned and mistreated by many activist groups and by the Senate....just because we disagree with him." She noted that a "federal judge dismissed the case and now the Supreme Court of the United States has upheld the legal position that Mr. van Spakovsky took."

A. Do you believe Ms. Mitchell's description is an accurate portrayal of Mr. Von Spakovsky's role in the Department's decision to preclear Georgia photo identification law?

No, I do not believe that Ms. Mitchell's description of Mr. Von Spakovsky's role in the Justice department was accurate. On May 24, 2008 Joe Rich, an attorney with the Lawyer's Committee for Civil Rights, published a response to a Wall Street Journal editorial previously written by Mr. von Spakovsky's. Rich, who served as the Chief of the Department of Justice's Voting Section in the Civil Rights Division under von

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Spakovsky, highlighted the working dynamics between von Spakovsky and his subordinates and provides a stark contrast to many of the assertions made by Ms. Mitchell before this committee. According to Rich, von Spakovsky's allegations that career attorneys at the Department of Justice were motivated by politics in their rejection of the state of Texas's 2003 redistricting plan "turns the record of political influence on its head." In fact, the plan von Spakovsky sought to approve, at the expense of two less partisan plans, was drafted by former Congressman Tom Delay with the intention of adding five to six more seats to the Texas's Republican delegation. (Joe Rich, *An Unfair Civil Rights Attack,* Wall Street Journal, May 24, 2008, at A10)

Further, while Mr. Von Spakovsky has contended that the Indiana Supreme Court case is a vindication of his approval of a Georgia plan to require voter identification, the Georgia law pre-cleared under von Spakovsky's direction is not the same law that the Supreme Court's recent decision in *Crawford v. Marion County Election Board* upheld. The law pre-cleared by von Spakvosky was struck down by a Georgia court in 2005, calling the provision a "poll tax". In fact, the Georgia court, in their factual record, noted that minority voters are twice as likely as white voters to lack the forms of identification accepted at the polls.

Moreover, while at the Justice Department, von Spakovsky perverted the Voting Section's purpose of protecting traditionally disfranchised voters by aggressively moving through such policies as the discriminatory Georgia voter ID law and shifting the Section's focus from protecting voters to hunting the phantoms of voter fraud. He, in fact, indicated as much through an article he wrote under the pen name "Publius," extolling the virtues of these laws and clearly demonstrating a conflict of interest. The Section was designed to expand access to the franchise for those eligible Americans who have challenges getting to the polls. While Mr. von Spakovsky was there, he did just the opposite.

B. Do you believe it is consistent with the will of Congress, as demonstrated in the initial passage of the Voting Rights Act and subsequent reauthorizations to preclear a restrictive photo ID law that would remove voters from the process rather than encourage their civic participation?

No. One of the dubious claims made by those who defend the Voting Section's decision to preclear the Georgia Voter ID law is that the Supreme Court's Ruling and the 11th Circuit ruling upholding the second incarnation of the Georgia ID law somehow vindicates the preclearance.

This is wrong for a few reasons:
First, the standard for deciding those cases and the standard for deciding if something should, or shouldn't be precleared are different. In the latter case, the DOJ need only decide if a specific policy, in this case imposing a restrictive identification requirement on voters in Georgia, will have a negative (or "retrogressive") impact on minority voting strength. Preliminary information provided to the Voting Section for its preclearance decision by Georgia, suggested that this policy will have a disproportionate impact on

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minority voters. Moreover, in the front office's haste to preclear the provision, it did not wait for even more convincing evidence that had just been received from Georgia that further suggested a retrogressive impact. Such considerations lead to the professional staff's near unanimous recommendation not to preclear the bill.

Second, such a sentiment is wrong because the original Georgia law that was precleared was struck down by the federal district court as unconstitutional. It was only the reconstituted law that provided free identification that was upheld by the courts – again, utilizing a standard different from what the DOJ must use to decide Section 5 preclearance.

Finally, the Voting Rights Act was designed to expand the franchise to include voices long silent by discrimination and institutional bigotry. These provisions fly in the face of the intent of Congress when it passed the original bill over 40 years ago and the intent of the subsequent Congress's that have reauthorized the critical legislation because they once again arbitrarily silence those voices.

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QUESTIONS FROM U.S. SENATOR DIANE FEINSTEIN TO MR. JONAH GOLDMAN FOLLOWING THE MAY 20, 2008 HEARING OF THE SENATE JUDICIARY COMMITTEE ON "PROTECTING THE CONSTITUTIONAL RIGHT TO VOTE FOR ALL AMERICANS"

1. **The Baker-Carter commission on election reform endorsed the idea of voter ID laws, but also said that the IDs should be "available without expense to any citizen," and that photo ID requirements should be phased in over two federal election cycles – through January 1, 2010. But, as we are seeing in Indiana and elsewhere, states are adopting voter ID laws without putting in place the equally important requirements for access to ID.**

   - ***What can Congress do to make sure that states with voter ID laws also ensure that all voters, including low-income voters, disabled voters, and elderly voters, have full access to ID cards?***

Unfortunately, Congressional efforts to ensure full access to ID cards cannot adequately overcome the barriers to obtaining ID cards facing low-income voters, disabled voters, and elderly voters. Even in states that do not charge an individual a fee to obtain a photo ID, the process of obtaining a photo ID often requires a prohibitive amount of time and resources. For example, voters without ready access to a certified birth certificate may need to pay a fee to get a replacement in order to meet the documentation requirements for a photo ID. There are also costs of transportation and time off from employment that may be required in order to bring the assembled documentation to the government office where photo IDs are distributed. *See generally* Amicus Brief for the Lawyers' Committee for Civil Rights Under Law, Service Employees International Union, American Federation of State, County and Municipal Employees, Common Cause, Jewish Council for Public Affairs, National Council of Jewish Women, and American Jewish Committee as Amici Curiae in Support of Petitioners, *Crawford v. Marion County Election Board*, p. 17-18, (available at http://lccr.3cdn.net/add41ab07812b8a7f6_i6m6b54ig.pdf)

That is not to say that Congress should not try to put identification in the hands of all Americans who are unable to obtain identification; however, this should have no connection to voting. Undeniably, current, valid identification makes many activities easier for Americans, so all Americans should have those opportunities. Congress can be creative through grants to states and programs to locate those without identification and provide meaningful ID to them.

2. **In the Supreme Court ruling in Crawford v. Marion County Election Board, the lead plurality opinion said there was no solid evidence of how many voters did not have photo ID, and no evidence of how many did not have the birth certificates they would need to get an ID. Justice Stevens wrote, "Supposition based on extensive Internet research is not an adequate substitute for admissible evidence."**

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However, there is also a supposition behind voter photo ID laws – a supposition that in-person voter fraud is a problem at all.

- ***In the Rules Committee's recent hearing on photo identification, there was not a scintilla of evidence that anyone has been convicted of voter impersonation fraud. Do you know of any case in which someone has been convicted of voter impersonation fraud?***

No, and no wonder. It is important to understand what goes into voter impersonation fraud:

1. the culprit will have to know that the voter he intends to impersonate is; currently on the voter rolls; has not moved; and has not been removed from the rolls.
2. the culprit will have to know that the voter has not yet voted absentee; early, or at the polls.
3. the culprit will need to show up at the polls with the intention of committing a federal and state felony.
4. the culprit will have to know that the poll worker does not know the voter the culprit intends to impersonate.
5. the culprit will have to know that no one in the polling place recognizes either him, or that the challengers, other party officials, other observers, other voters or other poll workers do not know the voter who the culprit is impersonating.
6. the culprit will then need to knowingly commit a federal and state felony that carries with it fines of f$10,000 and, in some places, up to 10 years in prison.

And all of that gets you a SINGLE fraudulent vote.

- ***In your opinion, what is the impact of voter photo ID laws?***

Voter photo ID laws will reduce voter participation by disenfranchising legitimate voters, without addressing any significant problem of voter fraud. An intensive study of 2.8 million Washington state votes in 2004 found that 0.0009 percent of the ballots involved double voting or voting in the name of deceased individuals. *Borders v. King County*, No. 05-2-00027-3 (Wash. Super. Ct. Chelan County June 24, 2005). Professor Spencer Overton calculates that this rate of fraud, when compared with the over 20 million Americans who lack a driver's license, would mean that "photo-identification requirements would deter over 6,700 legitimate votes for every single fraudulent vote prevented." Spencer Overton, "Voter Identification," 105 Mich. L. Rev. 631 (2006), available at http://www.michiganlawreview.org/archive/105/4/overton.pdf.

In Georgia, the Department of Driver Service ("DDS") used a data match to compare the Secretary of State's database of registered voters with the records of driver's licenses and state photo IDs. This data match determined that between 5.7% and 10% of all registered voters in Georgia do not have this type of photo identification. Further evidence shows that a significant number of these voters are unlikely to have another form of photo ID, such as a passport or government-employee ID card. If the current challenge to the 2006 Georgia Photo ID Act is unsuccessful, as many as 500,000 registered voters will be will

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be denied their right to cast their ballots for president and Members of Congress in person because they lack an acceptable form of official photo ID to present at the polls.

In Indiana, NCFFE staff and volunteers witnessed first-hand the disenfranchisement of legitimate voters who were turned away from the polls in the recent primary election. For example, a first-time voter, a freshman at a local private college was informed by poll workers, nuns at a local convent, that her private college ID was insufficient identification for her to cast a ballot. Lawyers' Committee board member and Election Protection leader John Borkowski, a partner at Hogan & Hartson LLP, was working as a Mobile Legal Volunteer at the polling place and attempted to help the student, including offering to help her get a valid ID. While Borkowski and the poll workers were helping her, the workers indicated that some of their fellow nuns also could not vote because of the photo ID law. Not only was this student disenfranchised, but so were many of the retired nuns at the convent.

Confusion about voter ID requirements in Indiana also threatened to prevent a registered member of the military from voting—a caller reported to Election Protection that poll workers refused to accept his current U.S. Military ID, claiming that it was insufficient identification. Fortunately, the caller, through consultation with Election Protection, was able to speak with a precinct judge who corrected the poll workers. See Testimony of Jonah Goldman, Senate Committee on the Judiciary, "Protecting the Constitutional Right to Vote for All Americans," May 20, 2008, available at http://judiciary.senate.gov/pdf/08-05-20Jonah_Goldman_Testimony2.pdf

- ***What, in your view, is the strongest evidence that voter photo ID laws pose a burden on low-income voters, elderly voters, and/or disabled voters?***

Academic research conducted in Indiana in 2007 strongly indicates the differences in impact that voter ID laws pose on low-income voters, elderly voters, and disabled voters. The study found that **13.3**% of registered Indiana voters (±3.1%) did not have a current government-issued photo ID card. The same study found that:

- 18.1% of black registered voters (compared to 11.5% of white voters)
- 20.3% of registered voters 18-34 (compared to 9.4% of voters 55-69)
- 16.4% of registered voters over 69 (compared to 9.4% of voters 55-69)
- 16.7% of voters without a college degree (compared to 7.9% of voters with a degree)
- 17.5% of voters earning < $40,000/ year (compared to 11-12% of others) in Indiana did not have a current government-issued photo ID card.

This data reflects statistically significant, lower rates of photo ID ownership among these groups of voters. Thus, the impact of photo ID requirements will be more burdensome. A. Barreto *et al.*, The Disproportionate Impact of Indiana Voter ID Requirements on the Electorate (2007), *available at* http://depts.washington.edu/uwiser/documents/Indiana_voter.pdf;

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In addition, the Lawyers' Committee's analysis of elderly voters found that those over 65 are twice as likely and those over 80 are four times as likely as those under 65 to lack appropriate photo identification.

3. Ms. Mitchell's written testimony listed a number of examples of supposed voter fraud. Please state whether requiring a photo ID when voting in person would prevent people from:

a) Filing fictitious voter registrations.

No, requiring a photo ID when voting in person would not prevent people from filing fictitious voter registrations.

b) Selling their votes.

No, requiring photo ID when voting in person would not prevent people from selling their votes. Documented cases of vote-buying schemes almost always involve individuals who are eligible voters, and do not involve voter impersonation that could be addressed by a photo ID requirement. *See* Justin Levitt, "The Truth About Voter Fraud," Brennan Center for Justice at New York University School of Law, available at http://brennan.3cdn.net/e20e4210db075b482b_wcm6ib0hl.pdf.

c) Voting when they are disqualified on account of a felony conviction.

No, requiring photo ID when voting in person would not prevent voting by persons who are disqualified by a felony conviction. Most cases of this kind involve people who think they can voter, or are told they can vote, and cast a ballot.

d) Voting in two neighboring states (such as Kansas and Missouri) by crossing state lines on election day.

No. A photo ID requirement would not prevent an individual who has a photo ID from more than one state from voting in more than one state on election day. Concerns about voter fraud of this type will not be resolved by photo ID laws.

4. Mr. King stated in his written testimony that there have been "no reports" that the voter ID law "resulted in the widespread disenfranchisement of voters throughout the state, or even that a significant number of voters had been required to cast provisional ballots for any reason (including compliance with the voter ID law)." Yet, he also testified at the hearing that the state of Indina did not know how many voters were turned away at the polls for lack of the required photo identification.

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- ***Given that we cannot compare the number of provisional ballots cast to the number of people who were turned away altogether because they lacked a photo ID, is the number of provisional ballots cast a meaningful indicator of the extent to which voter ID laws cause disenfranchisement?***

The number of provisional ballots cast does not provide an effective assessment of the extent of voter disenfranchisement caused by voter ID laws. The number of provisional ballots cast would not account for the number of legitimate voters who lacked photo ID and were turned away without being offered a provisional ballot. Also, it fails to reflect those eligible voters who simply did not go to the polls because they knew their ballot would not be counted.

In Arizona, where the Lawyer's Committee is currently engaged in litigation, 4,120 provisional ballots cast in the 2006 presidential primary, most of which were cast because voters lacked proper identification. Another 2,400 voters casts no ballots after being turned away from the polls due to a lack of identification (Pls'. Reply Mem. to Mot. for Sum. J, p. 4) . Of course, there is no way to determine how many voters did not go to the polls because they knew the lacked the appropriate identification.

Arizona, is just one of the states that has recently passed restrictive voter identification laws. And, like Arizona, other states present anecdotal evidence of voter disenfranchisement.

On May 6, as Indianans headed to the polls for the first time since the Supreme Court decided *Crawford*, Election Protection was on the ground assisting voters who had questions or problems at the polls. We also were running the 1-866-OUR-VOTE hotline to provide immediate assistance to citizens who needed help during the day. Early that morning, Election Protection volunteer and Lawyers' Committee board member, John Borkowski, a partner at the law firm of Hogan and Hartson, LLP, walked into a polling place on the campus of St. Mary's College in his hometown of South Bend. Students from the college were being turned away because they only had a student ID from the private college and not a government issued photo identification with an expiration date. The students were devastated. While talking to Sister Julie McGuire, one of the poll workers, John discovered that it was not just the students that were the victims of this misguided policy, but many of the nuns who lived in the convent that housed the polling place. John talked to retired nuns, between 70-90 years old who either did not have ID or only had an expired license. These nuns no longer drove and had no need for current, government issued photo identification. They lived in the convent, among a community of their sisters. John discovered many of the sisters who were ineligible did not attempt to come to the polls. And that is the true scope of this tragedy. Most of the citizen voices made silent because they do not have this type of ID, as many as 21 million eligible voters across the country, will not show up because they know they will be turned away. When the sisters, all in their 80's and 90's were told they would not be able to vote by another member of the convent, says Sister Julie McGuire, "they couldn't understand why." (Scott Martelle, *Campaign '08 Indiana and North Carolina Primaries; ID laws*

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keeps nuns, students from polls; Indiana requires photo identification. The sisters didn't have any, some students have trouble getting it. L.A. Times, May 7, 2008, at A14.)

Angela Hiss, a student at University of Notre Dame, was also turned away from the polls during the presidential primary. Hiss, in preparation to travel abroad, had sent her birth certificate to federal Passport Services with her application for a passport. When Hiss attempted to vote the next week, poll workers refused to accept either her Illinois drivers license or her private school identification as proof of ID. (Scott Martelle, *Campaign '08 Indiana and North Carolina Primaries; ID laws keeps nuns, students from polls; Indiana requires photo identification. The sisters didn't have any, and some students have trouble getting it.* L.A. Times, May 7, 2008, at A14.)

Founded after the contested 2000 election, Election Protection has operated during the 2004 and 2006 election cycles to ensure that all eligible voters can freely and effectively cast their votes. In 2006, Election Protection organized 27 Local Legal Coordinating teams in 19 states, along with nine national call centers. On Election Day 2006, 2000 volunteer attorneys fielded 17,964 calls from voters experiencing problems in districts across the country. In addition, the Lawyers Committee compiled the Election Incident Reporting System, a report on the experience of the 2006 election to create a comprehensive guide to future elections as well as provide support for litigation against states and individuals who engage in tactics that suppress the right to vote. This year, Election Protection's importance will be magnified by the obstacles caused by voters seeking to vote in states that have passed statutes requiring voter identification.

5. **In her written testimony for this hearing, Ms. Mitchell stated, "Some of us believe that voting is a sacred duty and trust and that the act of voting should be accompanied by at least as much care and responsibility as renting a pullcart at the golf course." Mr. King's written statement explained that Indiana's voter ID law allows citizens to vote if they execute an affidavit of indigency by traveling to the county seat each time they vote. Ms. Mitchell's written statement also pointed to alleged examples of multiple voting and vote buying.**

   These arguments are similar to the arguments that were made in support of the poll tax. In 1948, Virginia Governor William Tuck testified to the Senate Rules Committee that "We have always taken the position that every person who votes should be required to do something to show a sustained interest in his government, whether by the payment of a poll tax or whether by requiring them to do something else. But each voter should be required to do something to show this sustained interest in his Government, because in this way only can we have the very best government." Virginia Circuit Court Judge William Old testified at a 1962 House hearing that "We believe that an electorate devoted to the overall interest of the State and Nation is of vital importance to a State or Nation; that the right of franchise should be open to all persons who have exhibited a desire to exercise it as a public duty."

   Senator Burnet Maybank of South Carolina defended his state's poll tax in 1948

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by stating that "any man can go and take an oath, saying that he cannot pay the $1, and he can vote anyhow." Senator W. Lee O'Daniel of Texas said in 1948 that the poll tax was enacted to prevent the problem of "repeaters" – that is, multiple voting. And in 1962, Virginia Attorney General Robert Y. Button argued that the poll tax discouraged "the practice of 'buying' votes," while conceding that "there is available very little actual evidence of this illegal practice."

- ***Can you distinguish the current debate about voter photo ID laws from the previous debate about the poll tax? What are the similarities and differences between the legal analysis of the poll tax (prior to the enactment of the 24th Amendment) and the legal analysis of voter photo ID laws?***

Voter ID laws are a 21st Century poll tax. In addition to the cost of the identification itself, the imposition of "tangential burdens" – the cost of time, transportation, and underlying documentation to acquire the voter identification –is a poll tax.

A 2006 report from the Center on Budget Policy and Priorities surveyed the costs of obtaining a birth certificate from all fifty states. The prices ranged from $5 to $23, while obtaining a passport – an alternate form of identification - costs between $87 and $97, depending on the state. This finding takes the costs of obtaining a passport from "speculative" to concrete and, thus, may cause the court to reconsider the burden imposed by such a requirement. (Donna Cohen Ross and Allison Orris, *Missouri's Proposed Voting Requirement Could Disenfranchise More Than 200,000 US Citizens: Rural, Law Income, and African American Residents Among the Most Affected* 1-3 (Center on Budget and Policy Priorities, 2008))

A federal court contemplating the original Georgia voter ID law found that it amounted to a poll tax, while the courts have distinguished the poll tax from voter identification requirements when the identifications are provided free of charge, several of the current Voter Identification laws are not provided free of charge. In Arizona, for example, Proposition 200 allows individual counties to determine whether or not the identification will be provided free of charge.

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QUESTION FROM U.S. SENATOR HERB KOHL TO MR. JONAH GOLDMAN FOLLOWING THE MAY 20, 2008 HEARING OF THE SENATE JUDICIARY COMMITTEE ON "PROTECTING THE CONSTITUTIONAL RIGHT TO VOTE FOR ALL AMERICANS"

1. **As Chairman of the Aging Committee, I am concerned about the impact the *Crawford* decision and other voter ID laws will have particularly on older voters. I understand that your organization's election protection volunteers encountered multiple instances of older voters having problems complying with the Indiana voter ID law. What is the National Campaign for Fair Elections doing to help ensure that older voters in Indiana will not be disenfranchised in the November elections?**

The Lawyers' Committee for Civil Rights Under Law's National Campaign for Fair Elections administers the 1-866-OUR-VOTE hotline – the only nationwide comprehensive live voter support hotline – in all 50 states and the District of Columbia. Through the hotline, Election Protection will provide real-time assistance to older voters during the election process in Indiana. The Election Protection program is also strengthened by the community partnerships that NCFFE and its partners forge at the local level. In Indiana, Election Protection has established relationships with the following organizations: ACLU of Indiana, Citizens for Civil Rights, Common Cause Indiana, Indiana ACORN, Indiana State Conference of Branches, NAACP, Indiana State Teachers Association, Indianapolis Urban League, League of Women Voters of Indiana, and Verify the Vote Indiana. Additionally, Election Protection has established a national relationship with the Alliance for Retired Americans and is planning on bringing other organizations advocating for the rights of elderly voters into the coalition. Through these relationships, NCFFE is able to provide valuable legal support for their voter education campaigns in Indiana, ensuring their voters fully understand the complex Indian voter ID law.

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July 11, 2008

The Honorable Patrick Leahy
Chairman
United States Senate Committee on the Judiciary
Washington, D.C. 20510-6275
By mail and email

Dear Senator Leahy,

It was an honor to testify before your committee on May 20, 2008, regarding protecting the right to vote of all Americans. It is reassuring that Congress is considering how to fulfill its role under Article I of the Constitution and the enforcement provisions of the Reconstruction Amendments in making sure that all American citizens are able to exercise their rights.

You have sent me two sets of written questions from Committee members. I have attached my answers to this letter.

If you, other members of the Committee, or your staff have any additional questions, please contact me.

Sincerely,

Pamela S. Karlan

Answers to Senator Leahy's questions
(I have put the questions in italics and my answers in roman type)

1. At the Judiciary Committee hearing on Protecting the Constitutional Right to Vote for all Americans, Ms. Cleta Mitchell cited inflated and inaccurate voting rolls as a justification for restrictive photo identification voting laws. Would the irregularity of voter rolls be prevented by states implementing proof of identity or proof of citizenship requirements as a precondition to voters casting a ballot?

The quality and accuracy of voter rolls is independent from the question whether individual voters whose names appear on the rolls should be required to provide proof of identity in order to cast a ballot and have that ballot counted.

The problem with inflated voting rolls is that they contain the names of individuals – "phantom voters" – who are no longer eligible to vote (because, for example, they have died, moved out of the jurisdiction, or been disqualified from voting because of a conviction for a crime). To be sure, inflated rolls provide an opportunity for election fraud, since a malefactor could seek to cast ballots in the names of these individuals.

But requiring proof of identity before permitting someone to cast a ballot does nothing to change the data on the rolls themselves. The names remain on the rolls. Moreover, proof-of-identity laws may create a false sense of security about the integrity of the election system. All of the available evidence suggests that election fraud of the ballot box-stuffing sort is committed almost entirely by people with access to the election machinery – partisan poll officials. Requiring individual citizens who physically appear at the polls to present identification will not stop corrupt officials from surreptitiously checking off the names of phantom voters and casting fraudulent ballots on their behalf.

The only way to effectively prevent this kind of fraud is to focus on ways of keeping the voting rolls themselves accurate. This is, as I am sure you are aware, a technically complicated

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and complex task, because periodic purges can be misused and many of the techniques for keeping rolls updated are themselves flawed. But if we want to have accurate voting rolls, the way to do this is to focus on the rolls themselves, rather than to be lulled into complacency about the presence of phantom names on the list by the belief that no one can exploit those names.

Moreover, voter identification laws can, as we discussed during the hearing, prevent many legitimate voters from casting their ballots and having those ballots counted. Thus, while voter identification laws will do nothing to create more accurate voter data bases, they will undermine the integrity of elections by excluding many qualified citizens from participating.

2. In her written testimony, Ms. Mitchell analogized voting to other contexts where photo identification is required. Ms. Mitchell mentioned that individuals cannot enter federal buildings, board a plane or a train, access a key to a hotel room, claim luggage from a bellman, use a credit card, or rent golf clubs without producing photo identification. Is there any reason why voting sufficiently resembles these activities that require photo identification and therefore should require identical treatment? If not, why not?

Ms. Mitchell's analogies are incorrect as both a matter of fact and a matter of law. I do not golf, so I cannot comment on renting a golf cart. But I have, in the past five years, done every one of the other activities she mentions without providing valid, government issued photographic identification. I enter federal buildings frequently without showing any form of identification at all (including to testify before your committee and to attend oral arguments at the Supreme Court of the United States). I travel by train both in California on Caltrans and on the D.C. Metro as well as on Amtrak, and I have not been asked for identification. I traveled from California to Chicago by airplane in 2003 having forgotten to bring a valid driver's

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license.[1] While some hotels in which I have stayed have asked for photo ID, the majority have not. And I have never been asked for identification when claiming luggage from a bellman – the stub I received when I checked the luggage has always sufficed – or when using a credit card.

More fundamentally, none of the activities she cites, with the exception of entering federal buildings, involves the exercise of a core constitutional right. (Entering federal buildings may be necessary to exercise the First Amendment right to petition the government for redress of grievances. *Cf. Tennessee v. Lane*, 541 U.S. 509 (2004) (describing the fundamental right of access to the courts.)) Many of the activities involve entirely private transactions. For example, as a matter of solely constitutional law, there are literally no constraints on the right of a hotel, a merchant, or a golf club. To be sure, federal and state public accommodations laws and consumer protection laws enforce a variety of norms of fair treatment on private businesses. But the Constitution itself does not.

Even as to the transactions Ms. Mitchell identifies that involve the government, the due process calculus is quite different than it is in the context of voting. When the government infringes upon a fundamental constitutional right, it must show that the infringement was necessary to the achievement of a compelling governmental interest. By contrast, when the government interferes with a less fundamental interest, it need show only that the challenged practice is rationally related to fulfilling a legitimate governmental interest. The Supreme Court

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[1] I did, to be accurate, have my expired license with me, but the official Transportation Security Agency website, after stating that air travelers must present photographic identification, goes on to state that "passengers who do not present an acceptable ID may be subject to additional screening," http://www.tsa.gov/travelers/airtravel/acceptable_documents.shtm (last visited July 11, 2008), not that such travelers are categorically excluded from flying.

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has repeatedly held that the right to vote is a fundamental right. *See, e.g.*, *Bush v. Gore*, 531 U.S. 98, 104 (2000) (per curiam); *Kramer v. Union Free School Dist.*, 395 U.S. 621, 627 (1969); *Harper v. State Board of Elections*, 383 U.S. 663, 667 (1966); *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). To the best of my knowledge, the Court has never held that the right to use public mass transit or to gain access to the secure areas of a public airport or to purchase government services with a credit card is similarly fundamental. Thus, the government can use administrative convenience or cost saving as a justification for imposing burdens in those areas in a way that it cannot when it comes to voting.

Answers to Senator Feinstein's Questions

(I have put the questions in italics and my answers in roman type)

1. What can Congress do to make sure that states with voter ID laws also ensure that all voters, including low-income voters, disabled voters, and elderly voters, have full access to ID cards?

Congress can use its power under the elections clause of Art. I, § 4, to provide that states cannot use any ID requirement in any election in which a candidate for Congress appears on the ballot unless satisfactory ID is provided to all citizens free of charge. Congress could set out more detailed specifications for determining when a state is in fact making such ID readily available. For example, states could be required to provide access to such ID from places other than Departments of Motor Vehicles (for example, through social service offices that have contact with disabled, elderly or low-income individuals.) The experience with the National Voter Registration Act of 1993 as well as earlier federal statutes shows that because states generally hold their elections for most other offices in conjunction with elections for

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congressional office, Congress's plenary power over the latter effectively sets the parameters within which nearly all elections are conducted.

2a. In the Rules Committee's recent hearing on voter photo identification, there was not a scintilla of evidence that anyone has been convicted of voter impersonation fraud. Do you know of any case in which someone has been convicted of voter impersonation fraud?

I am unaware of any case where an individual has been convicted of in-person voter impersonation fraud – that is, where the person was convicted of showing up at a polling place, purporting to be a different individual, and casting or attempting to cast a ballot in that other individual's name. I am aware of a number of cases where individuals have been convicted of fraudulently casting absentee ballots in other individuals' names.

2b. In your opinion, what is the impact of voter photo ID laws?

As I described in my initial testimony, the likely impact of voter ID laws will be to disenfranchise a substantial number of eligible citizens and to have little, if any, effect whatsoever on preventing fraud, since the modal methods of fraud involve the manipulation of absentee ballots by election officials or partisan operatives, rather than improper in-person voting by individuals.

2c. What, in your view, is the strongest evidence that voter photo ID laws pose a burden on low-income voters, elderly voters, and/or disabled voters?

The evidence about the potential burden of voter ID laws is collected in a number of places. Spencer Overton's book, Stealing Democracy: The New Politics of Voter Suppression (2006), contains a wide range of useful information about the impact of voter ID laws. A number of the amicus briefs in the *Crawford* litigation describe a variety of statistics that are

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helpful in assessing the burden on low-income, elderly, and disabled voters. The briefs of Former State Secretaries of State, the Mexican American Legal Defense And Educational Fund and the AARP and National Senior Citizens Law Center in support of petitioners do a particularly good job of laying out some of these statistics.

How the actual burden will play out, though, is a bit of an unknown at this point because the laws are so new.

3. Please state whether requiring a photo ID when voting in person would prevent people from:

(a) Filing fictitious voter registrations.

A requirement to show ID when voting does nothing to prevent filing fictitious voter registration documents. To be sure, requiring proof of identity when registering might have such an effect, although limiting such proof to particular forms of identification (rather than either permitting a broad array of documentation or permitting signature under penalty of perjury) could preclude many legitimate registrations as well.

(b) Selling their votes.

None whatsoever.

(c) Voting when they are disqualified on account of a felony conviction.

If such individuals were removed from the rolls upon election administrators' being notified of the conviction, it would not matter whether or not the individuals had identification. Similarly, if all individuals who presented themselves to vote were informed when conviction of a felony disqualified them, then whether a particular individual were disqualified would be

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completely independent of whether he or she had photo ID.

(d) Voting in two neighboring states (such as Kansas and Missouri) by crossing state lines on election day.

It could well prevent such voting, since most individuals do not possess currently valid photo IDs from two separate jurisdictions.

4. Given that we cannot compare the number of provisional ballots cast to the number of people who were turned away altogether because they lacked a photo ID, is the number of provisional ballots cast a meaningful indicator of the extent to which voter ID laws cause disenfranchisement?

The number of provisional ballots cast will not provide an accurate indicator of the number of individuals who are precluded from voting by voter ID laws.

First, individuals who both know they lack the requisite ID and know or believe that a provisional ballot will not be counted unless they can produce such an ID will likely not even go to the polls to cast a provisional ballot. There is no point in their doing so. Other voters, when informed at the polls of the steps necessary to have their provisional ballot counted, will likely forgo casting one since there is no point to doing so.

Second, there will be individuals, including eligible individuals with satisfactory ID, who will be precluded from casting ballots or provisional ballots if they experience delays at their polling places due to confusion and wrangling over other voters' eligibility to cast ballots.

Third, some pollworkers will likely fail to provide provisional ballots, in violation of federal law, because they do not understand their legal obligations.

Fourth, not every jurisdiction accurately reports the number of provisional ballots cast.

5. Can you distinguish the current debate about voter photo ID laws from the previous debate

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about the poll tax? What are the similarities and differences between the legal analysis of the poll tax (prior to the enactment of the 24th Amendment) and the legal analysis of voter photo ID laws?

Beyond the obvious similarities that the prefatory materials in your question highlight, and the fact that in both situations otherwise eligible citizens are precluded from voting because they cannot pay the government a fee (either for a poll-tax receipt or for an ID or, in some jurisdictions, for the underlying documentation [such as a birth certificate] necessary to obtain an ID), there is one additional, and troubling similarity. In both situations, there is an undercurrent suggesting that people without the means to pay poll taxes or possess satisfactory IDs are somehow less qualified to participate in the political process because they are outside the mainstream. For example, there is a disturbing parallel between Robert Bork's description of the Virginia poll tax ultimately struck down in *Harper v. State Board of Elections*, 383 U.S. 663 (1966), as a "very small tax" that he doubted "had much impact on the welfare of the nation one way or the other" and Judge Richard Posner's view that virtually everyone who "maneuver[s] in today's America" – that is, who is a real member of society – has satisfactory ID.

The disturbing feature of the Supreme Court's decision in *Crawford* was the failure of the six Justices who joined the lead opinion or Justice Scalia's concurrence to see the parallels between the poll tax and the ID requirement in a world in which individuals must effectively pay the government to obtain the requisite ID.

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STATE OF INDIANA

Todd Rokita, Secretary of State

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June 13, 2008

The Honorable Patrick J. Leahy, Chairman
Attention Justin Pentenrieder, Hearing Clerk
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

BY ELECTRONIC MAIL AND US MAIL

Dear Senator Leahy:

Thank you for your letter of May 30, 2008, which included written questions from Committee members regarding my testimony at the May 20 Committee hearing regarding "Protecting the Constitutional Right to Vote for All Americans."

I have enclosed responses to the written questions from Senators Feinstein, Kennedy, Kohl, and Schumer.

Thank you very much for your courtesy, and that of the Committee's staff, during my attendance at the Committee's hearing.

Very truly yours,

J. Bradley King

J. Bradley King

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Questions from U.S. Senator Dianne Feinstein to J. Bradley King

Following the May 20, 2008 Hearing of the Senate Judiciary Committee

on "Protecting the Constitutional Right to Vote for All Americans"

1. The voter ID law in Indiana says that if a voter has no photo ID, he or she can cast a provisional ballot. But the voter then has to go to the county seat within 10 days to execute an affidavit saying either that they are indigent or that they have a religious objection to being photographed. This trip to the county seat is required each time a person votes – which can mean multiple times per year.

> • ***Does the state or county government offer transportation to indigent voters for these trips to the county seat? If not, what services are provided to ensure that these voters can get to the county seat?***

Response: I do not know whether the state or county government offers transportation to indigent voters for these trips to the county seat or whether other services are provided to ensure that these voters can get to the county seat. Information on this topic has not been compiled by the Election Division.

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Questions from the Office of Senator Edward M. Kennedy

to Bradley J. King, Co-Director, Indiana Election Division

Office of the Secretary of State of Indiana

1. How many facilities in the State of Indiana produce IDs acceptable under the Indiana Voter ID Law?

Response: I do not know how many facilities in the State of Indiana produce IDs acceptable under the Indiana Voter ID Law. Information on this topic has not been compiled by the Election Division.

Acceptable IDs could be produced by a variety of federal and state offices within Indiana. The state Bureau of Motor Vehicles can be contacted at 100 North Senate Avenue Room N440, 100 N Senate Avenue, Indianapolis, IN 46204 for information regarding the number of BMV facilities that produce such IDs. The United States Postal Service may have information regarding the number of postal service branch offices which assist with the production of passports by the federal government. State-funded colleges and universities located within Indiana may have information regarding the number of locations at which IDs acceptable under the Indiana Voter ID law are produced.

2. How much does it cost to get a copy of a birth certificate in the State of Indiana? (please include record search fees in your answer)

Response: Information regarding the cost to get a birth certificate in the State of Indiana (including record search fees) has not been compiled by the Election Division.

The Indiana State Department of Health can provide information regarding the current costs for getting a copy of a birth certificate in Indiana, and any record search fees. The State Department of Health can be contacted at Vital Records, 2 North Meridian St, LL, Indianapolis, IN 46204.

3. How many facilities in the State of Indiana provide copies of birth certificates? Can persons request a copy of their birth certificate from any of those facilities, or only from the State Department of Health or county of their birth?

Response: I do not know how many facilities in the State of Indiana provide copies of birth certificates, or whether persons can request a copy of their birth certificates from any of those facilities, or only from the State Department of Health or county of their birth. Information regarding the topic has not been compiled by the Election Division.

The Indiana State Department of Health can provide information regarding the number of facilities that provide copies of birth certificates, and whether a person can request a copy

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of their birth certificate from any of those facilities, or only from the State Department of Health or county of their birth. The State Department of Health can be contacted at Vital Records, 2 North Meridian St, LL, Indianapolis, IN 46204.

4. According to the website of the Indiana State Department of Health (http://indiana.gov/isdh/bdcertifs/faq.htm#VitalFAQ6), a person must provide 1 to 2 forms of identification to purchase a birth certificate. Is this still accurate? If so, how can a person *without* an ID acceptable under the Indiana Voter ID Law (who needs a birth certificate to *get* an ID acceptable under the Indiana Voter ID Law) purchase a copy of the birth certificate?

Response: I do not know whether the information set forth on the Indiana State Department of Health website regarding this topic was (or is still) accurate. Information regarding the topic has not been compiled by the Election Division.

The Indiana State Department of Health can provide information regarding the accuracy of the information on its website, and can be contacted at Vital Records, 2 North Meridian St, Indianapolis, IN 46204.

5. According to the website of the Indiana State Department of Health, http://indiana.gov/isdh/bdcertifs/bdcert.html, if persons are not within traveling distance of the health department in the county of their birth, they must order a birth certificate from the Indiana State Department of Health, and can do so only in person (in Indianapolis), online, or over the phone. If persons choose to travel to Indianapolis, they will incur those travel costs, and can only get a birth certificate Monday-Friday from 9a.m.-2p.m. If individuals cannot travel in person to Indianapolis, they can order the birth certificate by mail, but can pay for the birth certificate only by credit card, check, or money order. If individuals do not have a credit card, they must send a check or money order by mail, adding 15 to 30 days to the turnaround time for receiving the birth certificate, and adding postage and a trip to the post office to the total cost of the birth certificate. If individuals do not have a checking account, they must also travel to a currency exchange or similar business to get a money order.

a. How much is a person without a bank account likely to pay to get a money order?

b. Based on the information on your website, it seems that an individual ordering a birth certificate without a credit card or checking account is likely to pay a total of at least $12.42

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for the birth certificate ($10 for the certificate search and first copy, $0.42 for postage, an estimated $2 for a money order), and will have to make at least one trip to and from the currency exchange and post office. For individuals who are elderly, disabled, and/or poor, won't the costs and logistics of this process act as a deterrent to obtaining appropriate ID under the Indiana Voter ID act?

Response: I do not know whether the information set forth on the Indiana State Department of Health website regarding this topic (as characterized in the main paragraph of this question) is accurate. Information regarding the topic has not been compiled by the Election Division.

With regard to subsection (a) of this question, I do not know how much as person without a bank account is likely to pay to get a money order. Information regarding this topic has not been compiled by the Election Division.

I do not know whether the analysis set forth in subsection (b) of this question regarding the cost for obtaining a birth certificate is accurate. The Indiana State Department of Health can provide information regarding the accuracy of the information on its website, and the analysis of costs set forth in subsection (b), and can be contacted at Vital Records, 2 North Meridian St, Indianapolis, IN 46204.

With regard to costs and logistics of the process acting as a deterrent to obtaining "appropriate ID" under the Indiana Voter ID Act, it is impossible for me as the Co-Director of the Indiana Election Division to determine what *will* happen.

Likewise, there are "costs and logistics" associated with every part of the election process, such as voter registration, which may require a 42 cent stamp or a trip to a state or county agency

With regard to what has already happened, I would refer to the State of Indiana's brief in Crawford v. Marion County Election Board, which noted:

"The only published study of Indiana voter turnout since implementation of the Voter ID Law shows *no* negative disparate impact on the groups studied by Brace. In his November 2007 study, Jeffrey Milyo of the Truman School of Public Affairs at the University of Missouri reports that "[o]verall, voter turnout in Indiana *increased* about two percentage points" after photo identification." Jeffrey Milyo, Inst. of Pub. Policy, Report No. 10-2007, *The Effects of Photographic Identification on Voter Turnout in Indiana: A County-Level Analysis*, at 1 (Nov. 2007) (emphasis added)..."Furthermore, "there is no consistent evidence that counties that have higher percentages of minority, poor, elderly or less-educated population suffer any reduction in voter turnout relative to other counties." *Id.* at Abstract. Milyo concludes: "The only consistent and frequently significant effect of voter ID that I find is a positive effect on turnout in counties with a greater percentage of Democrat leaning voters." *Id.* at 1.

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6. Can persons born outside the State of Indiana, obtain a copy of their birth certificate from the State of Indiana?

Response: I do not know whether persons born outside of the State of Indiana can obtain a copy of their birth certificate from the State of Indiana. Information regarding the topic has not been compiled by the Election Division.

7. According to your written testimony, "...an Indiana voter who is 'indigent and unable to obtain proof of identification without payment of a fee' may cast a provisional ballot at the polls without presenting a voter ID. The voter may then personally appear before the county election board by noon, 10 days after election day and execute an affidavit to claim this exemption...[T]he voter's affidavit of indigency is not a continuing exemption, but must be claimed in later elections if it still applies to the voter."

a. How many elections were there in Indiana in the years 2006 and 2007 (please include local, state, and national elections)? How many will there be in 2008? 2009?

Response: In 2006, a primary election was conducted in each precinct on May 2, and a general election was conducted in each precinct on November 7. A special election for a single school district was conducted on January 18.

In 2007, a municipal election was conducted on November 6, but only within those cities and towns which had contested elections for an office. A municipal primary was conducted on May 8, but only within those cities and larger towns which were required to conduct a primary, and in which there was a contested nomination. The specific cities and towns in which a municipal primary or municipal election was held are listed at http://www.in.gov/sos/elections/elections/index.html

In 2008, there was a primary election conducted in each precinct on May 6, and a general election will be conducted in each precinct on November 4. A special election was conducted in the 7th Congressional District on March 11, and another special election in one town on February 19.

In 2009, no elections are scheduled in Indiana, with the following exceptions: if contested, elections will be held in two towns on November 3 (the towns of Cambridge City and Montezuma), and a special election will be held in one town on March 3 (the Town of Vernon).

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b. If an indigent voter wanted to vote in each of those elections, how many times in *each* of those years would an indigent voter need to travel to and from the county election board to file an affidavit of indigent status?

Response: In 2006 and 2008, a voter claiming indigent status would be required to travel twice to and from the county election board office to file the affidavit.

In 2007, if this voter happened to live in a city or town which conducted both a municipal primary and a municipal election, then the voter would be required to travel twice to and from the county election board to file the affidavit.

If the voter did not live in a city or town, or lived in a city or town which did not conduct either a municipal primary or a municipal election, then the voter would not be required to travel to and from the county election board office during that year.

In 2009, it is not certain that any election will be held, even within the three towns where an election would only be required if contested.

c. Is that in addition to the times the indigent voter would need to travel to and from the polls?

Response: If an indigent voter chose to cast an absentee ballot in the office of the county election board before Election Day, then the voter would not be required to travel to the polls at all. If the voter chose to do so, the voter could cast an absentee ballot at that office during any of the 29 days before Election Day, and at the same time execute the affidavit claiming indigency.

8. The evidence in the Supreme Court case, Crawford v. Marion County Board of Elections, showed that 43,000 Indiana citizens lack voter ID. In fact, even some military veterans are affected, because their U.S. - issued photo IDs do not have an expiration date, and therefore are not sufficient to allow them to vote. Has the state made any effort to identify citizens who may not have photo IDs, particularly persons in rural areas, the elderly, and persons with disabilities, in order to help them obtain the IDs they need to vote? If so please describe those efforts in detail.

Response: To clarify one point, I believe that the evidence discussed above did not apply to individuals who are "citizens", but instead compared the Bureau of Motor Vehicles data with Bureau of the Census data concerning voting age population.

With regard to the efforts taken by the State to identify persons in rural areas, the elderly, and persons with disabilities, in order to help them obtain the IDs they need to vote, following the enactment of the Voter ID law in 2005, the Secretary of State convened a task force with representatives from groups who supported, opposed, or simply administered the law, to develop strategies to identify citizens who may not have photo ID. These

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groups included members of the Indiana House of Representatives Democratic Caucus and Republican Caucus, the Indiana Senate Democratic Caucus and Republican Caucus, county and state election administrators, Indianapolis City-County government, news media, the NAACP, the League of Women Voters of Indiana, the Military Officers Association of America, Indiana Protection and Advocacy Services, the American Association of Retired Persons, the Purdue School of Nursing, and the Indianapolis Private Industry Council.

The recommendations of this task force were instrumental in identifying the populations who might lack required photo ID, and in developing strategies to assist individuals in obtaining ID.

9. How many provisional ballots were issued during the May 2008 Indiana primary to persons who lacked the required photo identification to vote?

Response: I do not currently know the precise number of provisional ballots cast by persons who lacked the required photo identification to vote. Indiana law requires that county election officials report the total number of provisional ballots cast for *any reason*, which can include not just photo identification issues, but a challenge to a voter based on residency, for example.

The total number of provisional ballots cast for any reason during the May 2008 primary (as reported by the county election boards) was 2,806. This number is significantly fewer than the estimated 3,500 provisional ballots cast based on preliminary surveys referenced in my written testimony at the May 20, 2008 Committee hearing. This number also reflects a continued downward trend in the number of provisional ballots cast in Indiana elections (compared to 5,862 in November 2004, and 3,873 in November 2006).

Indiana law also requires county election officials forward to the Secretary of State a copy of all affidavits resulting in the issuance of a provisional ballot, but does not prescribe a deadline for counties to do so. These affidavits set forth the reason given for a challenge, such as a person not presenting required photo identification. Although some counties have forwarded these copies as of the date of this response, some counties have not yet done so.

How many of those provisional ballots were ultimately counted (i.e. the number of ballots cast by individuals who returned within 10 days with ID to have their vote count)?

Response: I do not currently know the precise number of the provisional ballots (cast by persons who lacked the required photo identification) which were ultimately counted.

Indiana law requires that county election officials report the total number of provisional ballots counted, but this number includes provisional ballots cast *for any reason*, such as a challenge to a voter based on residency, for example. The total number of provisional ballots reported by the county election boards cast in the May 2008 primary which were ultimately counted was 782.

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10. Does the state keep a record of the number of individuals who leave the polling place without casting a ballot after learning that photo identification is required to vote? Is this information recorded by any of the local entities that administer elections?

Response: No, this information is not recorded by the state, by a county, or by polling place officials administering elections.

An individual can choose to leave a polling place for any number of reasons, such as running out of time to both vote and complete other activities; not wishing to wait in a line; realizing that the individual is in fact ineligible to vote at that precinct; or, in a primary, declining to ask for a specific political party's ballot.

Unless an individual makes a clear, unambiguous statement to polling officials regarding the reason why the individual is leaving the polls, there would be no way to accurately record this information.

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Protecting the Constitutional Right to Vote for All Americans

May 20, 2008

Senator Kohl's written questions to J. Bradley King:

1. As Chairman of the Aging Committee, I am concerned about the impact of Indiana's photo identification law on older voters. As you know, many older and elderly voters are less likely than other voters to have the identification required by the photo ID law. In my home state of Wisconsin, 23 percent of people age 65 and older – nearly 200,000 older voters – do not have a driver's license or other photo ID. Making matters worse, many older voters are not able to produce, or would have to undertake burdensome and prohibitive efforts to obtain, the documents required for an appropriate photo ID. In addition, they may lack the mobility to travel to the Bureau of Motor Vehicles to obtain a photo ID or to their county seat to affect the paperwork necessary to have their provisional ballot, cast without a photo ID, counted.

a. How many elderly voters or voters with disabilities live in state-licensed facilities without polling places?

Response: I do not know how many elderly voters or voters with disabilities live in state-licensed facilities without polling place. Information on this topic has not been compiled by the Election Division.

b. Prior to enacting the law, did you determine the number of Indiana voters over age 65 who lack photo ID? Did you study the impact the law would have on these voters?

Response: The Election Division's role is to assist with the administration of elections, not to perform the role of a legislator or policy maker. If, before enacting this legislation, the legislature obtained information or studied the impact of this law regarding elderly voters, I have no knowledge regarding this.

c. Since enacting the law, have you surveyed older voters to determine how many of people over age 65 have obtained a photo ID needed to vote?

Response: The Election Division's role is to assist with the administration of elections, and not to perform the role of a legislator or policy maker. If members of the legislature or other state agencies surveyed older voters to obtain this information, I have no knowledge regarding this.

d. What efforts have you taken to encourage or assist older voters in obtaining photo ID required to vote?

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Response: The Election Division's role is to assist with the administration of elections. However, other state agencies, particularly the Secretary of State, have made efforts to encourage and assist older voters in obtaining photo ID required to vote. Following the enactment of the Indiana Voter ID Law in 2005, the Secretary of State convened a task force of representatives of groups who supported or opposed the law to assist in developing strategies to identify and assist voters who needed assistance in obtaining photo IDs. This panel included representatives of the American Association of Retired Persons and the Indiana Protection and Advocacy Services. I personally served as a member of this task force. As a result of the recommendations of this panel, the State has expended more than $1.25 million for outreach to all voters, including older voters, to provide information regarding the requirements of the voter ID law.

e. What efforts have you undertaken to assist elderly voters to travel to their county seat to affect the necessary paperwork to have their provisional ballot counted?

Response: The Election Division's role is to assist with the administration of elections by county election officials. I have no knowledge of any effort undertaken to assist elderly voters to travel to their county seat to affect necessary paperwork to have their provisional ballot counted. Traditionally, political parties and candidates have provided assistance to voters by providing transportation to the polls on Election Day, but I have no knowledge as to whether parties or candidates continue to offer this assistance to provisional ballot voters.

2. Given the potential difficulties they may have in obtaining the appropriate photo ID required to vote, Indiana's law has attempted to accommodate older voters by permitting anyone age 65 and older to vote by absentee ballot without having to show a photo ID. However, allegations have been raised that call into question the effectiveness and accuracy of absentee ballots in Indiana. Briefs submitted in support of *Crawford* allege that Indiana's absentee ballots have not always been counted even though they have been submitted in a timely manner. In Indiana's recent primary, voters at a nursing home received incorrect absentee ballots – residents who had requested Democratic ballots received Republican ballots, and vice-versa. If this is the case, I am concerned that older voters who are forced by Indiana's photo ID law to absentee vote are being disenfranchised.

a. Do the above allegations undermine your absentee ballot "exemption" for older voters?

Response: No.

Of course, no election conducted by human beings will ever be perfect. Some errors in the distribution of ballots, whether at the polls or through the absentee process, are inevitable. These problems can be reduced by improving poll worker and election official

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training. An imperfect election process is not a sufficient reason to remove safeguards which both increase voter confidence and prevent election fraud.

Some absentee ballots which are "submitted in a timely manner" should, nonetheless, not be counted.

The extensive absentee ballot fraud that occurred in Indiana's May 2003 East Chicago primary election, which has since resulted in almost 50 individuals being convicted of election crimes, provides an example of where timely received absentee ballots could (or should) have been rejected as invalid.

b. How many absentee ballots from the most recent Indiana primary were counted prior to or an election day?

Response: Indiana law does not permit absentee ballots to be counted *prior to* Election Day.

According to information supplied by county election officials, 185,692 absentee ballots were counted on Election Day or during the ten days following the most recent Indiana Primary. This number equals 11% of the total number of ballots cast at the May 2008 Indiana Primary.

c. Are you aware of any recent incidents in Indiana in which absentee ballots were deemed invalid or otherwise not counted for reasons unrelated to any fault of the voter? Please describe these incidents.

Response: Indiana law does not require that incidents in which absentee ballots were deemed invalid or otherwise not counted for reasons unrelated to any fault of the voter be reported to the Election Division. In the absence of any systemic process, the Election Division only receives anecdotal information regarding issues regarding the counting of absentee ballots.

d. What specific actions are you taking to address these concerns about absentee voting?

Response: The Election Division has worked with the Office of the Secretary of State to assist with the development of training products and publications for county election administrators and precinct poll workers to provide information regarding the laws applicable to absentee ballots.

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Questions for the Record to J. Bradley King

From Senator Charles E. Schumer

May 27, 2008

1. Are you aware of any election in Indiana where the outcome was affected by in-person voter fraud?

Response: Yes, the May 2003 East Chicago primary election provided several examples of one type of "in-person voter fraud". Several individuals have been charged with voting in person at a precinct where the person no longer resided, and was therefore ineligible to vote in the East Chicago election.

Justin E. Walsh documented an earlier Indiana election which received national attention as the result of in-person vote fraud and the outcome was affected. In *The Centennial History of the Indiana General Assembly, 1816-1978,* at pages 227-229, Walsh writes:

"By the 1880's, the national parties poured... thousands of dollars into Indiana as instances of bribery, importation of voters, and fraud multiplied. The climax came with the presidential election of 1888, when Democrat Grover Cleveland ran against Indiana's own Benjamin Harrison. In that year an attempt by the Republican national committee to purchase the state's electoral votes for Harrison drew national attention to Indiana's corrupt election practices.

On October 31, about a week before the election, the Democratic Indianapolis *Sentinel* published a typewritten letter bearing the signature of William W. Dudley, national chairman of the Republican party. The letter... offered detailed instructions on how to get enough "floaters" –*i.e.*, voters imported from abroad – voted in Indiana to ensure that the Republican ticket carried the state. On election day, the Democrats carried both houses of the legislature by large majorities but Harrison and Republican gubernatorial candidate Alvin P. Hovey each won by less than 2,400 votes out of a total of more than 524,000 votes.

Ballot reform became mandatory when the Dudley letter focused national attention on Indiana...

* * *

[T]he buying of votes by both parties during the Cleveland-Harrison campaign of 1888 was so open and widespread as to disgrace the state. In 1889 outgoing Democratic Governor Isaac P. Gray spoke of the 'imperative necessity for a revision of the election laws' while incoming Republican Governor Alvin P. Hovey felt that 'we cannot shut our eyes' to charges of fraud and corruption that accompanied every election. Democrats controlled the General Assembly, but both parties were ready to act. Electoral reform bills were introduced in each house and the act passed that made Indiana the second state to adopt a version of the secret ballot developed in Australia earlier in the decade. Thus, passage of 'An Act Concerning Elections' made Indiana a pioneer in election reform. By 1892, thirty-five of forty-four states had adopted some form of the Australian ballot.

* * *

The immediate result was restoration of popular confidence in the integrity of Indiana's election process..."

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2. Are you aware of any case of in-person voter fraud that has been successfully prosecuted in Indiana?

Response:

At least one individual has been convicted of the type of "in-person voter fraud" that occurred in the East Chicago 2003 election: Raymond Carrillo, who was a health inspector with the City of East Chicago, pled guilty to one count of voting in a precinct in which he did not reside, a Class D felony.

The *New York Times*, on page 10 of its January 22, 1915 issue, reported that:

"...[United States District Attorney] Karch is planning his campaign [for election crime prosecutions in Illinois] along the lines of that which resulted so successfully in Terre Haute, Ind., and is receiving assistance from the Federal authorities in Indianapolis. Four affidavits revealing the system of vote fraud in the Eighteenth Illinois Congressional District, which were taken by District Attorney Frank C. Dailey of Indianapolis from certain of the eighty-one men who pleaded guilty to Terre Haute corruption, have been received at Danville. One, it is declared, was made by 'Kid' Kizer , a Terre Haute saloonkeeper. Kizer formerly lived in Paris, Ill. , and his saloon in Terre Haute was used as the Indiana rendezvous for thirty-one 'floaters,' alleged to have crossed the State line from Paris and voted several times in the Indiana city...."

I would also quote the words of Justice Stevens in his opinion in *Crawford v. Marion County Election Board:*

"The only kind of voter fraud that [the Indiana Voter ID law] addresses is in-person voter impersonation at polling places. The record contains no evidence of any such fraud actually occurring in Indiana at any time in its history. Moreover, petitioners argue that provisions of the Indiana Criminal Code punishing such conduct as a felony provide adequate protection against the risk that such conduct will occur in the future. It remains true, however, that flagrant examples of such fraud in other parts of the country have been documented throughout this Nation's history by respected historians and journalists... that occasional examples have surfaced in recent years... and that Indiana's own experience with fraudulent voting in the 2003 Democratic primary for East Chicago Mayor... though perpetrated using absentee ballots and not in-person fraud—demonstrate that not only is the risk of voter fraud real but that it could affect the outcome of a close election."

3. The nonpartisan Brennan Center did an analysis of 95 voter fraud cases nationwide brought by the Justice Department between 2002 and 2005, and concluded that not one of them was a case of in-person fraud that could have been stopped by a photo ID rule. Do you have any reason to disagree with this conclusion?

Response: I cannot evaluate whether the Brennan Center is in fact "nonpartisan" or whether its analysis in this case was objective, rather than result-oriented. Therefore, I cannot assume that its conclusions are correct.

4. Under Indiana's law, indigent voters are supposed to cast a provisional ballot and then travel to the county seat within 10 days to file an affidavit swearing that the voter is indigent. A county seat could be many miles from the impoverished voter's polling place.

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a. Why couldn't voters without an ID complete an affidavit of indigency right at the polling place?

Response: I have no knowledge regarding the actual "legislative intent" regarding this particular provision of the Indiana Voter ID Law. However, the implementation of any new election procedure requires extensive poll worker training, and can result in longer lines, delay, or confusion at the polls.

Administering the affidavit of indigency procedure at a centralized location (such as a county election board office), after Election Day, rather than as part of the sometimes hurried and intense activity in the polls, may reduce errors in the application of the law, and result in more consistent, uniform application of the requirement.

5. You have said that the voter ID law did not have a measurable impact on voter turnout, based on the small numbers of voters who were forced to turn in provisional ballots, but isn't it true that you do not know how many voters did not show up on Election Day at all, because they did not have the right ID and maybe did not have the time or resources to get one?

Response: I have no knowledge regarding the number of voters who did not show up on Election Day because they did not have a valid photo ID, and chose not to avail themselves of the opportunity to either obtain a free photo ID or to vote absentee, or who chose not to appear at the polls for any other reason.

6. There was at least one report of polling place workers giving voters the wrong information about the ID requirement, but there may have been many more instances that were not caught.

a. Did the Division of Elections do any spot checks to make sure that poll workers were correctly applying the new law, and voters were not being wrongly turned away?

Response: Under Indiana law, none of the Election Division's ten employees are authorized to enter a polling place to observe the conduct of poll workers. However, the Secretary of State, as chief election officer, was authorized to enter polling places, and designated several individuals as deputy Secretaries of State for this purpose. These individuals did make spot checks of several polling places on Election Day, and did not observe any incorrect applications of the voter ID law.

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June 16, 2008

VIA E-MAIL AND U.S. MAIL

The Honorable Patrick Leahy
Chairman
Senate Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Response to Written Questions

Dear Senator Leahy:

Please accept the following response(s) to written questions from Sen. Charles Schumer (D-NY). My office had computer issues on Friday, June 13, 2008 so I respectfully request that you accept this submission as timely filed even though not submitted until today.

1. **Do you support the idea that voter ID laws should be combined with steps to boost registration and turnout in order to counteract any disenfranchising effect?**

Response: The processes serve two different purposes. Registration and voter identification laws act as a means of assuring that those who are eligible to vote are properly registered and allowed to vote and to guard against those who subvert the integrity of the voting process through illegal or improper registration programs. Voter turnout efforts are the responsibility of the candidates and political parties, must be funded through federally regulated dollars and, while governments can and should encourage citizens to participate in the election process, the primary responsibility of the government is to manage election mechanisms that are fair and protect the integrity of the voting process.

2. Do you support allowing voters to register on Election Day?

Response: No. Because, as indicated above, same day voter registration denies the election administration process to perform its responsibility of assuring that only eligible voters are allowed to participate in the election.

3. A common issue for voters is that many people do not realize that you are supposed to change your registration if you move to a different voting precinct, even within the same town. Do you support making registration portable within each state, so that voters don't have to register if they just move one block over?

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The Honorable Patrick Leahy
June 16, 2008
Page 2

Response: Absolutely not. Voting is a sacred trust and responsibility of American citizenship to which every voter must give due care and attention to comply with the simple requirements of voting where the person is registered to vote.

4. Another way to encourage registration is to sign people up automatically when they turn 18, like we do for the Selective Service. Do you support automatic registration for eligible citizens when they turn 18?

Response: America's voting system should not be mandatory. It is precious right and a privilege. Automatic registration is one more effort of special interest groups to pad the voter registration rolls making it ever more difficult to assure that only those who are eligible to vote are actually on the voting rolls. I further believe that the voting rolls should be purged and cleaned on a regular basis to assist with proper election administration.

5. Do you support a reasonable transition phase to any new voter ID law, to give voters a fair warning by letting them keep using a signature instead of a photo ID for the first few elections under a new law?

Response: No. It is my position that a person should be required to show a voter identification card or some other voter identification *every* time the voter appears to vote. Absentee balloting and mail-in balloting should, likewise, have mechanisms in place to protect against voter fraud.

6. Would you support federal legislation providing that any state that institutes a voter ID requirement must also adopt ballot access protections such as mobile registration and same-day registration?

Response: No. I do not support federal legislation in this area. State legislation in this area should address the totality of the voting process and assure the integrity of the election administration process in every respect. Mobile registration should be allowed until the closing of the voter rolls for purposes of preparation of the election day process. I do not support same-day registration because it creates opportunities for inadequate election day administration to protect the integrity of the voting process.

7. In your opinion, how many votes is it acceptable to suppress, in order to stop one potential fraudulent vote?

Response: This is a false choice.

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Please contact me if you have further questions. Thank you.

Sincerely,

/s/ Cleta Mitchell

Cleta Mitchell, Esq.

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Responses of John Payton

President and Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc.

To Written Questions By
Members of the United States Senate Committee on the Judiciary

Legislative Hearing on
"Protecting the Constitutional Right to Vote for all Americans"
May 24, 2008

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Questions of Chairman Patrick Leahy

1a) Do you believe the legal standard in the *Crawford* decision is separate and distinct from the legal standard applicable in determining if a voting change enacted in a covered jurisdiction would violate Section 5 of the Voting Rights Act?

The Supreme Court's ruling in *Crawford v. Marion County Election Board* is distinct from the question of whether proposed voter identification laws are entitled to preclearance under Section 5 of the Voting Rights Act of 1965. Indeed, there are notable differences between the analysis conducted by the Supreme Court in *Crawford* and the analysis conducted under the Section 5 preclearance provision.

First, under Section 5, a covered jurisdiction (or the submitting official) bears the burden of proof. Thus, those officials responsible for adopting the proposed law would be charged with the responsibility of providing certain evidence regarding how the proposed identification requirement compares to the status quo. Second, the legal standard under Section 5 is wholly distinct from the analysis conducted by the *Crawford* Court. In particular, under Section 5, the submitting official must show that any proposed identification requirement would not have a discriminatory effect and was adopted free from discriminatory purpose.[1] Third, Section 5 preclearance determinations turn, in part, upon a comparison of the proposed and existing practices or laws. Thus, a proposed identification requirement would not be entitled to preclearance if it is determined that it would worsen the position of minority voters relative to their position under the existing law.

That is why it is important that the U.S. Department of Justice (DOJ) aggressively enforce Section 5 in this area to ensure that any proposed identification laws are carefully examined to determine whether they worsen the position of minority voters. Given that ongoing voting discrimination continues to be a problem in many of the covered jurisdictions, as evidenced by DOJ objections, successful Section 2 suits and other sources, there is a strong possibility that photo identification requirements may make it more difficult for voters to cast their ballots on Election Day. The extent of the burden imposed by these laws will vary in each jurisdiction and thus, DOJ must conduct a careful case-by-case analysis of these laws when making a preclearance determination in this context.

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[1] In determining whether a particular voting change was adopted without a discriminatory purpose or an intent to retrogress, a starting point for such analysis is provided by *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). There, the Supreme Court identified the analytical structure for determining whether there is sufficient circumstantial evidence of racially discriminatory intent. This approach requires an inquiry into: (1) the impact of the decision; (2) the historical background of the decision; (3) the sequence of events leading up to the decision; (4) whether the challenged decision departs, either procedurally or substantively, from the normal practice; and (5) contemporaneous statements and viewpoints held by the decision-makers. *Id.* at 266-68.

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1b) Are you concerned that restrictive laws that condition the right to vote on the ability to produce photo identification are more likely to harm voters if implemented in jurisdictions with substantial numbers of minority voters or in an area with a long history of voting discrimination?

The evidence reveals that African Americans and other racial minorities are least likely to possess the kind of government-issued identification generally required in those jurisdictions that have adopted these restrictive laws. *See* Written Testimony of John Payton, Director Counsel, NAACP Legal Defense and Educational Fund, Inc., "Protecting the Constitutional Right to Vote for all Americans", U.S. Senate Committee on the Judiciary at 3-4 (May 24, 2008). Thus, it follows that photo identification laws are likely to have very pronounced effects in those jurisdictions with substantial numbers of racial minorities. Many of these are jurisdictions covered under Section 5. Thus, any adoption of or change to an existing photo identification requirement would be subject to federal preclearance review. As described above, jurisdictions bear the burden of proving that the imposition of any photo identification requirement would not retrogress minority voting strength. Jurisdictions must also prove the absence of a discriminatory purpose. It is critical that DOJ conduct a very careful case-by-case examination of any proposed identification requirement to ensure that jurisdictions meet their substantial burden in every instance.

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Questions from Senator Edward M. Kennedy

1. Do you agree that a voter photo ID requirement can act as a poll tax? How have voter photo ID requirements impacted African Americans?

Restrictive photo identification measures bear an uncanny resemblance to the infamous poll taxes which had long served as a device for limiting African-American access to the ballot box. By requiring individuals to pay fees to obtain the underlying documents needed to apply for and secure government-issued identification, restrictive identification measures function in a remarkably similar manner to poll taxes that have previously been found unconstitutional by the Supreme Court. Given recent evidence showing that African Americans are least likely to possess government-issued photo identification relative to whites, photo identification requirements significantly burden Black voter access to the polls. The *Crawford* Court's lead plurality opinion makes clear that the holding is limited to the facts of this particular case. However, future challenges to mandatory, photo identification laws are likely to rely, in part, on the Twenty-fourth Amendment, which prohibits the imposition of poll taxes, as a basis to both contest the costs and burdens associated with these laws and highlight the unfair racial impact.

In *Harman v. Forssenius*, 380 U.S. 528 (1965), the Supreme Court struck down a law that required voters in federal elections to either pay the customary poll taxes as required for state elections or file a certificate of residence. The Court found the scheme unconstitutional under the Twenty-fourth Amendment after determining that the requirement to file a certificate of residence imposed a burden upon those who refused to surrender their right to vote in federal elections without paying the poll tax. 380 U.S. at 540-41. The Court observed that "[C]onstitutional rights would be of little value if they could be ... indirectly denied," or "manipulated out of existence." *Id.* at 540 (international citations omitted). In the Court's view, the Twenty-fourth Amendment, like the Fifteenth Amendment, "nullifies sophisticated as well as simple-minded modes" of impairing the right to vote and prohibits "onerous procedural requirements which effectively handicap exercise of the franchise." *Id.*

Similarly, in *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966), the Supreme Court struck down Virginia's poll tax requirement for state elections under the Equal Protection Clause. The Court observed that:

> Wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process. Lines drawn on the basis of wealth or property, like those of race, are traditionally disfavored. To introduce wealth or payment of a fee as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor. The degree of the discrimination is irrelevant. In this context - that is, as a condition of obtaining a ballot - the requirement of fee paying causes an "invidious" discrimination that runs afoul of the Equal Protection Clause.

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383 U.S. at 668. In light of these precedents, it is clear that there are notable similarities between poll taxes and voter identification requirements. Future challenges may rely upon these precedents to help establish the costs and burdens associated with these laws, which may make the analogous relationship between identification laws and poll taxes more readily apparent for courts.[2] In addition, Section 10 of the Voting Rights Act includes a rarely-cited Congressional declaration "that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition to voting." *See* § 10, 42 U.S.C.A. § 1973h. This provision, which authorizes the Attorney General to institute actions to set aside such taxes, may also provide additional grounds for contesting the adoption of any future identification requirement that unfairly burdens the rights of voters.

2. There's been a great deal of talk about voter fraud at the polls – but no real evidence that it exists. Can you describe for the Committee the kinds of real-world problems that you have seen in the area of voting rights? In particular, what voting practices have served as the greatest barriers to minority voters?

Minority voters continue to face significant barriers that limit their ability to equally and meaningfully exercise the right to vote. For example, African-American and other minority voters continue to encounter significant levels of intimidation aimed at discouraging or denying their access to the ballot box on Election Day. *See* Joint Statement, MALDEF and NAACP LDF Uncover Voter Intimidation Attempts Uncovered During 2006 Election Cycle (2006).[3] In addition, a number of states, including Louisiana and Mississippi, continue to evade their obligations under the National Voter Registration Act by failing to make registration opportunities available to those seeking services at local government agencies. Other states continue to maintain electoral structures, practices and procedures that dilute minority voting strength in violation of Section 2 of the Voting Rights Act. Moreover, covered jurisdictions continue to adopt discriminatory voting changes as evidenced by objections interposed by the U.S. Department of Justice following their Section 5 preclearance examination of those changes. Those objections are described in greater detail below. Overall, these real-world problems make clear that ongoing voting discrimination persists and stands as a threat to the goal of meaningful political equality.

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[2] *Compare Common Cause/Ga. v. Billups (Billups I)*, 406 F. Supp. 2d 1326, 1366-70 (N.D. Ga. 2005) (finding Georgia's photo-identification requirement to be an unconstitutional poll tax). *But see Common Cause/Ga. v. Billups (Billups II)*, 439 F. Supp. 2d 1294, 1354-55 (N.D. Ga. 2006) (finding Georgia's revised photo-identification requirement not to be a poll tax).

[3] Joint Statement, *available at* http://www.naacpldf.org/content/pdf/barriers_to_voting/Voter_Intimidation_Statement_MALDEF_LDF.pdf

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3. Has your organization seen evidence that discrimination remains a significant barrier to voting for minority communities?

During the 2006 reauthorization of Section 5, Congress developed a record showing significant evidence of ongoing discrimination in the covered jurisdictions. This evidence covered the time between the previous 1982 renewal and 2006. DOJ objections interposed between proposed voting changes provided a significant source of this evidence. Likewise, since the July 2006 reauthorization, DOJ has continued to interpose a number of objections to voting changes, which provides further evidence of the continuing need for the protections afforded by the Voting Rights Act, and, in particular, the Act's Section 5 preclearance provision.

On September 12, 2006, DOJ interposed a purpose-based objection to a proposed voting change that sought to reassign Henry Cook, an African American and Chair of the Board of Education, from District No. 5 to District No. 4 in Randolph County, Georgia.[4] *See* Attachment A. Analyzing the submission under the framework set forth by the Court in *Arlington Heights*, DOJ determined that the County failed to meets its burden of proving the absence of a discriminatory purpose. DOJ found the sequence of events leading up to the adoption of the proposed change to be highly unusual, noting that redistricting for the Randolph County Board of Education had been conducted following the 2000 Census. Despite this, DOJ found that the all-white, three-member Randolph County Board of Registrars met in a special meeting called for the sole purpose of determining whether to change the voter registration status of Mr. Cook and his family members from District 5 (70% Black) to neighboring District 4 (70% white). DOJ also observed that the Board "resurrected the issue of Mr. Cook's residency after it had been settled for three years, without any intervening change in fact or law, and without notifying Mr. Cook that it was doing so." *Id.* at 2.

On June 25, 2007, DOJ interposed an objection to a proposed change in the method of election for the City Council in Fayetteville, North Carolina.[5] *See* Attachment B. Specifically, the jurisdiction sought to move from nine single-member districts to six single-member districts, with three at-large seats. DOJ concluded that under the proposed plan, African-American voters would have substantially less than certain prospects of electing candidates of their choice to four of the nine positions. In particular, DOJ noted and the City's submission itself acknowledged that African-American voters would have to depend on the uncertain prospect of winning one at-large seat in order to elect candidates of their choice to four positions. Given the existence of racially polarized voting and the mixed record of success of African-American voters in at-large contests compared to their uniform success in single-member district contests, DOJ concluded that the jurisdiction failed to meet its burden of establishing the absence of a retrogressive effect.

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[4] Letter from Wan J. Kim, Assistant Attorney Gen., to Tommy Coleman, Esq., Hodges, Erwin, Hedrick & Coleman (Sept. 12, 2006).

[5] Letter from Wan J. Kim, Assistant Attorney Gen., to Michael Crowell, Esq., Tharrington Smith (June 25, 2007).

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On December 26, 2007, DOJ interposed an objection to the State of Michigan's proposed closure of a Secretary of State branch office in Buena Vista Township, which has a Black population of 56 percent and a Latino population of 10 percent.[6] *See* Attachment C. In general, these branch offices provide voter registration services and issue Michigan drivers licenses and personal identification cards. DOJ determined that the Buena Vista office closure would impair the ability of minorities to register to vote given that Secretary of State branch offices are the primary source of voter registrations for Buena Vista residents. In particular, DOJ found that since 2002, Secretary of State branches accounted for 79.13 percent of total registrations for the Township, approximately four times the number of registrations of all other sources combined. These numbers demonstrate that closure of the Buena Vista office, which is the only branch office in a majority-minority township in the County, will significantly lower minority registration. Finally, DOJ also observed that the closure of the Buena Vista office would make it more difficult for minorities to obtain the kind of photo identification required under the state's ID requirement (PA 71). The state's proposed closing of the Buena Vista branch office would have required minority voters to visit a branch office in a neighboring county to obtain qualifying ID.

On February 11, 2008, DOJ interposed a purpose-based objection to the proposed increase in the number of county commissioners from three to five and proposed redistricting plan for Charles Mix County, South Dakota. *See* Attachment D. DOJ determined that the historical background and the sequence of events leading to the proposed changes "support an inference of intentional retrogression of Native American voting strength by the county." *Id.* at 2. DOJ's investigation determined that the move to increase the size of the commission followed a June 2006 Democratic Primary election. The candidate who won that election would have become the first Native American County Commissioner in Charles Mix County because the general election was uncontested. DOJ also found evidence that county commissioners had made comments that evidence a racially discriminatory intent underlying the change.

4. I'm concerned that the rush to prevent voter fraud has led some states to remove legitimate voters from the rolls. Are you aware of instances in which overzealous or ill-informed efforts to purge the voter rolls may have removed legitimate voters from the registration lists?

Last year, the State of Louisiana implemented a voter registration cancellation program, which identified and removed from the rolls persons allegedly registered in two states. Under the state's proposed plan, persons identified as dual-registrants were mailed a notice indicating that they had 30 days to provide a certified statement showing that their out-of-state voter registration status had been cancelled. Those voters who did not respond within the 30 day period were sent a second notice indicating they would be permanently

[6] Letter from Grace Chung Becker, Acting Assistant Attorney Gen., to Brian DeBano & Christopher Thomas, Dir. of Elections (Dec. 26, 2007).

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removed from the Louisiana rolls in Louisiana if they did not appear in person at the appropriate Registrar's Office in Louisiana to show proof of why their registration should not be cancelled.

LDF submitted a Comment Letter to the Department of Justice regarding Louisiana's purge program, which, as of today, has not yet been precleared. Notably, four of the five states targeted under the purge program – Florida, Georgia, Tennessee, and Texas – are states where significant numbers of Hurricane Katrina evacuees remain displaced. This aspect of the state's proposed plan is particularly troubling, as it is widely known that that the vast majority of displaced persons are African American. Finally, the state's proposed purge program includes no "fail-safe" measures securing the voting rights of persons improperly removed from the rolls. Data provided in the state's submission illustrates that Louisiana's purge program is likely to have the greatest impact on African-American voters. LDF has urged the Attorney General to file a Section 5 enforcement action to reinstate voters who have been purged from the rolls and to interpose an objection to the state's proposed purge scheme.

5. We're very concerned that the Civil Rights Division should do everything possible to ensure that no one is disenfranchised because of discrimination this November. Are there particular issues you believe this Committee should focus on in our oversight of the Division?

As we approach the November 2008 general election cycle, it is important that the Civil Rights Division use its resources to investigate complaints arising out of the covered jurisdictions. So long as voting discrimination persists, there remains the potential for harassment and intimidation to emerge during the course of elections in our country. The Justice Department's federal observer program provides an effective oversight mechanism to help secure minority voters' access to the ballot box. We think it is important that the Division take seriously and investigate thoroughly any complaints concerning racial tension and harassment between now and the November election, with a particular focus on those jurisdictions certified for federal observer coverage under the Act. In addition, it is important for the Justice Department to focus on schemes used to discourage minority voter participation during elections including, but not limited to, aggressive challenges mounted by groups and/or individuals inside polling places, uneven application of voting rules, and the misapplication of restrictive voting measures such as the presentation of mandatory voter identification. In our view, the legacy of past and present voting discrimination demands that the Civil Rights Division prioritize the goal of full and equal access to the polls on Election Day for all voters in our country.

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U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

SEP 12 2006

Tommy Coleman, Esq.
Hodges, Erwin, Hedrick & Coleman
P.O. Box 2320
507 North Jefferson Street
Albany, Georgia 31703-2320

Dear Mr. Coleman:

This refers to the change in voter registration and candidate eligibility regarding the proposed reassignment of Board of Education Chair Henry Cook from District No. 5 to District No. 4 in Randolph County, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on July 14, 2006, and supplemental information through August 23, 2006.

We have carefully considered the information you have provided, as well as information and materials from other interested parties. Under Section 5 of the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 ("Voting Rights Act"), the Attorney General must determine whether the submitting authority has met its burden of showing that the proposed change "neither has the purpose nor will have the effect" of denying or abridging the right to vote on account of race. As discussed further below, we cannot conclude that the County has sustained its burden of showing that the proposed change does not have a discriminatory purpose. Therefore, based on the information available to us, we are compelled to object to the proposed reassignment on behalf of the Attorney General.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. *Georgia v. United States*, 411 U.S. 526 (1973). See also Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.52). In *Village of Arlington Heights v. Metropolitan Housing Authority*, 429 U.S. 252, 256-57 (1977), the Supreme Court identified a non-exhaustive list of factors that may serve as indicia of a discriminatory purpose. Those factors include the following: (1) the impact of the official action and whether it bears more heavily on one race than another; (2) the historical background of the action; (3) the sequence of events leading up to the action; (4) whether the challenged decision departs, either procedurally or substantively, from the normal practice; and (5) contemporary statements and viewpoints held by the decision-makers.

In analyzing the available information in light of *Arlington Heights*, we conclude that sufficient factors are present to prevent the County from meeting its burden of proving the absence of a discriminatory purpose. In the first place, the sequence of events here is highly unusual. The boundaries of districts for electing members of the Randolph County Board of Education were redrawn following the 2000 Census. An issue arose as to which district the Board Chairperson, Henry Cook, resided. Mr. Cook, who is black, is a "liner," in that his property is divided between Districts 4 and 5. During our Section 5 review of the redistricting, the County formally determined – and advised this Department – that Mr. Cook was an eligible voter and candidate for office in District 5, the district which he has long represented on the school board. On August 1, 2002, Mr. Cook received a new voter registration card that retained him in District 5.

The same issue arose again in a 2002 lawsuit. In that action, Judge Gary C. McCorvey of the Superior Court of Tift County heard evidence in an adversarial hearing, considered the law, and ruled that Mr. Cook was eligible to vote and run for office in District 5:

> [F]or purposes of running for election to the Board of Education from "new" district five as enacted by the General Assembly of the State of Georgia and as approved by the Department of Justice of the United States of America, the residence of Henry L. Cook is within the boundaries of such "new" district five as contemplated by the Laws and Constitutions of both the State of Georgia and the United States of America.

In re: Henry L. Cook, Candidate for Board of Education for the County of Randolph, Decision of Gary C. McCorvey, Chief Judge, Superior Courts, Tifton Judicial Circuit, Sitting by Designation as Superintendent of Elections, Randolph County, Georgia, slip op. (Oct. 28, 2002) at 7 ¶ 22. An appeal to the Randolph County Superior Court was dismissed as moot. *Jordan v. Cook*, 277 Ga. 155, 587 S.E.2d 52 (2003). The dismissal was affirmed by the Georgia Supreme Court. *Id.* The election was duly held and the candidate supported by the voters won.

Notwithstanding these court decisions, and despite the lack of any change in relevant facts or law, in January 2006 the three-member Randolph County Board of Registrars met in a special meeting called for the sole purpose of determining anew the proper voter registration location of Mr. Cook and his family members living at his address. Neither Mr. Cook nor his family were specifically notified of the meeting or invited to present evidence on their own behalf. The Board of Registrars, all of whose members were white, voted unanimously to change the voter registration status of Mr. Cook and his family members from District 5, where over 70 percent of the voters are African American, to District 4, where over 70 percent of the voters are white.

This sequence of events is procedurally and substantively unusual. The Board resurrected the issue of Mr. Cook's residency after it had been settled for three years, without any intervening change in fact or law, and without notifying Mr. Cook that it was doing so. Moreover, it is particularly unusual for officials with no legal training to overturn, in effect, a decision by a judge in order to disturb an incumbent officeholder.

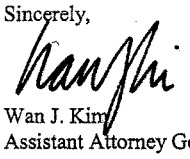
In addition, the Board's contemporaneous statements undermine their purported reasons for seeking to reassign Mr. Cook. One of the stated bases for the Board's decision was the purported fact that all neighbors who surround Mr. Cook's residence are in District 4, although the Board has since acknowledged that Mr. Cook's District 4 neighbors do not in fact encircle his house. Another stated basis for the Board's decision was to prevent a "liner" from voting in any district where he owns property or from voting in multiple districts at the same time. The Board presented no evidence indicating that any "liner" has attempted to change his registration status or vote in multiple districts, and certainly nothing in Judge McCorvey's decision warrants an interpretation that multiple voting is permissible.

For these reasons, and in light of the history of discrimination in voting in the County, we cannot conclude that the County has sustained its burden of showing that the submitted change lacks a discriminatory purpose. Therefore, on behalf of the Attorney General, we must object to the change in voter registration and candidate eligibility regarding the proposed reassignment of Board of Education Chair Henry Cook from District No. 5 to District No. 4 in Randolph County, Georgia.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District Court for the District of Columbia is obtained, the change in voter registration and candidate eligibility regarding the proposed reassignment of Board of Education Chair Henry Cook from District No. 5 to District No. 4 in Randolph County, Georgia will continue to be legally unenforceable. *Clark v. Roemer*, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Randolph County plans to take concerning this matter. If you have any questions, please call Maureen Riordan (202-353-2087), an attorney in the Voting Section.

Sincerely,



Wan J. Kim
Assistant Attorney General

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

June 25, 2007

Michael Crowell, Esq.
Tharrington Smith
P.O. Box 1151
Raleigh, North Carolina 27602-1151

Dear Mr. Crowell:

This refers to the change in method of election from nine single-member districts to six single-member districts, with three other positions filled by the top three vote recipients in an at-large election, and the resulting 2007 City Council redistricting plan, for the City of Fayetteville in Cumberland County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on April 26, 2007; supplemental information was received through June 22, 2007.

Under Section 5 of the Voting Rights Act, the Attorney General must determine whether the submitting authority has met its burden of showing that the proposed change "neither has the purpose nor will have the effect" of denying or abridging the right to vote on account of race. *Georgia v. Unites States,* 411 U.S. 526 (1973). *See also* the Procedures for the Administration of Section 5 of the Voting Rights Act, 28 C.F.R. 51.52. "A change affecting voting is considered to have a discriminatory effect under Section 5 if it will lead to a retrogression in the position of members of a racial or language minority group (*i.e.,* will make members of such a group worse off than they had been before the change) with respect to their opportunity to exercise the electoral franchise effectively." 28 C.F.R. 51.54(a) (citing *Beer v. United States,* 425 U.S. 130, 140-42 (1976)); *Reno v. Bossier Parish School Board,* 528 U.S. 320, 340, 328 (2000). The Act as amended also requires an objection if the proposed change was motivated by any discriminatory purpose.

We have carefully considered the information you have provided, as well as census data, comments, and information from other interested parties. As discussed below, I cannot conclude that the City has sustained its burden of proof under Section 5. Therefore, on behalf of the

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Attorney General, I must object to the change in method of election from nine single-member districts to six single-member districts with three at-large positions, and the resulting 2007 City Council redistricting plan.

According to the 2000 Census, the City had 121,015 residents, of whom 51,288 (42.4%) were African American, 6,862 (5.7%) were Hispanic, 3,057 (2.5%) were Asian, and 1,545 (1.3%) were Native American. According to May 2007 voter registration data, at the present time, African American voters comprise 43.6 percent of the Fayetteville electorate. The City currently elects its council from nine single-member districts. African American citizens comprise between 59.2 and 65.0 percent of the registered voters in four of the nine districts. Under the proposed plan, three out of six districts would have African American voter registration majorities of between 55.7 and 56.4 percent, and all city voters would participate in the selection of three council members. If more than six candidates qualified for these seats, an initial or primary election would narrow the field to six candidates.

Under the existing system, African American voters have elected candidates of their choice to four of the nine positions on the council in all instances. There has been no suggestion, and no evidence, that African American voters may lose their firm control of those positions in the future.

In contrast, under the proposed plan, African American voters would have substantially less than certain prospects of electing candidates of their choice to four of the nine positions. The City's submission itself acknowledges that African American voters would have to depend on the uncertain prospect of winning one at-large seat in order to elect candidates of their choice to four positions:

> If those districts allow black voters to elect three of the six council members and African Americans also are able to elect at least one of the three council seats, then black voters still would have the ability to elect four of the nine council members.

Submission, at 4. To support the prospect of African American success in one at-large position, the City references the prospect of single-shot voting, in which a large preponderance of African American voters would select only one candidate, and a large preponderance of white votes would spread their votes relatively evenly among two or more different candidates. In making this argument, the City relies on estimations rather than detailed election data analysis.

We have analyzed the election data in detail, and have received other analyses from interested persons. As you acknowledge, elections in the City are racially polarized. African American candidates have had, at best, mixed success in multi-seat and other at-large contests. We previously interposed an objection in an April 9, 1985 letter to the City. When the City used a system of six districts and three at-large seats from 1986 through 1997, African American voters had no success in electing candidates of their choice to at-large positions. During that period, all African American candidates lost elections for at-large positions. Only in 1999, on the eve of the change to nine single-member districts, did the first African American candidate win an at-large position on the council. African American voters have succeeded in

subsequent exogenous at-large contests, including Mr. Marshall Pitts' two successful elections as Mayor. Mr. Pitts, however, lost a mayoral election amid racially polarized voting in his most recent race in 2005, and all five African American candidates have been defeated within the City's precincts in at-large elections for the Cumberland County School Board.

After comparing the extremely mixed record of success of African American voters in at-large contests with their uniform success in single-member district contests, I cannot conclude, as I must under Section 5, that the City has met its burden of establishing the absence of a retrogressive effect. Accordingly, I must interpose an objection to the proposed change in method of election for the Fayetteville City Council from nine single-member districts to six single-member districts with three at-large positions, and the resulting 2007 City Council redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted change continues to be legally unenforceable. *Clark v. Roemer*, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Fayetteville plans to take concerning this matter. If you have any questions, you should call Mr. Robert Lowell (202-514-3539), an attorney in the Voting Section.

Sincerely,

Wan J. Kim
Assistant Attorney General

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

December 26, 2007

Mr. Brian DeBano
Chief of Staff and Chief Operating Officer
430 West Allegan, 4th Floor
Lansing, Michigan 48918

Mr. Christopher Thomas
Director of Elections
P.O. Box 20126
Lansing, Michigan 48901

Dear Messrs. DeBano and Thomas:

This refers to the relocation and subsequent closure of the Buena Vista Township Secretary of State's branch office ("Buena Vista office") and the photo identification procedures contained in Public Act 71 (S.B. 513) (2005) ("PA 71"), for Buena Vista and Clyde Townships in Saginaw and Allegan Counties, for the State of Michigan, submitted to the Attorney General, pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our September 18, 2007, request for additional information on September 28, 2007, October 13, 2007, and October 26, 2007. Additional information was received on November 9, 2007, November 27, 2007, December 7, 2007, December 12, 2007 and December 21, 2007.

Buena Vista Office Closure

With relation to the Buena Vista office, we note that there are actually two unprecleared changes that require review under Section 5, the office's relocation and the office's closure. The Department first precleared the creation of a voter registration site at a Secretary of State branch office in Buena Vista on September 13, 1993. While no street address for the Buena Vista office was submitted by the Township, Christopher Thomas, Michigan Director of Elections, indicated in a December 7, 2007 e-mail that the first Secretary of State branch office in Buena Vista was located at 3890 Dixie Highway, Saginaw, MI and existed as early as 1990. Mr. Thomas further explained that this office was relocated to the current address, 4212 Dixie Highway, Saginaw, MI 48601, some time in or around 1999. Our records indicate that this relocation was never submitted for preclearance.

In order for the Department to render a determination on the Buena Vista office closure, the Department must first issue a decision governing the relocation. Procedures for the Administration of Section 5 of the Voting Rights Act, 28 C.F.R. § 51.22. The December 7 e-mail from Christopher Thomas, however, provides adequate information for the Attorney General to review the relocation. The Attorney General does not interpose any objection to the Buena Vista office relocation that occurred in or around 1999. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. 28 C.F.R. § 51.41.

Turning to the office closure, the last precleared change is now the relocation of the Buena Vista office to its current location. This is the benchmark by which the office closure is measured. Your contention that the Buena Vista office closure does not constitute a change under Section 5 is contradicted by federal case law. You argue that the Department's guidelines provide that the benchmark for all voting changes is the practice or procedure in force or effect at the time the relevant jurisdiction became covered under Section 5. Under this interpretation, you assert that the office closure does not constitute a change because there was no branch office in Buena Vista when the Township became subject to Section 5. This interpretation of the benchmark standard is incorrect. Federal courts have stated that the benchmark for purposes of defining a change under Section 5 constitutes the last precleared change occurring after the date of coverage. *See Young v. Fordice*, 520 U.S. 273, 281 (1997); *Holder v. Hall*, 512 U.S. 874, 883-84 (1994) (plurality opinion); *Presley v. Etowah County Comm'n*, 502 U.S. 491, 495 (1992); *Kennedy v. Riley*, 445 F. Supp. 2d 1333, 1336 (M.D. Ala. 2006), *appeal pending*, No. 07-77; *Dotson v. City of Indianola*, 521 F. Supp. 934, 943 (N.D. Miss. 1981), *aff'd summarily*, 456 U.S. 1002 (1982); *NAACP v. Georgia*, 494 F. Supp. 668, 677-79 (N.D. Ga. 1980). The Department's guidelines also state that the benchmark by which a change is measured is the "last legally enforceable practice or procedure used by the jurisdiction." 28 C.F.R. § 51.54. Accordingly, the Secretary of State's reliance upon there being no branch office in the Township on the date of Section 5 coverage is misplaced. Indeed, the fact that the Township submitted the creation of a voter registration site at a Buena Vista Secretary of State office in 1993 undermines any argument that the appropriate benchmark is the absence of such an office.

With respect to the Buena Vista office closure, we have carefully considered the information you have provided, as well as census data, comments, and information from other interested parties. Under Section 5, the Attorney General must determine whether the submitting authority has met its burden of showing that the proposed change "neither has the purpose nor will have the effect" of denying or abridging the right to vote on account of race. *Georgia v. United States*, 411 U.S. 526 (1973); *see also* 28 C.F.R. § 51.52. "A change affecting voting is considered to have a discriminatory effect under Section 5 if it will lead to a retrogression in the position of the members of a racial or language minority group (*i.e.*, will make members of such a group worse off than they had been before the change) with respect to their opportunity to exercise the electoral franchise effectively." 28 CFR § 50 1.54(a) (citing *Beer v. United States*, 425 U.S. 130, 140-42 (1976)).

Several factors establish that the State has failed to sustain its burden of showing that the closure of the Buena Vista office will not have a retrogressive effect on minority electoral participation. First, the Buena Vista office closure will impair the ability of minorities to register to vote. The Buena Vista office conveniently allows citizens to register to vote or update their voter registration while using other Secretary of State services. While you have argued that there are numerous alternative registration locations throughout the County, registration statistics in your submitted materials indicate that Secretary of State branch offices are the primary source of voter registrations for Buena Vista residents. Since 2002, Secretary of State branches have accounted for 79.13% of total registrations for the Township, approximately four times the number of registrations as all other sources combined. These numbers demonstrate that closure of the Buena Vista office, which is the only branch office in a majority-minority township in the County, will significantly lower minority registration.

The next closest Secretary of State branch office for Buena Vista residents is the Saginaw Northwest office, an 18-mile round-trip from the Buena Vista office. Our analysis indicates that travel to the Saginaw Northwest office for Buena Vista residents will be significantly more difficult than visiting the current location. Public transportation between the Buena Vista branch office and the Saginaw Northwest office is time-consuming. Our analysis indicates that a round-trip between the two offices on public transportation would take a minimum of one hour and 40 minutes, assuming no delays. Additionally, contacts in Buena Vista have informed us that the drive to the Saginaw Northwest branch entails travel along highly congested streets.

The Frankenmuth and St. Charles branch offices are not viable alternatives to the Saginaw Northwest office. These offices are even farther away from Buena Vista Township in more rural parts of the county. According to submitted materials, the Frankenmuth office is a 24-mile round-trip from the Buena Vista branch, and the St. Charles office is a 42-mile round-trip from the branch. Both offices are in townships in which every census block has less than 35% black or Latino representation.

Second, the closure of the Buena Vista office will make it more difficult for minorities in Buena Vista who wish to comply with PA 71's ID requirement by showing photo identification, in lieu of signing an affidavit attesting to their identity, to obtain Michigan IDs. The Secretary of State's office is the only issuer of Michigan driver's licenses and personal identification cards ("PIDs"). Thus, closing the Buena Vista branch will require Buena Vista residents, 55.6% of whom are black and 9.6% of whom are Latino, to visit one of the other County or state branches to obtain an ID.

In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object the closure of the Buena Vista office.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race,

color, or membership in a language minority group. *See* 28 C.F.R. § 51.44. In addition you may request that the Attorney General reconsider the objection. *See* 28 C.F.R. § 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the closure of the Buena Vista Township Secretary of State's branch office continues to be legally unenforceable. *Clark v Roemer*, 500 US 646 (1991); 28 C.F.R. § 51.10.

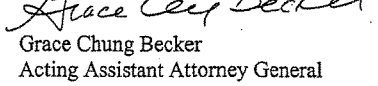
Photo ID Requirement

With respect to the photo identification procedures contained in PA 71, we note that you have supplemented your submission with materials reflecting the Secretary of State's interpretation and planned implementation of the ID requirement. According to the materials you provided, acceptable identification under the new requirement includes: a Michigan driver's license, a Michigan chauffeur's license, a Michigan PID, a current driver's license or personal identification card from another state, a current federal or state government-issued photo identification card, a current U.S. passport, a current military photo identification card, a current student photo identification card or a current tribal photo identification card. Your materials state that individuals without one of the acceptable forms of identification, regardless of whether they do not have identification at all or merely did not bring it to the polls, will be able to vote on a regular ballot if they sign an affidavit affirming their identity. Your materials confirm the fact that signing the affidavit in lieu of showing identification is not an independent basis for challenging a voter.

The Attorney General does not interpose any objection to the photo identification requirement and accompanying implementation procedures. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In this case, where our decision not to object rests in part on the detailed implementation procedures you provided, and on effective education of poll workers and voters as to the new procedures, any change from these procedures must be precleared under Section 5. Further, to the extent that PA 71 includes provisions that are enabling in nature, any changes affecting voting that are adopted pursuant to this legislation require Section 5 review. *See* C.F.R. § 51.15.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Secretary of State plans to take concerning this matter. If you have any questions concerning this letter, you should call Eric Rich (202-305-0107), an attorney in the Voting Section.

Sincerely,



Grace Chung Becker
Acting Assistant Attorney General

U.S. Department of Justice

Civil Rights Division

T. 2/11/08
CC:TFM:JP:jdh
DJ 166-012-3
2007-6012

Voting Section - NWB
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

February 11, 2008

Ms. Sara Frankenstein
Gunderson, Palmer, Goodsell & Nelson
P.O. Box 8045
Rapid City, South Dakota 57709-8045

Dear Ms. Frankenstein:

This refers to the increase in the number of county commissioners from three to five, and the 2007 redistricting plan for Charles Mix County, South Dakota, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on December 12, 2007; supplemental information was received through January 28, 2008.

According to the 2000 Census, the County has 9,350 residents, of whom 2,644 (28.3%) are Native American, 177 (1.9%) are Hispanic, 9 (0.1%) are Asian, and 12 (0.1%) are African-American. The County currently elects its commission from three single-member districts. Under the proposed plan, the number of commissioners would increase to five and be elected from single-member districts. An increase in the number of commissioners on the board is a voting change under Section 5. *See City of Lockhart v. United States*, 460 U.S. 125, 131 (1983) (change in system where county commission increased from a three-member commission to a five-member commission is a voting change). The county also has adopted a redistricting plan for the five single-member districts.

We have carefully considered the information you have provided, as well as information and materials from other interested parties. Under Section 5 of the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, Public Law 109-246, 120 Stat. 577 (2006) ("Voting Rights Act"), the Attorney General must determine whether the submitting authority has met its burden of showing that the proposed change "neither has the purpose nor will have the effect" of denying or abridging the right to vote on account of race. As discussed further below, I cannot conclude that the County has sustained its burden of showing that the proposed change does not have a discriminatory purpose. Therefore, based on the information available to us, I object to the voting changes on behalf of the Attorney General.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of

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showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. *Georgia v. United States*, 411 U.S. 526 (1973). See also Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.52). In satisfying its burden, the submitting authority must demonstrate that the proposed changes are not tainted, even in part, by an invidious racial purpose; it is insufficient simply to establish that there are some legitimate, nondiscriminatory reasons for the voting changes. See *City of Rome v. United States*, 422 U.S. 156, 172 (1980); *Busbee v. Smith*, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd 459 U.S. 1166 (1983).

The Supreme Court identified a non-exhaustive list of factors that may serve as indicia of a discriminatory purpose in *Village of Arlington Heights v. Metropolitan Housing Authority*, 429 U.S. 252, 256-57 (1977) . Those factors include the following: (1) the impact of the official action and whether it bears more heavily on one race than another; (2) the historical background of the action; (3) the sequence of events leading up to the action; (4) whether the challenged decision departs, either procedurally or substantively, from the normal practice; and (5) contemporary statements and viewpoints held by the decision-makers.

Here, an analysis of these factors confirms that the County has not sustained its burden of showing that the proposed change does not have a discriminatory purpose. In the first place, the voting changes appear to have a greater impact on Native Americans because, under the proposed plan, Native American voters can elect their candidate of choice in only one of five districts, as opposed to one in three districts under the current plan. Our election analysis demonstrates that there is no reasonable probability that Native American voters could elect their candidate of choice in District 2 of the proposed plan.

In addition, Charles Mix County and the State of South Dakota have a history of voting discrimination against Native Americans. Native Americans could not vote in the county until 1951. Even when Native Americans received the right to vote, they were discriminated against in registration and other parts of the voting process.

Moreover, the historical background and the sequence of events leading to these voting changes also support an inference of intentional retrogression of Native American voting strength by the county. In January 2005, the county was sued for violations of the Fourteenth Amendment and Section 2 of the Voting Rights Act in *Blackmoon v. Charles Mix County*. At the time *Blackmoon* was filed, no Native American had ever been elected to the County Commission in Charles Mix County, despite the significant Yankton Sioux population in the County. Depositions in the case revealed that after the 2000 Census, the County Commissioners decided not to redistrict despite the fact that commissioners knew that the districts did not provide Native Americans the voting strength to elect a candidate of choice.

On March 24, 2005, the court in *Blackmoon* found that there had been violations of the Fourteenth Amendment because Charles Mix County failed to redistrict after the 2000 Census. Despite the court's finding, the first remedial plan suggested by the county again failed to

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provide Native Americans with an opportunity to elect a candidate of their choice. Finally, in 2006, the County agreed to a redistricting plan that included a majority Native American district which could elect a candidate of choice, and this plan was implemented for the 2006 county elections. Under this new plan, the voters elected the first Native American to the county commission in Charles Mix County.

The timing of the adoption of the proposed change to a five member commission raises concerns of a discriminatory purpose. The first petitioner signed the referendum petition to increase the size of the commission on April 3, 2006. Only 46 people signed the initial circulation prior to June 2006. At the June 2006 Democratic Primary election, Ms. Drapeau won, and she would become the first Native American County Commissioner in Charles Mix County because there was no opponent in the general election. Immediately after the primary election, an article about changing the number of county commissioners appeared in *The Lake Andes Wave*. Momentum for the petition then built, and one thousand signatures were obtained to put the referendum on the ballot. The referendum was held in November 2006, and the measure passed.

Elected officials supported the increase in the number of county commissioners. In particular, the Sheriff and his deputies, actively circulated the petition. According to our contacts in the county, the Sheriff and deputies collected signatures in uniform.

Depositions in *Blackmoon* reveal that one commissioner admitted that the commissioners decided not to redistrict in 2000 despite the fact that they knew that the districts did not provide Native Americans the voting strength to elect a candidate of choice. Various community members, including Native Americans and non-Native Americans, also have informed the Section that county commissioners have made comments that evidence a racially discriminatory intent.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District Court for the District of Columbia is obtained, the increase in the number of county commissioners and the redistricting plan will continue to be legally unenforceable. *Clark v. Roemer*, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

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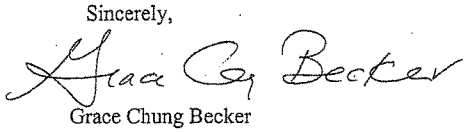
To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Charles Mix County plans to take concerning this matter. If you have any questions, you should call Tim Mellett (202-307-6262), Acting Deputy Chief of the Voting Section.

Sincerely,



Grace Chung Becker
Acting Assistant Attorney General
Civil Rights Division

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SUBMISSIONS FOR THE RECORD

AARP STATEMENT FOR THE RECORD

SUBMITTED TO THE

SENATE JUDICIARY COMMITTEE

For the Hearing Record

ON

PROTECTING THE CONSTITUTIONAL RIGHT TO VOTE FOR ALL AMERICANS

May 20, 2008

AARP
601 E Street NW
WASHINGTON, DC 20049

For further information, contact:
Larry White
Government Relations
(202) 434-3760

On behalf of AARP's nearly 40 million members, we thank you for holding this hearing on "Protecting the Constitutional Right to Vote for All Americans". AARP submits this statement for inclusion in the hearing record.

The right to vote is the most basic of all political rights. Over the last several years, the American public has become aware of the many inconsistencies that exist in voting systems throughout the country and which compromise the integrity of the election process. Overall, voting mechanisms lack uniform standards, and in many locations, they have failed to keep pace with new technologies. Of particular concern are the unnecessary, complex rules for voter registration and absentee balloting and physical and other barriers to voting in-person. These impediments to exercising the franchise tend to disproportionately prevent minorities, older persons and people with disabilities from voting or from having their vote counted. And as we all know, the overall rate of voter participation in the U.S. is woefully low, especially when compared to other industrial democracies. User-friendly voting and voting procedures would encourage larger numbers of Americans to vote. In order to ensure that more Americans participate in the electoral process, people's confidence needs to be restored by an election system that is fair, accurate, accessible and secure.

AARP has a longstanding commitment to full citizen participation in the democratic process at the federal, state and local levels. 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.

Congress passed HAVA in 2002, requiring states to meet uniform standards in federal election technology and administration. One result of these reforms is that states are required to develop and maintain centralized voter lists, offer provisional ballots, permit voters to verify and correct their ballots, and meet accessibility requirements for voters with disabilities.

HAVA imposes more stringent voter-identification requirements for voters casting a ballot for the first time after having registered to vote by mail. This provision – intended as an anti-fraud measure – could discourage participation by otherwise-eligible low-income, minority, foreign-born and older voters. Ultimately, the success of the law in allowing all eligible citizens the opportunity to vote and have their vote accurately counted depends on state implementation laws and administrative procedures.

VOTER ID REQUIREMENTS

As the states have become more active in addressing access to the ballot in recent years, AARP attorneys have represented citizens – a great many of whom are aged 50+ – who could become disenfranchised. AARP also has participated in various advisory capacities, at both the federal and state levels, to support citizen empowerment through meaningful opportunity to exercise the franchise.

AARP attorneys serve as one of the counsel for plaintiffs in federal lawsuits challenging burdensome and unreasonable state laws in Georgia (GA) and Arizona (AZ). AARP also has filed "friend of the court" briefs in the highest state courts in Missouri (MO) and

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Michigan (MI) to challenge similarly restrictive voting rules. AARP filed such a brief in the U.S. Supreme Court -- focusing on the adverse impact on older voters, minority voters and voters with disabilities -- in the recently decided case involving the Indiana (IN) voter ID law, *Crawford v. Marion County Election Board*. We believe that "photo ID" voting requirements unnecessarily limit rather than expand citizen participation in the electoral process, and the Supreme Court acknowledged that in-person voting fraud is a "problem" that exists barely, if at all.

In the jurisdictions that have embraced strict "photo ID" policy, state statutes or ballot initiatives have sought to enact laws that elevate proof requirements for voters to register (AZ) and/or to vote in person (GA and AZ). These laws are based on assertions of voter fraud. This assertion heightens tensions among all voters. The new state laws and implementing rules, we believe, could 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 have never 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 were not allowed in white hospitals that provided documentation). 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 undermined in an overbroad effort to address unproven allegations of voting abuse.

The need for voter ID laws is understandable, but overly stringent barriers to voting are questionable. There is very little evidence of actual in-person voter fraud. The problem in this country is not people trying to vote who shouldn't -- it's all the people who can vote, but don't. Many people don't vote because of rules that make it too complicated, too difficult, or too costly to go to the polls. We need laws that make it easier to vote, not harder. Just imagine, you're 75 years old, you've been going to your local polling place for a half century, and suddenly you're asked to prove who you are with a new photo ID. The ID will cost extra money to obtain. If you do not have or can not find your birth certificate — necessary to prove you are a citizen — you may have to spend up to $200 to get a replacement copy. For someone on a fixed income, this is an unnecessary cost, and it should not be necessary for you to prove your identity after having gone to the same polling station for decades. We think that there are less punitive alternatives to address alleged in-person voter fraud.

Further, the potential for poll worker confusion and selective enforcement of voter ID rules are great – especially given recent and historic voting rights abuses. In many instances, poll workers are not adequately trained in advance to fully grasp the nuances of such requirements as:

- which IDs are acceptable;
- who should be asked for their IDs;
- what is proper protocol for attending to persons lacking proper ID; and

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- who is responsible for ensuring voter access to a provisional ballot or alternative voting opportunity?

Leaving the decision to subjective interpretation may result in racial and other forms of profiling at the polling place.

Even casting a provisional ballot can be a barrier to voting. Provisional ballots have been suggested as a "compromise" that is equivalent to casting a ballot, but provisional ballots are valid only when counted – and many are not. For example in Indiana, the voter has to provide a valid photo ID to the county court house, not the polling place, within 10 days of the election. (This aspect of Indiana's election administration system is noted in Justice Souter's dissent in the *Crawford* decision upholding the state's voter ID law. He highlights the fact that only two of 34 aspiring voters who used a provisional ballot in 2007 municipal elections in one Indiana county showed up within 10 days to follow up with the necessary documents to the County Clerk's office. Thus, it appears from this Indiana example that provisional ballots are more a burden than an acceptable alternative to in-person voting.)

AARP believes that voter ID requirements and provisional ballots should be tools to promote honest and effective elections, but should not present administrative, financial or other barriers to the right to vote. Effective remedies legislators could consider include:

- sworn vouching statements to affirm in-person voter identity;
- thorough, advance training of poll workers to ensure each voter understands how to cast a ballot that will be counted;
- requirements to provide in advance of elections, free voter ID to registered voters and new registrants for whom the financial and administrative cost of an official ID is burdensome;
- procedures that encourage and promote maximum participation in the electoral process by expanding the range of voting times, locations and means (e.g., by offering in-person, vote-by-mail, early and secure online voting); and
- repeal of unreasonable identification requirements that discourage or prevent certain classes of citizens from voting.

ELECTION TURNOUT, ELECTION ADMINISTRATION & VOTER ACCESS

A positive result of HAVA's passage has been innovation in the states as election officials have sought creative solutions to the challenges presented by the Act's mandates. The requirements for accessible voting, the difficulty in recruiting poll workers and the desire to increase voter participation have led a number of jurisdictions to experiment with vote-by-mail (VBM) processes. Oregon, which pioneered VBM in 1980 with a series of pilot projects, is the first state to conduct all elections by VBM, starting in 2000. Election officials in Oregon indicate that VBM has resulted in higher voter participation, lower election costs, and avoidance of controversies over electronic voting systems. They also report strong acceptance by the public and minimal instances of election fraud. In 2005, Washington State passed legislation allowing counties to switch to VBM and in the September 2006 primary election, 93 percent of voters cast their ballots by mail. In 2007, several cities in Montana initiated VBM systems for local elections.

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According to a 2007 report by the Pew Center on States, early voting in person at centralized polling places has increased since HAVA's passage. In 2008, 35 states will allow all voters some option to cast ballots before election day. In addition, Montana and Iowa joined six states that currently allow registration and voting on election day. North Carolina allows registration and early voting at the same time but not on election day itself.

In addition to HAVA, four other statutes—the Voting Rights Act, the National Voter Registration Act, Voting Accessibility for the Elderly and Handicapped Act of 1984, and Americans with Disabilities Act (ADA)—also promote the right to vote by mandating improved access to registration and polling places and better outreach programs for older Americans and people with disabilities. Because the requirements of the Voting Accessibility for the Elderly and Handicapped Act expired in 1995, the Federal Election Commission can no longer require reporting, yet its voluntary state-reporting guidelines remain. Stairs without ramps remain the greatest physical obstacle at polling places. Periodic accessibility reports should be restored.

COGNITIVE IMPAIRMENTS AND VOTING RIGHTS

Consistent with the constitutional right to vote and democratic principles, governments should aim to expand the franchise and enhance access to the ballot for those capable of voting. Yet state constitutions and laws vary widely regarding mental capacity to vote. All but 12 states have constitutional provisions barring people with various kinds of mental impairment from voting, and the categories of individuals excluded are sweeping and imprecise. State voting and guardianship laws also vary dramatically in this regard, and often appear inconsistent with constitutional provisions. Only a few statutes and cases require a court to determine whether an individual has capacity to vote. Yet such a safeguard, with strict parameters, may be needed to avoid inappropriate deprivation of the right to vote based on mental impairment.

THE VOTING RIGHTS IMPACT OF REDISTRICTING

A final, related voting rights concern for AARP is the use of redistricting to nullify the impact of certain voting populations. While drawing of districts is a right of the states, this tool can undermine the most effective voting rights laws and regulations. A fundamental principle of our nation is that citizens are able to select leaders who will represent their interests in Congress and state legislatures. Since state legislatures and the US House of Representatives elect members based on districts, the composition and configuration of those districts matter a great deal. But groups with district-drawing power shape districts to maximize their advantage. This practice, known as gerrymandering, was first identified in the early 19th century. In the last two decades, however, new technology and evolving constitutional case law has brought to light the effects of gerrymandering on the democratic process.

Gerrymandering occurs when districts are drawn not to reflect actual communities but to splice together barely contiguous census blocks and produce a district that strongly favors one party or candidate. This practice has at least four negative consequences: Voters are detached from their legislators and fellow constituents by spread out, confusing districts; one-sided districts lead to the election of candidates that tend to be less moderate than the general population; the minority party concedes races in districts they are unlikely to win, leaving voters with no viable options; and legislators who are

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protected by safe seats may have little inherent interest in pursuing policies that help their constituents.

Arizona and Iowa have adopted systems that have produced districts that are compact, contiguous and reflect traditional communities of interest. The success of these systems is based on establishing bipartisan commissions that do not include legislators, lobbyists or potential candidates. The commissions work within guiding principles to draw districts that are based on communities of shared interest rather than incumbency or party affiliation.

Supreme Court decisions on redistricting have supported voters' rights by ensuring that districts adhere to the Fourteenth Amendment, which guarantees that every vote has equal weight. The courts also have sought to discourage the practice of dispersing minority voters among districts to diminish the power of voting blocs. These are important positive trends that should be continued as we move toward systems of redistricting that better represent our communities and make voting rights laws and regulations genuinely meaningful.

CONCLUSION

AARP believes that these voting issues represent a few of the broader issues that directly or indirectly affect every voter and should therefore be of concern to all of us. To recast AARP's policy recommendations:

- Congress should adopt procedures that encourage and promote maximum participation in the electoral process by expanding the range of voting times, locations and means (e.g., by offering in-person, vote-by-mail, early and secure online voting), and oppose unreasonable identification requirements that discourage or prevent certain classes of citizens from voting.
- Federal, state and local governments should ensure that no governmental entity exclude any otherwise qualified person from voting on the basis of medical diagnosis, disability status or type of residence.
- Uniform standards should be established and reinforced with adequate funding in order to safeguard the integrity of the election process and afford all Americans the ability to express their electoral preference.

Because this is an effort that requires coordination between federal and state governments, AARP looks forward to working with leaders at both levels to institute laws, regulations and administrative tools to promote, expand and ensure exercise of every citizen's right to vote.

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Indiana nuns lacking ID denied at poll by fellow sister

By DEBORAH HASTINGS – 6 days ago

About 12 Indiana nuns were turned away Tuesday from a polling place by a fellow bride of Christ because they didn't have state or federal identification bearing a photograph.

Sister Julie McGuire said she was forced to turn away her fellow sisters at Saint Mary's Convent in South Bend, across the street from the University of Notre Dame, because they had been told earlier that they would need such an ID to vote.

The nuns, all in their 80s or 90s, didn't get one but came to the precinct anyway.

"One came down this morning, and she was 98, and she said, 'I don't want to go do that,'" Sister McGuire said. Some showed up with outdated passports. None of them drives.

They weren't given provisional ballots because it would be impossible to get them to a motor vehicle branch and back in the 10-day time frame allotted by the law, Sister McGuire said. "You have to remember that some of these ladies don't walk well. They're in wheelchairs or on walkers or electric carts."

Nonetheless, she said, the convent will make a "very concerted effort" to get proper identification for the nuns in time for the general election. "We're going to take from now until November to get them out and get this done. You can't do this like school kids on a bus," she said. "I wish we could."

Elsewhere across the pivotal state, voting appeared to run smoothly, despite the fears of election experts that the Supreme Court's recent refusal to strike down Indian's controversial photo identification law could cause confusion at the polls.

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A voter hot line set up by the secretary of state's office had no complaints regarding photo IDs as of 3 p.m., said spokeswoman Bethany Derringer. In a primary expected to draw record numbers, most calls concerned precinct locations.

"The No. 1 call they've heard so far is just people asking where they can go to vote," Derringer said.

But a group of voting rights advocates that established a separate hot line reported receiving several calls from would-be voters who were turned away at precincts because they did not have a state or federal identification bearing a photograph.

One newly married woman said she was told she couldn't vote because her driver's license name didn't match the one on her voter registration record, said Myrna Perez of the Brennan Center Justice at New York University's law school, coordinator of the 1-866-OUR-VOTE hot line. Another woman said she was turned away from casting her first-ever ballot because she had only a college-issued ID card and an out-of-state driver's license, Perez said.

"These laws are confusing. People don't know how they're supposed to be applied," she said.

Indiana's photo ID law is the strictest in the country. The Republican-led effort was designed to combat ballot fraud, said supporters, who also have acknowledged that no case involving someone impersonating a voter at the polls has ever been prosecuted in Indiana.

The state's American Civil Liberties Union sued, calling the law a poll tax that disproportionately affected minorities and elderly voters, those most likely to lack such identification. On April 28, the Supreme Court ruled 6 to 3 that the law did not violate the Constitution.

Since then, advocacy groups have fretted that people showing up to vote in Tuesday's primary would not understand their rights under the law, which include being able to cast a provisional ballot and obtain a proper ID within 10 days so that ballot would be counted later.

Rick Rice, a precinct judge at the Charles Martin Youth Center in South Bend, said one person complained about the voter ID law when he attempted to use a federal identification that didn't have an expiration date on it.

"I didn't know who it was put out by, but we couldn't accept it," Rice said. "He had a driver's license, he was just trying to make a point. He wanted to push it and the law is very clear."

Rice said the man voted, then asked where he could write to file a complaint.

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Sean Greene, of the nonpartisan electionline.org, was monitoring precincts in the Lafayette area of Tippecanoe County. "It's going pretty well," he said, despite long lines. "Most of the people I've seen today are prepared and used to this. They have their IDs out already.

That thought was echoed in South Bend, where Elizabeth Bridges, 63, said half of the people working in her voting precinct were family members, but still she showed her ID.

"I think the law is a good thing because a lot of people are crooked," she said.

John Parker III, agreed.

"I think it's a good thing because I don't want anyone coming in and voting for me," he said. "Someone could come in here and just use my name."

Associated Press writers Tom Murphy, Tom Coyne and Ryan Lenz in Indiana contributed to this report.

examiner.com

Opinion

Terrence Scanlon: Is ACORN disenfranchising the process itself?

Terrence Scanlon
2006-11-06 10:00:00.0
Current rank: *Not ranked*

WASHINGTON -
Last Thursday a federal grand jury in Kansas City indicted four persons working for the group Association of Community Organizations for Reform Now, accusing them of submitting more than 15,000 voter registration forms with fictitious names, phony signatures and bogus addresses.

ACORN is a liberal advocacy group that claims to speak for the poor and minorities — running these voter registration drives no doubt to prime the pump for an Election Day voter turnout operation that includes multiple voting by the same people at different precincts in a state with a tightly contested Senate race.

But ACORN also runs big-money community development corporations. The federal government supported ACORN housing programs to the tune of $2.6 million in 2003-04. That led Republicans to support efforts to prohibit Fannie Mae and Freddie Mac from subsidizing ACORN's voter registration drives.

Democrats resisted Republican efforts to restrict ACORN Housing Corporation funding, arguing that community development could rightly include registering new voters at their new addresses. But Republicans prevailed in adding voter registration restrictions to the Federal Housing Finance Reform Act.

Too many reports of ACORN involvement in voter registration fraud led them to amend the Fannie Mae reform bill to prohibit giving federal housing grants to any group that participated in voter drives.

ACORN's problem isn't its attempts to "game the system." It's the questionable legality of the tactics they use.

For instance, The Wall Street Journal reported that an Ohio ACORN worker was given crack cocaine in exchange for fraudulent voter registration cards. Many of the newly registered voters were deceased, underage or were named Mary Poppins, Dick Tracy or Jive Turkey.

In Minnesota, authorities founds hundreds of voter registration cards in the trunk of a car owned by a former ACORN worker suspected of registering voters twice so he could double his fees.

In Colorado, one woman admitted to a local television station that she was forging names on voter registration cards in order to help her now-convicted boyfriend collect a $50 bounty for newly registered voters. These incidents were widely reported in the 2004 presidential campaign.

We all remember the long voter lines in Ohio in 2004. The problem was so systemic that the House of Representatives held hearings into the possibility of statewide voter disenfranchisement. Local county officials testified that one problem was the practice by ACORN operatives of dropping stacks containing

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thousands of voter registration forms on county registrar desks just before the voter registration deadline. Officials reported that they were harried and overwhelmed by the practice, which made it harder for them to protect the integrity of the ballot.

There are many other stories of voter registration improprieties by ACORN workers. In Wisconsin, Ohio, Pennsylvania and Tennessee investigations are ongoing, and some workers have been convicted of voter fraud.

Is it a coincidence that in Missouri, site of the current indictments, Democrat Claire McCaskill is in a closely contest Senate race with Republican incumbent Jim Talent? Some 20,000 questionable voter registration forms were turned in by ACORN officials.

Fox News has reported that Kansas City election officials became suspicious of 15,000 registrations when they noticed the name of one person who was registered with the same signature three times under three addresses, social security numbers and birthdays.

The St. Louis Board of Elections is currently investigating another 5,000 questionable registrations submitted by ACORN operatives. These have been turned over to federal investigators from the Justice Department.

Last month, the Missouri state Supreme Court ruled unconstitutional a law that required voters to submit photo identification at polling locations. ACORN was a plaintiff behind the challenge to the state law. With 15,000 questionable voter registrations in Kansas City and another 5,000 in St. Louis, ACORN's involvement should be no surprise.

It is our civic duty to support increased participation in the electoral process. But we also need to protect the integrity of the ballot. ACORN's well-documented track record should raise the question: Is ACORN disenfranchising the process itself?

Terrence Scanlon is president of the Capital Research Center, a nonprofit think tank in Washington, D.C.
Examiner
INCLUDED

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Testimony of Jonah H Goldman
Director, National Campaign for Fair Elections, Lawyers' Committee for Civil Rights Under Law

Before the Senate Committee on the Judiciary
"Protecting the Constitutional Right to Vote for All Americans"
May 20, 2008

Mr. Chairman, members of the Committee, thank you for inviting me here today and for holding this hearing on the foundational issue of our great democracy – the fundamental right to vote.

My name is Jonah H Goldman and I am the Director of the National Campaign for Fair Elections at the Lawyers' Committee for Civil Rights Under Law. The Lawyers' Committee was founded 45 years ago by President Kennedy to organize the *pro bono* resources of the private bar to protect civil rights. The National Campaign for Fair Elections was established by the Lawyers' Committee to serve as the lead legal partner of Election Protection, the nation's largest non-partisan voter protection coalition, and to turn the lessons learned from that experience into real, effective, policy solutions for America's voters. This year, the Lawyers' Committee will recruit, train and deploy over 10,000 legal volunteers to develop a nationwide comprehensive, year round program to work on all facets necessary to ensure the right to vote. We will support over 150 coalition partners, establish a productive dialogue with election officials, conduct strategic legal voter protection field programs and answer the 1-866-OUR-VOTE hotline. This hotline is the nation's largest voter services hotline which, since its inception, has answered nearly 300,000 calls from voters across the country, including over 6,000 in this year's primaries.

Mr. Chairman, the Congress has both a Constitutional and moral duty to protect the rights of all eligible Americans to cast a meaningful ballot. My fellow panelists, with whom I am proud to share this honor with, have laid out the historical and constitutional imperative to fiercely protect the right to vote. The 1st, 14th and 15th amendments give Congress the power to protect this fundamental right. Through the Voting Rights Act, the National Voter Registration Act, and the Help America Vote Act Congress has shown, with varying levels of success, a commitment to protect this right. In addition to the constitutional responsibility, there is another critical reason why this hearing – and hopefully subsequent remedial action – is so important. This country is the light of liberty and democracy. Our noble experiment in providing each citizen a voice in the destiny of her country – constantly evolving and made better through expanding the

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voices of those able to participate – is now the template for freedom around the world. The hope of our democratic institutions inspires nations to entrust power to the citizenry.

Of course, with this role comes great responsibility. We have a moral obligation to America's voters to provide the most responsive infrastructure available. We have a duty to make our elections equally open to all eligible citizens, conduct them fairly, and transparent so all Americans have confidence in the process. Unfortunately, we are not there yet.

In this year's primaries we have made strides towards honoring our democratic promise through historic voter turnout. This primary season, almost 50 million voters have already cast ballots. In Pennsylvania in 2004, fewer than 800,000 voters cast ballots in the presidential primary; this year over 3 million voters showed up to the polls. Georgia saw a 157% increase during that same time and Virginia added over 1 million voters to its primary process this year as compared to the last presidential contest. Unfortunately, this civic exuberance has put tremendous weight on an already crumbling election infrastructure. This year Election Protection has recruited, trained and deployed nearly 2,000 legal volunteers and answered more than 6,000 calls to its hotline during programs on the season's five largest primary days: February 5, February 12, March 4, April 22 and May 6. Attached to my testimony is a report the Lawyers' Committee compiled highlighting the experience of voters across the country in those elections. This experience is consistent with what we have learned over the 7 years of this program and during the 45 years the Lawyers' Committee has been working to secure voters' rights. Real, eligible voters – between 4-6 million voters, according to a study conducted by CalTech and MIT in 2000 – may be prevented from exercising their right to vote in a general election. Primarily, this staggering level of disfranchisement stems from an election administration system that lacks resources, is overly burdensome and complicated, lacks centralization, and, unfortunately, is still marred by cynical attempts to remove eligible voters from the process for political gain.

These administrative failures violate our constitutional protections and undermine our democratic leadership. Americans want the best election system in the world and we deserve it.

During this year's primaries, Election Protection identified unique challenges in each of the 10 states in which we ran programs. Four themes emerged across state lines that violate the constitutional right to vote by denying eligible voters an opportunity to cast a ballot:

- under trained and under resourced poll workers;
- voting technology malfunctions;
- inaccurate and incomplete registration lists; and
- Problems with voter identification requirements.

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Under trained and Under Resourced Poll Workers

There are over 1.4 million poll workers across the country. The overwhelming majority of these dedicated Americans are committed to doing their civic duty by volunteering up to 18 hours on Election Day. Despite this commitment voters are turned away because poll workers lack training and guidance on how to effectively administer an election. In every state we ran a program during this cycle and in every program we have run in the past, Election Protection uncovers voters who were turned away because poll workers did not know the rules. Voters who should have been able to cast regular ballots were forced to cast provisional ballots and voters who should have been offered provisional ballots were turned away from the polling place. Voters stood in lines for hours or were disfranchised because there were not enough poll workers or because polling places opened late or close early.

We need to be creative about how we recruit, train and deploy poll workers. Government workers on all levels should be encouraged to be poll workers and should be provided extensive training. High schools, colleges and universities should pursue programs that put students at the polls. Large employers should work in public/private partnerships to encourage their employees to become poll workers. Before November, however, election officials must improve their training curricula and programs. They need to ensure that poll workers have the tools they need to do their job and the guidance necessary to understand the rules. They must have an effective way to communicate with election officials if they have questions or if something goes wrong.

Voting Technology Malfunctions

Problems with voting equipment also led to disenfranchised eligible voters. In 8 of the 12 states Election Protection has covered this year, we received reports of significant problems with voting technology that led to voters being turned away at the polls. Most of the problems were with voting machines, but some concerned electronic poll books and other election technologies. Sometimes, the problems were caused by technological glitches, but frequently the problems were more human. Both poll workers and voters were confused about how new voting technology works. Unfortunately, many jurisdictions do not have adequate safeguards for when voting technology breaks down. In many places when the machines breakdown, voting stops. Those voters who have the bad luck to show up when the machines are down are turned away. States should implement emergency ballot procedures and be sure to teach their poll workers how to follow them.

Inaccurate and Incomplete Registration Lists

This year, more than 3.5 million new voters have registered, up 65% from the same period 4 years ago. These numbers are staggering and we should all be proud of the powerful chorus of new voices engaging in the process. Unfortunately, in every state we covered during this year's primaries and in every program we have run in elections past, eligible voters who submit timely registration applications find that their names are not

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on the registration rolls. Moreover, this year in Indiana, Pennsylvania, Georgia and elsewhere, longtime voters -- many with their voter registration confirmations in hand -- were told they were not on registration lists or their party affiliation had been switched. In addition to the administrative shortcomings that left voters off of registration rolls, irresponsible, discriminatory or ineffective purges removed countless voters from the rolls. Many of these problems are foreign to voters in states with Election Day Registration. There, administrative problems and other pitfalls of registration lists can be fixed by voters when they get to the polls. More than any other single reform, Election Day Registration will move us towards fulfilling our moral and constitutional imperative.

Problems with Voter Identification Requirements

Voters in every state are also being turned away by confusion over voter identification requirements. Poll workers are confused about when voters need to show identification and what identification is required by state law. Because of this confusion, poll workers force voters to cast provisional ballots, though they are entitled to regular ballots and turn away voters who should be casting provisional ballots. Worse, some poll workers, educated about what the rules are in their states, insist on implementing stricter ID requirements based on what they think the law *should* be. In every election cycle, we receive calls and our volunteers on the ground witness, poll workers implementing ID requirements in a discriminatory way. Sometimes, in areas where there are large populations of young voters, only students are asked for ID. In addition, we have seen poll workers only ask for the ID of voters they do not know or only voters of a particular racial or ethnic background.

Unfortunately, the debate over voter ID has distracted us from a productive discussion of how to solve the real problems voters face. The case recently decided by the United States Supreme Court, *William Crawford, ET AL. v. Marion County Election Board, ET AL; and Indiana Democratic Party, ET AL., v. Todd Rokita, Indiana Secretary of State, ET AL.* has only made this problem worse. As this Committee has heard, there is no evidence of a massive conspiracy to impersonate eligible voters at the polling place – the only type of election misconduct that voter ID actually guards against. There are no shadow bands of ineligible voters roving from polling place to polling place to affect election results. And no wonder, penalties are quite high – up to 10 years in prison and a fine of up to $10,000 and the prospects of affecting election outcomes are low – changing a single vote. As they should, every state has a process for verifying voters' identities. Most accomplish that essential goal without sacrificing the ability of eligible voters to participate in the process. Of course, there have been attempts to influence election results through misconduct; it just is not done *this* way. The truth is you have a better chance of being hit by lightning than you do finding a voter impersonator.

But the participatory casualties of voter ID are real. On May 6, as Indianans headed to the polls for the first time since the Supreme Court decided *Crawford*, Election Protection was on the ground assisting voters who had questions or problems at the polls. We also were running the 1-866-OUR-VOTE hotline to provide immediate assistance to citizens who needed help during the day. Early that morning, Election Protection volunteer and

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Lawyers' Committee board member, John Borkowski, a partner at the law firm of Hogan and Hartson, LLP, walked into a polling place on the campus of St. Mary's College in his hometown of South Bend. Students from the college were being turned away because they only had a student ID from the private college and not a government issued photo identification with an expiration date. The students were devastated. While talking to Sister Julie McGuire, one of the poll workers, John discovered that it was not just the students that were the victims of this misguided policy, but many of the nuns who lived in the convent that housed the polling place. John talked to retired nuns, between 70-90 years old who either did not have ID or only had an expired license. These nuns no longer drove and had no need for current, government issued photo identification. They lived in the convent, among a community of their sisters. John discovered many of the sisters who were ineligible did not attempt to come to the polls. And that is the true scope of this tragedy. Most of the citizen voices made silent because they do not have this type of ID, as many as 21 million eligible voters across the country, will not show up because they know they will be turned away.

That night, John summed it up best, referring to the voter ID law he said it "definitely had the effect of preventing many people who were highly motivated to participate in this primary election from exercising their right to vote. It seems very ironic to me that a law intended to prevent voter fraud prevented members of a single community, essentially a family, who have lived together for years, from accepting the votes of their own sisters."

Mr. Chairman, there are real problems with our election system that prevent real, eligible voters with a deep desire to participate in the proud tradition of our democracy. Government has a constitutional mandate to act to protect our moral obligation to providing the world's light of democracy with the best system possible. In addition to the problems I have already discussed, Congress should focus its attention on preventing the cynical attempts to remove eligible voters from the process that actually cause real, eligible voters to be confused, turned away, and disfranchised for political gain. It is critical to show Congress is concerned with making it easier, not harder, for eligible citizens to have their voices heard. Failing this, we risk losing the possibility to transform the energy inspired by this historic election season – the young voter revolution and the reinvigorated voices from all walks of American life – into a civic community committed to a lasting voice in the future of the nation.

Common sense provisions like the Deceptive Practices and Voter Intimidation Prevention Act – which is spearheaded by members of this Committee – will demonstrate the Congress's commitment to fulfilling its constitutional mandate to protect all voters. A particularly strong illustration of the need for this critical legislation is the experience of African-American voters in Milwaukee in 2004. Across the community fliers were distributed claiming to be from the "Milwaukee Black Voters' League" saying that if voters failed to pay parking tickets, if any member of their family was convicted of a felony or if they had ever voted during that year, they could be arrested at the polls. Other fliers were distributed in states across the country telling voters to come to the polls on the wrong day. Unless you can prove conspiracy, these tactics are not currently prohibited by federal law. Furthermore, Senator Whitehouse's Caging Prohibition Act,

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will go a long way to providing the tools needed to stop these insidious political attacks on our right to vote and preventing voter intimidation at the polls.

The Department of Justice should also vigorously enforce the current federal voter protections including the Voting Rights Act and the National Voter Registration Act. The Voting Rights Act is the most successful civil rights legislation in the country's history. We are proud of the clear commitment to the Voting Rights Act that Congress made just two years ago by overwhelmingly reauthorizing the Act. The Department of Justice must reinvigorate its efforts to honor that commitment by vigorous enforcement. Similarly, the Congress took a tremendous step towards progress in passing the National Voter Registration Act just over 15 years ago. Unfortunately, the promise of that bill continues to be unfulfilled because there has not been adequate enforcement of Section 7, which requires state social service agencies to provide their clients with voter registration opportunities. The Department of Justice, and states across the country, must do a better job of enforcing this critical provision.

Unfortunately, election administration has been largely treated as a political issue and not a policy issue in our country. This needs to change. We need real solutions to the real problems that prevent eligible voters from participating in the process and we need to address those issues, not only on the eve of a national election, but in a constant effort to improve the process. Our election system needs an overhaul and not with political solutions to non-existent problems – like requiring discriminatory photo ID requirements, but with common sense solutions to the real problems voters face. We should move toward universal registration by implementing Election Day Registration. Election Day Registration has been implemented with security and reliability in several states, with voters in those states overwhelmingly approving the system once it is in place. This policy also helps simplify the system for poll workers: if there is some problem in the process that would otherwise require several different steps for a poll worker to remedy, Election Day Registration makes the fix easy. We should prevent the real fraud that happens in elections like offensive deception and take away the tools of intimidation and dirty tricks like voter caging. We need to provide a real infrastructure of training for our nation's poll workers and searchingly contemplate the best technology for voters to cast ballots on. We should be creative, thinking of ways to make sure that those who have work or family obligations on Election Day can still participate. Finally, we need to protect those voters who have reliably shown up election after election by making it easier for our seniors to participate.

For over a century, the Supreme Court has held that the right to vote is our most fundamental right because it is preservative of all of our other rights and freedoms. We must honor those who participate by providing the most responsive, advanced infrastructure available. We owe our history, our children and our country no less.

Thank you for the opportunity to testify today and I would be happy to answer any questions.

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Appendix A:
Election Protection 2008 Primary Report:
Looking Ahead to November
May 16, 2008

Election Protection Partners:

A. Philip Randolph Institute
ACLU of Maryland
ACLU of Southern California
ACLU Voting Rights Project
ACORN
Advancement Project
Advocates for Basic Legal Equality
AFL-CIO
African American Ministers Leadership Council
Alliance for Retired Americans.
American Association for Justice
American Bar Association
Asia Pacific American Labor Alliance
Asian American Justice Center
Asian American Legal Defense and Education Fund
Asian Pacific American Bar Association
Association of Black Women Attorneys
Atlanta Legal Aid Society
Avencia
Bet Tzedek
Black Leadership Forum
Black Women Lawyers Association of Los Angeles
Black Youth Vote
Brennan Center for Justice
Bronx Defenders
California Common Cause
California Protection and Advocacy
CASE Ohio
Center for Election Integrity at Cleveland State University
Change to Win
Coalition of Black Trade Unionists
Committee of 70
Common Cause
Common Cause Indiana
Common Cause Ohio
Common Cause Pennsylvania
Congreso de Latino Unidos
Cook County Bar Association
Democracia USA
Democracy North Carolina
Demos
Disability Rights Network of Pennsylvania
Drexel University
Ebenezer A.M.E. Church
Gate City Bar Association
Georgia Association of Black Women Attorneys
Georgia Association of Latino Elected

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Officials
Georgia Coalition of the Peoples' Agenda
Greater Philadelphia Cares
Greater Washington Area Chapter Women Lawyers Division of National Bar Association
Hispanic National Bar Association
Houston Black Lawyers Association
Human Rights Campaign
IMPACT
J. L. Turner Legal Association
John M. Langston Bar Association
KPMG International
Labor Council for Latin American Advancement
Leadership Conference on Civil Rights
League of United Latin American Citizens
League of Women Voters of Ohio
League of Women Voters of Pennsylvania
Metropolitan Black Bar Association
Mexican American Legal Defense and Educational Fund
NAACP, Inc.
NAACP Atlanta Branch
NAACP Brooklyn Branch
NAACP Cleveland Branch
NAACP Houston Branch
NAACP Indiana State Conference
NAACP Legal Defense Fund
NAACP National Voter Fund
NAACP Ohio State Conference
NAACP Prince Georges' County Branch
National Association of Latino Elected and Appointed Officials
National Bar Association
National Black Law School Association
National Coalition on Black Civic Participation
National Congress of American Indians
National Disability Rights Network
Native American Bar Association
New York PIRG
Norman S. Minor Bar Association
Ohio Women with Disabilities Network
OhioVotes
People for the American Way Foundation
Philadelphia AFL-CIO
Philadelphia Daily News
Policy Information Exchange
Puerto Rican Legal Defense and Education Fund
Rock the Vote
Service Employees International Union
Special People In Northeast, Inc.
Temple University
The Black Press of America
The New Voters Project
University of Philadelphia Law School
Video the Vote
VotePA
Votes for Home
Washington Bar Association

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Legal Partners:

Arent Fox LLP
Arnold & Porter LLP
Ballard Spahr Andrews
& Ingersoll, LLP
Bingham McCutchen LLP
Blank Rome LLP
Cleary Gottlieb Steen
& Hamilton LLP
Cooley Godward Kronish LLP
Crowell & Moring LLP
Davis Polk & Wardwell
Debevoise & Plimpton LLP
Dechert LLP
Dewey & LeBoeuf LLP
Dickstein Shapiro LLP
DLA Piper US LLP
Dorsey & Whitney LLP
Drinker Biddle & Reath LLP
Fried, Frank, Harris, Shriver
& Jacobson LLP
Heller Ehrman LLP
Hogan & Hartson LLP
Kaye Scholer LLP
Kilpatrick Stockton LLP
Kirkland & Ellis LLP
Latham & Watkins LLP
Manatt, Phelps & Phillips, LLP
Miner, Barnhill & Galland, P.C.
Morgan, Lewis & Bockius LLP
Morrison & Foerster LLP
Munger, Tolles & Olson LLP
Nixon Peabody LLP
O'Melveny & Myers LLP
Patton Boggs LLP
Proskauer Rose LLP
Reed Smith LLP
Ropes & Gray LLP
Shearman & Sterling LLP
Simpson Thacher & Bartlett LLP
Skadden, Arps, Slate, Meagher
& Flom LLP
Steptoe & Johnson LLP
Stroock & Stroock & Lavan LLP
Sullivan & Cromwell LLP
Sutherland Asbill & Brennan LLP
Troutman Sanders LLP
Venable LLP
Weil, Gotshal & Manges LLP

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INTRODUCTION

In this unprecedented primary season, Americans have once again turned to Election Protection to ensure their votes count. Pundits and strategists alike never imagined the length of this primary process, nor how the historic ground swell of the collective voice of new voters would shape the results.

Unfortunately, the encouraging story of record turnout has been tempered by voters in each primary reporting they were underserved by the infrastructure that supports the election process. This report highlights some of those problems. While each state had a unique set of issues at the polls, there are some common obstacles that voters across the country faced.

While some of the reports that follow describe a single caller's experience, many represent the problems faced by tens, sometimes hundreds of voters. The experiences of the voters served by Election Protection paint a picture of a system that is not prepared to handle this year's expected significant increase in voter turnout. There is time, however, for jurisdictions across the country to adopt new procedures to better respond to the needs of their constituents. Election Protection and the Lawyers' Committee are already establishing programs across the country to operate from now through Election Day to ensure that all voters have an opportunity to cast a meaningful ballot. And when the polls close on November 4, 2008, the Lawyers' Committee will begin culling through the unprecedented amount of data collected by the coalition to make recommendations about improving the voting process nationwide based on real experiences of voters across the country. Based on what Election Protection learned in the primary, the most pressing problems are:

- **Under Trained and Not Enough Poll Workers:** In each primary covered by Election Protection, the dedicated cadre of poll workers misapplied many election rules – from what ballot to give which voter, to what to do when election equipment broke down – causing voters to unnecessarily cast provisional ballots or, worse, to leave the polling place without voting.
- **Election Machinery Breakdowns:** Last-minute changes in voting equipment and new procedures at the polls caused confusion among voters, poll workers and election

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administrators often leading to disenfranchisement. But it was not only human error and confusion; ballot scanners jammed, electronic voting machines broke down and new electronic poll books malfunctioned.

- **Registration Roll Problems:** From state to state, eligible voters who submitted timely registration applications failed to appear on the registration rolls. Other voters showed up on the rolls registered with a political party other than the one with which they intended to register.
- **Confusion Over Voter Identification Requirements:** Voters across the country were improperly asked for identification. Some poll workers, apparently confused about the requirements in their state, were implementing illegal and restrictive voter identification requirements, turning away eligible voters who did not have identification.

Over the coming months, election officials across the country have the authority to prevent many of these problems from happening. Election Protection looks forward to working together with those responsible for administering elections to:

- **Improve poll worker training;**
- **Ensure proper protocols for dealing with election machinery breakdowns;**
- **Implement procedures to guarantee that all eligible registrants make it on the registration rolls; and**
- **Widely publicize correct requirements and restrictions about voter identification and other procedures.**

ELECTION PROTECTION 2008

This year, Election Protection has already organized legal programs for the February 5 "Super Tuesday" Primary, the February 12 "Potomac Primary", the March 4 "Second Super Tuesday" Primaries in Ohio, Texas, Rhode Island and Vermont, the April 22 Pennsylvania Primary, and the May 6 Indiana and North Carolina Primaries. The unique combination of activities that the coalition offers provided immediate support for thousands of voters across the country. Almost 1700 legal volunteers have been recruited, trained and deployed. The 1-866-OUR-VOTE Hotline, administered by the Lawyers' Committee and our pro bono partners, answered more than 6,800 calls from 43

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states and the District of Columbia. Nine call centers were established at law firms across the country where legal Hotline operators staffed over 200 lines. The Election Protection database, designed by the Electronic Frontier Foundation, has already collected more than 5,500 reports from voters across the country. Legal field programs were also organized in Atlanta, Los Angeles, Maryland, Dallas, Houston, Cleveland, Philadelphia, Pittsburgh, Indianapolis and Charlotte.

As November draws closer, the Lawyers' Committee is gearing up to provide the most extensive legal assistance structure to its Election Protection allies since the founding of the program in 2001. Ten thousand legal volunteers will form over 25 local Election Protection Legal Committees (EPLCs) to provide comprehensive legal assistance, guidance, support and advice to diverse coalitions of state and local voter mobilization partners, answer over 200,000 calls to the 866-OUR-VOTE Hotline, meet with election officials, litigate where necessary and advocate for common sense improvements in the election process. There will be more call centers, more trained volunteers and more locations to provide immediate assistance to voters and support for our coalition partners from late spring through Election Day. EPLCs will be working with coalition partners to identify the types of problems voters may face in each location and what can realistically be done to address those issues before Election Day.

SUPER TUESDAY - FEBRUARY 5, 2008

For the first time in history, over half of primary voters cast ballots or caucused on the same day. Starting nearly a year before, state legislatures began moving their presidential nominating contests up to give their voters an opportunity to play a more significant role in the selection of the parties' presidential candidates.

As the country was gearing up for its largest primary process, Election Protection was doing the same. The Lawyers' Committee, together with pro bono partners set up call centers in Los Angeles, CA; Atlanta, GA; Chicago, IL and New York, NY.

Volunteer attorneys created local Election Protection Legal Committees (EPLCs) to coordinate a strategic media campaign focusing their efforts on placing the non-partisan Hotline (1-866-OUR-VOTE) number and critical voter protection information in media outlets that target traditionally disenfranchised voters. A comprehensive suite of

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election materials, from election guides, to Frequently Asked Questions, to Voters' Bills of Rights were updated for each of the states voting on February 5.

Community partners led voter mobilization programs, spread the word about the resources the Election Protection coalition provides to voters and worked with the EPLCs to engage local election officials and prepared the programs for what voters might face on primary day.

Voters across the country received invaluable information and problem-solving from trained call center volunteers.

While the majority of calls were received from the four states where Election Protection had call centers, voters from 15 other Super Tuesday states also received assistance through the Hotline.

CALIFORNIA - FEBRUARY 5, 2008

Arcane primary rules and poll workers' confusion dominated the coverage of problems in California. Voters who did not register with a political party (in California, these voters are referred to as "Decline-to-State" voters) are allowed to vote in either the Democratic or American Independent primaries.

Across the state, the Election Protection Hotline received calls from voters and poll workers alike unfamiliar with who could vote in which primary. Untrained poll workers refused to allow some Decline-to-State voters to cast ballots.

In Southern California another poll worker training problem dubbed "Double Bubble Trouble" threatened to leave 59,000 ballots uncounted. Los Angeles County used a balloting system which required Decline-to-State voters to physically mark a bubble at the top of their ballot indicating whether they were voting in the Democratic or the American Independent primary.

Confusion about the double bubble issue resulted in the disenfranchisement of many Decline-to-State California voters because they did not mark the bubble at the top of their ballot indicating in which primary they wished to vote.

Election Protection coalition partners led by Common Cause and the California Voter Empowerment Circle (CalVEC) advocated with Secretary of State Deborah Bowen for these ballots to count since the vast majority of voters intended to vote in the

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Democratic primary, as indicated by the rosters of votes.

Armed with the data and voter experiences collected through Election Protection, coalition partners met with acting Los Angeles Registrar of Voters Dean Logan and his staff to discuss possible solutions. Within two weeks, Los Angeles County was able to implement a plan to assess the intent of 47,000 voters and "rescue" and count their ballots.

Of course, this is just one of the problems that voters faced in California. Many California voters were disenfranchised because they were dropped from the registration rolls. One caller who had registered two years before had called the Secretary of State's posted phone number to confirm her registration two weeks prior the election, but was not on the registration list when she went to cast her vote.

California voters were also disenfranchised when their party affiliations were wrongly designated on the registration rolls at their polling places. Some registered Democrats were listed as Republicans on the registration rolls, and were not allowed to vote in the Democratic primary, while many registered Republicans were listed on the registration rolls as a Decline-to-State voters or Democrats and were not permitted to vote in the Republican primary.

Other California voters called Election Protection to report:

- A poll worker in Baldwin Park was going down a long line of voters demanding they show identification before they could vote, despite no identification being required.
- Callers reported that they did not receive the vote-by-mail ballots they had previously requested.
- At one polling place, a poll worker challenged a student voter's right to vote and refused to issue a regular ballot because the poll worker asserted that the voter no longer lived at the address the voter used for voter registration.
- In Oxnard, a polling place did not have the voter registration roll for any voter with a last name beginning with "M" or later in the alphabet. All voters with a last name beginning with "M" or later were being instructed to vote by provisional ballot. Poll workers were forcing these voters to vote provisionally.
- Several polling places opened late, making it difficult for working voters to vote prior to going to work and creating confusion for voters.

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GEORGIA - FEBRUARY 5, 2008

Many of Georgia's difficulties on Super Tuesday stemmed from issues with voting technology. Long lines were caused by a shortage of, and problems with, new computerized poll books.

In other incidents, callers reported that the voting equipment was not working, sometimes for an extended period of time, or that the machine failed to record votes properly. One caller reported a line "down the street and around the corner" with over a 45-minute delay due to only one of three machines working. Election Protection advised the caller to ask for a paper ballot and sent a Mobile Legal Volunteer to ensure the situation was resolved.

Throughout the day Election Protection notified election officials about technological issues reported by voters.

In another incident, a caller reported that he had asked to vote Democrat, but when the poll worker inserted the yellow card into the machine Republican names appeared and then the machine shut off. When he asked the poll worker for assistance he was told he had voted. The caller disputed this fact because he had no intention of voting Republican, but the poll worker was unwilling to help. Election Protection was able to resolve this issue by contacting an election official who sent a technician to pull up his voting information and contacted the voter to cast a provisional ballot.

Election Protection also responded to several reports of voter intimidation. In one instance, a caller was stopped by a road block in Fulton County. Election Protection responded by calling officials and the road block was disbanded.

Another report involved an armed Elections Investigator for the Secretary of State at a polling location. Election Protection quickly responded by dispatching a Mobile Legal Volunteer to the polling place.

When the team arrived at the majority African American polling place, the Investigator was standing behind a poll worker who was reviewing and entering identification at the check-in. He left shortly after the team arrived and Election Protection called the Secretary of State's office to report the incident and the concern expressed by voters.

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Other Georgia voters called Election Protection to report:

- A voter in Cobb County reported the entrance to her precinct was blocked and the polling location appeared to be closed. She explained that police wanted voters to enter through the side of the building, but people were unaware and were leaving.
- There were scattered reports of voters being issued a ballot for the wrong party—one caller reported his girlfriend was given an incorrect ballot and the poll worker refused to provide the correct one.
- Another caller reported she was unable to cast a regular ballot at her polling location because a poll worker had incorrectly marked her name when a previous voter with a similar name had voted. Instead, she was forced to cast a provisional ballot.
- Many voters showed up to vote, believed they were registered, and in some cases had received confirmation of their registration, but were told they were not on the rolls.
- Several voters from one particular polling location called to report very long lines caused by the electronic ID verification machines – only two of the 10 machines were being used.
- After presenting identification, a caller was told she was listed as having already voted. The poll worker was unable to make the screen function properly and advised her to return later, even though she had already waited an hour. When the caller returned in the evening, she was told she could have voted earlier by paper ballot.

ILLINOIS - FEBRUARY 5, 2008

Confusion among poll workers regarding identification requirements complicated primary voting in Illinois. Election Protection received multiple reports of poll workers who were erroneously asking voters to show photo identification.

Illinois law requires only first time voters who register by mail to show identification, but reports came in to Election Protection that several long-time voters were being turned away in the city of Chicago.

Another caller alerted Election Protection to a situation in DuPage County where

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he witnessed a poll worker requiring voters to show identification. When a fellow poll worker informed her that identification was not required under most circumstances she seemingly ignored him. The incident was reported to an "obstinate" Election Judge. Election Protection dispatched a Mobile Legal Volunteer to the polling location to address the identification issue.

Yet another problem arose in a precinct with a large Latino population when a caller reported a similar incident to his Board of Elections, but did not believe they were responding to his complaint and called 1-866-OUR-VOTE for further assistance.

Another problem experienced by Illinois voters involved the distribution of ballots. One voter reported that she had been given a Republican ballot despite requesting a Democratic one. When she finally received the correct ballot, she reported the poll workers put her ballot aside rather than in the proper place for counting.

There were several reports about electioneering close to the polls. A caller in Chicago Heights reported he was followed into the polls by a stranger trying to convince him to support particular candidates.

Similar reports were made to the Election Protection Hotline regarding poll workers who were encouraging individuals to vote for certain candidates, or of poll workers calling out voter party information in a crowded polling place.

Other Illinois voters called Election Protection to report:

- Polling places in multiple counties opened late. One voter reported that he could not wait for his polling place to open and would not be able to vote because he worked over one hour away.
- One voter knew that, by law, officials were required to offer Democratic, Republican and Green Party ballots, but did not receive his requested Green Party ballot at his polling location in Lake County until he insisted to multiple officials that they provide him with the correct ballot. After two different officials claimed not to have any ballots, they were "finally able to dig one up."
- A caller expressed concern about the ballot machine at her polling location. When she finished voting, the election judge tried to feed her ballot into the machine back-side up. She protested and the ballot went through the correct way, but the election judge said that she "was one of the lucky ones." The caller was concerned that if the

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election judge was doing this with other ballots, these ballots were not being counted because they were not being fed into the machine properly.

- When a voter asked for a Democratic ballot in a predominantly Republican area, she was told she needed to show photo identification, contrary to Illinois law. She refused and insisted they allow her to vote. Other poll workers then made loud remarks like, "Oh, we've got a Democrat here."

NEW YORK - FEBRUARY 5, 2008

Across New York City, longtime voters showed up at the polls to find they were not on the rolls. Many of these citizens had neither changed their party affiliation nor their address.

A number of callers received documents in the mail detailing their assigned polling location, but when they arrived at the sites they were not listed on the rolls.

One caller estimated that over 100 voters at a single polling place had been dropped from the rolls. Poll managers confirmed that names were missing from the rolls. A number of voters whose names did not appear on the list had registered with the Department of Motor Vehicles.

One caller and her husband were turned away from their polling place because their names were not on the list. They reported the poll worker had told them that "there must be pages missing from the voting rolls" because there was a group of names missing spanning a section of the alphabet. Election Protection verified that she and her husband were at the correct polling site and advised them to print their registrations and return to the polls.

Voting machines also caused problems in New York due to inadequate poll worker training as well as machine malfunctions. Voting machine failures occurred across the city, including parts of Manhattan, West Harlem, Brooklyn and areas of the Bronx.

Some callers reported poll workers were not following protocol by turning away voters when voting machines broke down. Other voters were mistakenly given an affidavit instead of an emergency ballot which is counted regularly.

Callers also complained that poll workers were disseminating information

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contrary to written instructions or were unfamiliar with the correct administration of voting materials. When one caller's voting machine was broken, she was given a paper ballot that was already filled out. She also reported the paper ballot receptacle was an unlocked cardboard box and the paper ballot had candidates from both parties listed.

Throughout the day, when machines broke down many poll workers became confused about proper procedures. Problems resulted from these poll workers' lack of training when failing voting equipment or names missing from the voter rolls required that alternative measures be taken as designated by complex New York voting laws.

Election Protection sent legal representatives to polling locations to inform poll workers of their legal duties, communicated problems to the Board of Elections and initiated the dispatch of machine technicians.

Other New York voters called Election Protection to report:

- Multiple callers reported inappropriate behavior by poll workers. One caller reported that her husband, a registered Republican, was laughed at and ridiculed because of his declared party affiliation. Another caller reported a poll worker made a disparaging remark about the candidate for whom she was wearing a pin.
- At a Manhattan theater, a caller reported the only voting machine assigned to his district had broken down. Voters were instructed to fill out emergency ballots at a table without any privacy. Ballots were then folded into quarters and placed in a cardboard box.
- Another caller reported there was a lack of privacy for voters filling out affidavit ballots at her polling place. She was also concerned there was no visible lockbox to hold the completed ballots. Instead, poll workers took the envelope and "disappeared into a room with it."
- A caller reported that at her polling location, poll workers physically entered the voting booth trying to fix the machines and changed the voter's selection. Election Protection sent a Mobile Legal Volunteer to the polling location to inform the poll workers that they needed to use emergency ballots.

POTOMAC PRIMARIES - FEBRUARY 12, 2008

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When Super Tuesday failed to produce presumptive nominees in either party, the eyes of the nation and Election Protection turned to the District of Columbia, Maryland and Virginia on February 12, 2008, dubbed the "Potomac Primaries."

The Lawyers' Committee, together with DLA Piper US LLP, set up a call center in Washington, D.C., monitored polling places in Prince George's and Montgomery Counties in Maryland and had volunteers stationed at select election official offices in the region.

Volunteer attorneys created a regional Election Protection Legal Committee (EPLC) to meet with local election officials, developed a suite of legal materials and implemented a strategic media campaign to promote the 1-866-OUR-VOTE number and provide vital election-related information to voters.

EPLC members also analyzed data to create a target polling site list for Mobile Legal Volunteers focusing on areas with a disproportionate number of traditionally disenfranchised voters or histories of election administration problems.

The Potomac Primaries continued the trend of high voter turnout. In the District of Columbia, turnout was the highest it had been for a presidential primary in 20 years; in Virginia, there was a 130% increase from 2004; and Maryland had the highest presidential primary turnout in 16 years.

Election officials were overwhelmed and under prepared for such large crowds. Across the region a large number of voters were unable to exercise their fundamental right because the polling places opened late, poll workers were uninformed about the rules, machines malfunctioned and polling places ran out of ballots.

Election Protection worked overtime when a Maryland judge extended polling hours in that state due to an ice storm.

DISTRICT OF COLUMBIA - FEBRUARY 12, 2008

Election officials and poll workers in the District of Columbia were not adequately prepared for the near record turnout during its 2008 Presidential Primary. A shortage of paper ballots, malfunctioning machines and a lack of resources at polling places led to long lines and voters being turned away without casting a ballot.

Election Protection worked closely with D.C. election officials throughout the day

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to help fix problems as they were reported. A number of polling locations ran out of ballots, sometimes more than once throughout the day, causing excessively long lines and forcing countless numbers of voters to leave without casting a ballot. One caller reported that when her polling location ran out of Democratic ballots, voters were instructed to vote Republican.

Election Protection leadership stayed in close contact with the District of Columbia Board of Elections and Ethics late in the day, relaying reports of paper ballot shortages as they were coming in.

Callers reporting ballot shortages included D.C. Councilmember Yvette Alexander, who called to report her precinct had run out of paper ballots. Another caller, who did not feel comfortable voting electronically, was denied her request for a paper ballot, despite local law that gives voters the right to cast a paper ballot if requested. The caller left without voting.

There were also numerous reports from across the District of Columbia of problems with voting machines, including one call from a polling location where only machine was not functioning. The voter reported that she was instructed to use a paper ballot, and to place that ballot in an unsecured box.

Other District of Columbia voters called Election Protection to report:

- Poll workers at one precinct giving out Republican and Statehood Green Party ballots to registered Democrats because they had run out of Democratic ballots.
- A caller reported that, when the polling place at Mount Pleasant Library ran out of paper ballots, voters had to wait in a long line because there was only one touch-screen machine. The polling site also ran out of registration cards to submit for a ballot after signing the roster, so people started using blank pieces of paper to obtain ballots.
- One of Election Protection's Mobile Legal Volunteers reported that when she voted, the optical scanner at her polling place was not working. Ballots were being placed inside the scanner to be processed later.
- Another caller had voted Democrat and registered as a Democrat since 1986, but was informed at her polling place that she was listed as a Republican and so had to vote on a provisional ballot.

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MARYLAND - FEBRUARY 12, 2008

In Maryland near record turnout swamped poll workers and precincts throughout the state. Election Protection received numerous reports of voting machines breaking down. Making the problem worse, many poll workers were not properly trained to hand-out emergency ballots, causing voters to leave without casting a ballot.

In Montgomery and Prince George's County, Election Protection volunteers at election offices worked with county officials to rectify many of these problems and prevent further voters from being turned away. Election Protection also dispatched Mobile Legal Volunteers to polling locations to check on problems, work with poll workers and ensure problems were resolved.

Election Protection received a troubling number of calls from voters who registered through the Department of Motor Vehicles (DMV), but were not on the rolls. Numerous voters arrived at the polling place only to find they were not registered with the party they chose on their registration form preventing them from voting in Maryland's closed primary.

In addition to issues with the DMV, Election Protection worked with numerous voters who had problems with their registrations. Reports from callers and Mobile Legal Volunteers included names dropped from the rolls, incorrect party affiliation, confusion and apparent malfunction of electronic poll books.

A number of the voters reporting party affiliation issues had previously voted without problem. Election Protection was able to help some voters determine their correct party affiliation, allowing them to vote. Volunteers advised others to cast a provisional ballot and contact their local Board of Elections to try to resolve the problem.

Election Protection worked late on February 12 when a Maryland judge extended polling place hours by 90 minutes due to severe weather. The Hotline received a flood of calls after the normal closing time from voters confused about the rules pertaining to extended hours – Federal law requires after hours voters to cast a provisional ballot that is counted like a regular ballot, however, poll workers at several precincts were not properly informed about the procedures.

A caller also reported that poll workers at a polling location in Clinton, MD

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closed the site, kicked voters out of line and locked the doors, despite Maryland's extended hours. Election Protection quickly contacted county election officials who ordered the polling place back open, allowing several voters, who would have otherwise been turned away, an opportunity to cast a ballot.

Other Maryland voters called Election Protection to report:

- A caller in Upper Marlboro reported the ballot on her touch screen machine was incorrectly setup as an audio ballot. The voter asked the presiding election judge for assistance and, after speaking to his supervisor, pulled the card out of the machine. The screen read that the ballot had been cancelled and the election judge gave her a provisional ballot and took her voter card. The caller said she witnessed the same incident happen to approximately 15-20 other voters.
- Multiple callers reported long lines due to disorganization at the polling site, an inadequate number of voting machines, or insufficient preparation for check-in. Several callers reported long lines caused a large number of voters to leave without casting a ballot.
- A number of callers reported they had not been notified of polling location changes. A voter in Prince George's County reported she and other voters had stood in line for 30 to 45 minutes before finding out the polling site had changed. Another caller reported she did not know the polling place where she has voted for a number of years had changed until she was waiting in line. She ultimately cast a provisional ballot along with at least four other people in line.

VIRGINIA - FEBRUARY 12, 2008

Election Protection helped keep countless Virginians in the Richmond area from being turned away when polling places in Chester County ran out of Democratic ballots. At one of the polling places, a poll worker was giving out sheets of paper and telling voters to write down their name, party and presidential candidate, and the sheets of paper would be counted as regular ballots the next day. Volunteers contacted the county board of elections and stayed in close contact with the media, ensuring that ballots were delivered before the polls closed. The Hotline also received multiple reports of poll workers not allowing voters without identification to vote.

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Election Protection also received disturbing reports of voter intimidation. In Spotsylvania, a caller reported seeing a scarecrow hanging from a tree—as though it had been lynched—near her polling place. Another caller in Arlington County reported that a county sheriff's officer was pulling people over in front of the polling place. An Election Protection volunteer notified the county board of elections who contacted the sheriff's office to address the situation.

Severe weather caused power outages in the southwestern part of the state, forcing election officials to change polling locations at the last minute. Election Protection received reports that voters were confused about where they were supposed to vote. Local television and radio stations reported the changes, but many voters did not have power in their homes. Election officials put out signs at the closed precincts, but many of them were too small or not readily visible for voters to see. Confused voters also could not get through to their local election officials because the phone lines were jammed. Election Protection leadership immediately contacted the Virginia State Board of Elections and stayed in contact with them throughout the evening. The Board contacted the media and area poll workers to disseminate corrective information.

Other Virginia voters called Election Protection to report:

- A polling place in Fairfax County had only one person checking voters in and one person handing out ballots. At one point, a poll worker even went outside and advised voters that they might want to come back later.
- An Arlington County polling place lacked sufficient parking forcing voters to circle the location for over 30 minutes. The caller observed several voters give up and drive off without casting a ballot.
- Multiple callers reported that a polling place in Prince William County was understaffed and under resourced. Several voters could not wait in a line that took over an hour and left without casting a ballot.
- A polling place in Fairfax County was listed incorrectly on the website and in the voters' guide mailed by the board of elections, causing numerous voters to go to the wrong location with no information directing them to the correct address.

THE SECOND SUPER TUESDAY - MARCH 4, 2008

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The unprecedented turnout continued on Tuesday, March 4th as voters went to the polls in Ohio, Rhode Island, Texas and Vermont.

The Lawyers' Committee and DLA Piper US LLP set up a call center in Washington, D.C., where the 1-866-OUR-VOTE Hotline received over 1,000 calls from voters.

Volunteer attorneys again organized into Election Protection Legal Committees (EPLCs) to meet with local election officials, developed a suite of legal materials and implemented a strategic media campaign to promote the 1-866-OUR-VOTE number and provide vital election-related information to voters.

In Dallas and Harris Counties in Texas, and Cuyahoga County in Ohio, volunteer attorneys and coalition partners set up local command centers. From these command centers, local leaders dispatched mobile legal volunteers, contacted election officials and helped resolve problems called into the call center in Washington, D.C.

High voter turnout again overwhelmed states as they struggled to supply a sufficient number of ballots and provide space for voters and caucus-goers. Over 2.8 million voters cast ballots, 61% more than in the last presidential election.

In Cuyahoga County, Ohio, Election Protection Mobile Legal Volunteers worked closely with poll workers to solve problems when they couldn't get in touch with the county board of elections' Hotline. Election Protection was able to quickly contact volunteers directly at the board's offices and fix problems in minutes rather than hours, protecting the right to vote for countless Ohioans.

In Texas, Election Protection volunteers worked overtime when the complex Democratic Party primary/precinct convention rules confused and disenfranchised voters across the state.

OHIO - MARCH 4, 2008

About half of the March 4 primary calls came from Ohio. The majority of the problems reported were the result of insufficient information, a lack of resources and inclement weather. While Election Protection and county boards of elections worked to fix problems as they arose, countless Ohioans were disenfranchised due to these problems.

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Election Protection had an especially strong presence in Cuyahoga County with legal volunteers on the ground monitoring targeted precincts throughout the County, assisting voters, helping poll workers and gathering information. The coalition also placed legal volunteers at select Board of Elections offices in Cuyahoga County and across the state.

One of the common problems reported by callers was confusion among voters and poll workers about the newly implemented paper ballot system, especially whether or not to remove "Stub A" from paper ballots. The stub was clearly labeled "Do Not Remove Or Vote Will Not Be Counted." While the warning was not to remove the stub prior to a voter marking the ballot, this was not clear to voters or poll workers. Election Protection worked with the Cuyahoga County Board of Elections to inform voters and poll workers of correct procedure, ensuring that ballots would be counted.

Additionally, multiple precincts began to run out of materials in the evening and poll workers reported problems getting more from the board. When one precinct ran out of paper ballots, poll workers began handing out ballots for another precinct within the polling location despite the fact that the two precincts were in different Congressional Districts. Election Protection was able to quickly notify the Board of Elections and get ballots to the polling place.

Polling locations also ran out of other materials. At one location an Election Protection mobile legal volunteer brought a new box of pens for filling out ballots because the poll workers could not get through to the Board of Elections and workers were concerned that voters would be turned away.

During early voting, a concerned caller reported to the Hotline that voters were not being permitted to park temporarily at a free parking lot behind the Cuyahoga County Board of Elections and were instead directed to pay for parking at lots costing $4.00-$10.00. One woman, who could not pay for parking, was in tears because she was unable to vote. Election Protection's coalition partners on the ground contacted the Cuyahoga Board of Elections and the Board cleared the employee lot to allow any voter free parking for the remainder of the early voting period. The Board also delivered an absentee ballot to the house of the elderly woman who had been turned away.

Other Ohio voters called Election Protection to report:

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- In Cuyahoga County, disability access and electronic reading machines were down at multiple polling locations—some had not worked since early morning. One report noted that the person with knowledge to operate the special disability equipment simply failed to show up.
- The paper ballot system also raised privacy issues across the state. Mobile Legal Volunteers observed multiple polling locations that lacked sufficient privacy screens, forcing many voters to cast their ballot in the open.
- Numerous eligible voters were unable to vote with regular ballots because their names did not appear on the electoral rolls or appeared incorrectly. A caller reported that when she gave the poll worker an electric bill as proof of identification, the worker refused to accept it and told her voters needed a valid Ohio drivers' license with a current address in order to vote.
- One student reported that a poll worker required students to recite their address, while another overheard poll workers incorrectly saying that if the address on a student's driver's license did not match the address on their voter registration they would have to vote a provisional ballot.

TEXAS - MARCH 4, 2008

Dubbed "the Texas Two-Step", the Texas primary was unique because it was both a primary and a caucus. Election Protection worked on the ground and in call centers to help ensure that voters were able to fully participate in both processes.

At the polls, late openings created problems for early voters. One location in Tarrant County opened late and attempted to close early. Election Protection was able to contact the County Registrar to correct the problem. At another polling location in Dallas, there were 100 to 200 people waiting in line at 7:10 a.m. because the polling place wasn't set up. The two workers who were on hand were telling people to return at later without offering an emergency ballot.

Both during regular voting and early voting, callers from Texas reported having problems at the polls when their registration information was either incorrect, changed, or their names were missing from the electoral rolls. Voters across the state reported their names were purged from the rolls, including voters who had submitted changes to their

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registration information six weeks before the election.

Some voters reported that, although they had registered before the deadline with the Department of Motor Vehicles, they were not listed on the rolls at the corresponding polling location or had never received a registration card in the mail. Election Protection instructed them to vote by provisional ballot and to contact the local election authorities before the November elections.

Multiple callers reported that they showed up to cast a ballot before the polls closed, but because of the long lines and general chaos ended up in line for the caucus by mistake. By the time they realized their error, the polls had closed and they were unable to vote.

The Texas precinct conventions were also problematic, largely due to a lack of preparation for an unprecedented turnout. Election Protection received numerous reports of locations that weren't equipped to handle the large number of caucus-goers that arrived, causing excessively long lines at precinct convention locations.

At one location 400 people were still waiting to participate in the caucus one and a half hours after it started, and at another a caller reported that she was in line before 7:15 p.m. to caucus, but the line was so long that when she finally made it to the front more than an hour later the door was locked and she was told she could not participate.

Election Protection also received numerous calls from voters who were confused about the transition from primary to caucus. One caller who had participated in early voting was turned away because he didn't bring the yellow receipt given when he voted.

At one caucus site, a poll worker kept voters waiting to caucus 100 feet away from the polling place, even after the polls closed on time. She would not let anybody inside. Voters were filling out caucus forms in the dark, many using light from cell phones. At another location, voters were denied entry to their caucus by the Fire Marshall.

Other Texas voters called Election Protection to report:

- Election Protection received multiple reports of employers denying employees their legal right to time off to vote. One caller reported that, when he requested time to leave and vote, the employer responded, "it's your problem if you do not get off in time to go vote."

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- At a polling location in Dallas, a volunteer for a sheriff candidate entered a polling place and started incorrectly telling people waiting in line that if they were voting Republican they could go down the street and vote at a different location.
- A single location had only eight booths and one scanner, but the polling place housed three precincts.
- A polling place in Denton County was directing disabled voters to the back of the building where there was no assistance for them to go up the stairs to the voting area.
- General logistics were a significant problem in Texas. Multiple callers reported tow trucks towing cars, including one site in Dallas where people had to leave the caucus location to go outside to stop their cars from being towed.

PENNSYLVANIA PRIMARY - APRIL 22, 2008

At the end of April, the country's attention turned to the Pennsylvania Primary. The Lawyers' Committee and principle Pennsylvania coalition partner the Committee of Seventy were on the ground with over 800 volunteers, mostly stationed in Philadelphia, making this the largest single state Election Protection Primary program. Volunteer attorneys once again organized into an Election Protection Legal Committee (EPLC) to develop relationships with local election officials and media to promote the 1-866-OUR-VOTE number and provide critical support to voters.

A call center at the DLA Piper LLP US office in Philadelphia fielded Hotline calls from across the state, while an army of trained volunteers fanned out across the city to respond to problems at any polling place in Philadelphia. Election Protection leadership was also able to rapidly dispatch these volunteers to polling places in their zones to check on reports of problems and address the issue at the source, helping to protect voters across the city. The comprehensive program was a success by taking advantage of the combined strengths of the Lawyers' Committee and the Committee of Seventy. The relationship between these organizations is spearheaded by Lawyers' Committee board member John E. McKeever, a partner at DLA Piper, who also serves on the Board of Directors for the Committee of Seventy. Election Protection's Coalition partner Congreso de Latino Unidos, in conjunction with other members of the Coalition, fielded the 1-866-OUR-VOTE Spanish language calls, helping to ensure Pennsylvania's Latino and

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Spanish voters were able to cast a meaningful ballot during the primary.

The Election Protection partnership produced over 1,000 voter reports into the Election Protection database recorded throughout the day, the largest number for any single state primary.

Voter turnout once again led to overwhelmed poll workers and long lines - over 3.8 million voters cast ballots in Pennsylvania's primary. As in the other primaries covered by Election Protection, the high turnout exposed many of the fundamental problems that plague the election administration system throughout the state. The sources of problems faced by voters in other states – untrained poll workers, voting machine malfunctions, and problems with the voter rolls – caused many of the obstacles Pennsylvanians faced at the polls.

One of the most troubling issues was a barrage of reports from voters who have been registered as Democrats for years, but were forced to vote provisionally because they were listed as unaffiliated so were prevented from casting a ballot in Pennsylvania's closed primary. When this problem surfaced early in the day, the Coalition took action by alerting the county Boards of Election to the issue and releasing a statement to the media advising voters who encountered this problem to vote provisionally.

PENNSYLVANIA - APRIL 22, 2008

The majority of incidents reported by callers to the 1-866-OUR-VOTE Hotline in Pennsylvania were caused by poorly trained poll workers and an overly-complicated election administration system and poor registration rolls.

Volunteers received more than 300 individual reports of issues at polling locations including poll workers vocally supporting individual candidates at the polls, polling locations that were moved at the last minute without sufficient voter notification, poll workers not being aware of electioneering rules and poll workers imposing overly restrictive voter identification requirements. Election Protection even received a report of a polling location located inside an apartment building with a security system that prevented all but building residents from entering.

Voting machine malfunctions and registration problems were also high on the list of incidents reported. The 1-866-OUR-VOTE Hotline received multiple reports of callers

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unable to vote because of machine problems. In some locations, poll workers refused to distribute provisional ballots where voting machines weren't functioning, while others simply ran out of provisional ballots. The machine problems were diverse in type, ranging from power outages to machine vote counts that were different than the records in the poll books.

Issues with registration were also widespread. Some callers reported that their Party affiliation had been changed despite a long-time voting record with their chosen political party, while others - some of whom had been voting for decades - were simply not listed on the rolls. One caller reported that she had voted as a Democrat in the last election, but when she arrived at the polls, her registration was changed to an "Independent needing assistance." The voter was not in need of assistance, nor had she changed her party affiliation.

New registrants, and those who switched their party affiliation for this election, were also listed incorrectly on the rolls. Election Protection also received multiple reports of registration problems from election administrators - several Judges of Elections called to report incorrect or missing voter registrations.

Voters also called to report intimidation at the polls, including candidates videotaping the entrance to the polling location as well as more disturbing incidents. In one instance, a caller reported that people were standing in the doorway of her polling place. When she asked if they would move, they laughed at her. One of the men followed her into the polling place and ridiculed her when she asked an election official about the rule. Callers also reported issues with various candidates' supporters using bullhorns and other devices to shout obscenities.

Another common issue reported to the 1-866-OUR-VOTE Hotline was last-minute changes in polling place location. One caller reported that his polling place had moved without notice - he was only able to find his new polling location through word-of-mouth; there was no poll worker or sign to indicate where the new polling place was. Another voter received a card in the mail directing her to her polling location, which turned out to be a construction site and not a polling spot.

Other Pennsylvania voters called Election Protection to report:

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- A number of callers were confused and upset by sample ballots that seemed official, but only showed one presidential candidate.
- A voter entered her polling place and asked to be shown how to push the button for her candidate. The poll worker told the voter she was supporting a competitor and said she hoped the voter would adhere to her request.
- Election protection received a call from a voter who reported that the voting machines at her location were set for Republicans only. She told the poll worker that she was a Democrat and the worker replied, "Not today." The voter insisted that she had always voted at that location as a Democrat, but the poll worker simply said "Oh well." The caller was unable to vote.
- At one location, a sample ballot provided by the city was displayed next to the polling machine. A volunteer for a particular candidate had marked this sample ballot in favor of his candidate. This defaced sample ballot remained on display into the afternoon.
- Election Protection received multiple reports of privacy issues - in one location, polling booths were exposed with the machine screens in plain sight of poll workers.
- Disability access was also an issue in Pennsylvania. One woman reported that her mother was unable to access the polling place which was down stairs - the poll workers refused to provide her with a provisional ballot. Another caller reported that she was not allowed assistance from her husband despite being blind. The situation was mismanaged and the caller felt publicly embarrassed.
- One voter called to report that, contrary to Pennsylvania law, a poll worker refused to allow her child to accompany her to the voting machine. When she asked the poll worker why her son was not allowed, the poll worker told her it was because her son "can read."

INDIANA & NORTH CAROLINA PRIMARY - MAY 6, 2008

For our last program of the 2008 Primary season, Election Protection again helped to ensure voters were able to cast meaningful ballots on May 6th. The trend of record turnout continued as voters went to the polls in Indiana and North Carolina.

The Lawyers' Committee together with coalition partner the Brennan Center for

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Justice set up a call center at DLA Piper US LLP in New York City, where legal volunteers answered calls from both primary states through the 1-866-OUR-VOTE Hotline.

In Indiana, Election Protection, supported by coalition partners the Brennan Center for Justice and the NAACP Legal Defense Fund, worked with election officials on the ground in Allen, Bartholomew, Clark, Elkhart, Howard, Lake, LaPorte, Madison, Marion, Monroe, Rush, St. Joseph, Vanderburgh and Vigo counties. In North Carolina, we were supported by coalition partner Democracy North Carolina, and worked on the ground in Durham, Mecklenburg, Orange and Wake counties.

Early in the day Indiana's strict voter ID law emerged as a significant issue, as Election Protection received reports from voters across the state who were turned away from the polls. Students, members of the armed services, and even a group of retired nuns were not allowed to cast a ballot due to the burdensome law recently upheld by the United States Supreme Court.

Voters in both states also reported problems with machine breakdowns. In Indianapolis, a school teacher could not wait in the long line resulting from a machine breakdown and was unable to vote, while in North Carolina, a caller was told that the machine at her polling location was broken and her ballot might not be counted.

Registration problems were again an issue, as voters called 1-866-OUR-VOTE to report they were not listed despite having registered by the deadline, or they were listed under the incorrect party.

Inadequate poll worker training aggravated such situations, as workers in both states were not aware of, or did not follow correct procedure. Some turned away voters without offering provisional ballots, while others incorrectly represented the ID requirements in their state.

INDIANA - MAY 6, 2008

Predictably, Indiana voters were met with a variety of problems stemming from confusion over the state's strict voter ID requirements. Indiana is the only state in the nation to require that a voter's ID include a photo, name, expiration date, and be issued by the State of Indiana or the U.S. Government, a requirement upheld in the recent

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Supreme Court decision.

The impact of the Court's decision was exemplified in an incident that began with a first-time voter, a freshman at a local private college. She was reduced to tears when poll workers, nuns at a local convent, informed her that her private college ID was insufficient identification for her to cast a ballot. Lawyers' Committee board member and Election Protection leader John Borkowski, a partner at Hogan & Hartson LLP, was working as a Mobile Legal Volunteer at the polling place and attempted to help the student, including offering to help her get a valid ID. While Borkowski and the poll workers were helping her, the workers indicated that some of their fellow nuns also could not vote because of the photo ID law. Not only was this student disenfranchised, but so were many of the retired nuns at the convent.

Borkowski expressed his frustration with the onerous law, saying that it "definitely had the effect of preventing many people who were highly motivated to participate in this primary election from exercising their right to vote. It seems very ironic to me that a law intended to prevent voter fraud prevented members of a single community, essentially a family, who have lived together for years, from accepting the votes of their own sisters."

Confusion about voter ID requirements in Indiana also threatened to prevent a registered member of the military from voting—a caller reported to Election Protection that poll workers refused to accept his current U.S. Military ID, claiming that it was insufficient identification. Fortunately, the caller, through consultation with Election Protection, was able to speak with a precinct judge who corrected the poll workers.

Another common issue involved registration. In what has become a consistent pattern this primary season, Election Protection received multiple reports of voters who had registered, and even had current registration cards, but were not found on the rolls.

Poll worker confusion exacerbated these problems. Many of the people who were unable to vote due to insufficient ID or incorrect registration should have been offered a provisional ballot. Unfortunately, insufficient poll worker training resulted in those voters being simply turned away.

Other Indiana voters called Election Protection to report:

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- Machine breakdowns continued to disenfranchise voters. One caller reported a precinct where all electronic voting machines had stopped working, but the poll workers were not offering paper ballots. Many voters left without casting a ballot, including the caller who waited for over an hour. In another incident, a school teacher was forced to leave without casting a ballot because he could not wait for a broken machine to be repaired.
- One polling location utilized a private parking facility, so voters had to go through a gate to park, but it was unclear how a voter should leave the facility since a code was required for exit. Election Protection was able to assist voters by speaking with the Inspector, who agreed it was a problem, and was able to provide the code to an EP volunteer for dissemination.
- Disorganization was also an issue. Election protection received multiple reports of polling places opening late and long lines due to organizational issues. In one instance, a poll opened late because the Inspector was not familiar with the area and had to be guided to the location by a Circuit Court Clerk. In another, a voter reported a polling site where the power cord to the machine had not been delivered as of 11 a.m.

NORTH CAROLINA - MAY 6, 2008

As has happened throughout this primary season, the majority of problems experienced by North Carolina voters on May 6th resulted from poorly trained poll workers. Election Protection fielded calls from across the state as voters encountered barriers at the polls.

Election Protection was prepared and assisted voters on the ground with Mobile Legal Volunteers in Durham, Mecklenburg, Orange and Wake counties, and a Command Center, through the support of Dewey & LeBoeuf LLP, in Charlotte. Legal Volunteers got an early start when a caller reported that a poll worker came outside and announced at 6:20 am that there were no ballots and voters were sent away. Election Protection followed up and discovered the polling place had the ballots in a box but had not opened it. Volunteers quickly notified the caller who was able to vote.

One of the poll worker problems that have occurred throughout the primary

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season, confusion with party affiliation, affected North Carolina voters on May 6th. Despite the fact North Carolina law allows registered voters who are unaffiliated with the Democratic or Republican parties to vote in either primary, multiple callers who were registered as Independents reported poll workers incorrectly turned them away. One voter was told she could only vote in a non-affiliated district judge election; Election Protection advised her she could vote in either primary election.

While North Carolina's primary is open for Independents, voters registered with either the Democratic or Republican parties must vote their party ticket. This added to the confusion on May 6th. Election Protection received reports of voters being registered with the wrong party, including a caller who claimed to have registered as a Democrat, but was informed by poll workers that she was listed as a Republican. The situation was made worse when poll workers incorrectly prevented her from voting for her Democratic candidate, rather than allowing her to vote provisionally.

Inappropriate behavior by poll workers was also reported to Election Protection. At one polling location, a poll worker followed a voter into the voting booth. At another, poll workers were incorrectly telling students their registration was invalid because the deadline to register was 30 days before the election.

Other North Carolina voters called Election Protection to report:

- At one location, officials announced they ran out of Democratic ballots and they would be closing the polling location. Election Protection contacted the County Board of Elections to fix the situation.
- Election Protection also received multiple reports of registration issues. One voter was turned away for not being registered, but had done so at the Department of Social Services in March, prior to the April 11 deadline. Another voter had registered at the Department of Motor Vehicles in 2005, but was turned away at the polls. After speaking with the Board of Elections, she was made to wait an additional 1 hour and 45 minutes to cast a provisional ballot.
- Call center volunteers assisted numerous voters who had recently moved and were confused about where they should vote. Volunteers were able to walk callers through the complex rules and helped them locate the right polling location.

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RECOMMENDATIONS

The problems that have been uncovered by Election Protection – in this primary season and in past efforts – demonstrate that seemingly simple problems, a poll worker not being trained on the proper use of provisional ballots or an election official not properly planning for how to distribute election equipment, leads to countless eligible voters being turned away from the process.

Over the coming months, election officials across the country have the authority to prevent many of these problems from reoccurring. Election Protection looks forward to working together with those responsible for administering elections to:

- **Improve poll worker training:** Election officials have wide discretion over how long, and on what subject areas/topics, poll workers are trained. Poll workers should be provided adequate guidance on how to administer the provisional balloting system, what to do when voters are not on the registration rolls, how to deal with election machinery breakdowns and how to keep lines moving on Election Day.
- **Ensure proper protocols for dealing with election machinery breakdowns:** States and election officials should ensure that there are effective protocols in the case of machine breakdowns. Every polling place with electronic voting equipment should have ample emergency ballots – that are counted as regular ballots – in case machines do not function properly.
- **Implement procedures to guarantee that all eligible registrants make it on the registration rolls:** Every jurisdiction should have adequate staffing and procedures to make sure that every eligible voter who submits a registration application by the deadline is added to the registration list. Moreover, state and local government officials must ensure that all voters who register at the Department of Motor Vehicles or at state social service agencies, pursuant to the National Voter Registration Act, are added to the rolls.
- **Widely publicize correct requirements and restrictions about voter identification and other procedures:** Election officials should clearly communicate to every voter and every poll worker acceptable forms of voter identification required by state law. Similarly, election officials should educate voters through direct mail, advertising and at the polls about their rights.

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THE NATIONAL CAMPAIGN FOR FAIR ELECTIONS IS AN INITIATIVE OF THE VOTING RIGHTS PROJECT OF THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW.

THE GOAL OF THE NATIONAL CAMPAIGN IS TO FOSTER A NATIONAL MOVEMENT COMMITTED TO ENSURING THAT ALL VOTERS HAVE AN EQUAL OPPORTUNITY TO CAST A MEANINGFUL BALLOT. NCFFE IS THE LEGAL LEAD OF ELECTION PROTECTION - THE NATION'S LARGEST NON-PARTISAN VOTER PROTECTION COALITION WITH OVER 100 PARTNERS AT THE NATIONAL, STATE AND LOCAL LEVEL. WE ADMINISTER THE 1-866-OUR-VOTE HOTLINE AND RECRUIT, TRAIN AND DEPLOY THOUSANDS OF DEDICATED TRAINED VOLUNTEERS WHO HELP TENS OF THOUSANDS OF VOTERS ACCESS THE POLLS AND OVERCOME OBSTACLES TO THE BALLOT BOX.

IN ADDITION TO OUR LEADERSHIP IN THE ELECTION PROTECTION COALITION, NCFFE ADVOCATES FOR PROGRESSIVE ELECTION REFORMS AT THE FEDERAL, STATE AND LOCAL LEVEL, LITIGATES WHERE VOTING RIGHTS ARE VIOLATED AND BRINGS COMMUNITIES TOGETHER TO EDUCATE AND MOBILIZE CITIZENS ABOUT FAIR ELECTIONS. WE CANNOT WAIT UNTIL ELECTION DAY TO RESPOND TO THE PROBLEMS VOTERS FACE EXERCISING THEIR MOST FUNDAMENTAL RIGHT, THE RIGHT TO VOTE.

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Appendix B:

Fast Facts on the Impact of Photo ID: The Data

Justin Levitt, Counsel
Brennan Center for Justice at NYU School of Law
April 2008

- We now know that Indiana's law has actually disenfranchised real citizens. In contrast, no party or *amicus* cited even one case of impersonation at the polls in Indiana to the Supreme Court. In fact, more real Hoosiers have been disenfranchised by the law in the last two years than the number of reported cases of impersonation at the polls cited to the Supreme Court — from anywhere in the country — in the last two decades.[i]

Actual elections

- For example, in limited-turnout local elections in one Indiana county (Marion) in 2007, 32 voters cast ballots that could not be counted because of the voter ID law.[ii] Moreover, these were long-time voters: 14 of them had previously voted in at least 10 elections.[iii]

- Similarly, in limited turnout local elections in 2007 in Georgia — the only other state that requires photo ID at the polls to vote a valid ballot — 33 voters' ballots were rejected because of the ID law.[iv] In the 2008 presidential primary, the number grew to hundreds (254).[v] It is impossible to know how many other voters without ID came to the polls but did not cast provisional ballots (which wouldn't have counted anyway), or how many declined to make the trip to the polls in the first place (which would have been futile).

Surveys of registered voters

- Researchers have also surveyed voters to assess the impact of photo ID laws on the electorate. A 2007 academic study found that **13.3%** of registered Indiana voters (±3.1%) did not have a current government-issued photo ID card.[vi] The same study found that:
  - 18.1% of black registered voters (compared to 11.5% of white voters)
  - 20.3% of registered voters 18-34 (compared to 9.4% of voters 55-69)
  - 16.4% of registered voters over 69 (compared to 9.4% of voters 55-69)
  - 16.7% of voters without a college degree (compared to 7.9% of voters with a degree)
  - 17.5% of voters earning < $40,000/ year (compared to 11-12% of others)

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in Indiana did not have a current government-issued photo ID card. All of these differences were statistically significant.

- These same academic researchers also conducted an exit poll study based on the 2006 elections in three counties in California, New Mexico, and Washington.[vii] Surveying actual midterm voters, the researchers found that **12**% of actual voters reported that they did not have a valid state driver's license. The same study found that:
  - Nonwhite voters were 9.8% less likely to have a valid license than white voters
  - Voters over 65 were 8.1% less likely to have a valid license than younger voters
  - Voters with no high school diploma were 5.6% less likely to have a valid license than voters with a graduate degree, and
  - Voters making less than $20,000 per year were 4.0% less likely to have a driver's license than voters making more than $100,000.

- In 2008, the Executive Director of the Carter-Baker Commission released a study of registered voters in Indiana, Maryland, and Mississippi.[viii] The study found that 1.2% of registered voters had no government-issued photo ID; it did not ask whether the ID in question was current. Even this modest result amounts to an impact reaching more than **two million** registered voters if applied nationwide.[ix] The same study found that 2.2% of black registered voters (compared to 0.9% of white voters) lacked government-issued photo ID, though that difference was not statistically significant, given the small sample size.

Surveys of eligible voters

- Researchers have also surveyed eligible voters, including registered and non-registered voting age citizens. A 2006 national survey by an independent survey firm, and sponsored by the Brennan Center, found that **11**% of voting-age citizens (±2%) did not have current government-issued photo ID.[x] The same study found that:
  - 18% of citizens 65 and above
  - 25% of black voting-age citizens (compared to 8% of white citizens)
  - 16% of Hispanic voting-age citizens (compared to 8% of white citizens)
  - 20% of nonwhite voting-age citizens (compared to 8% of white citizens), and
  - 15% of citizens earning < $35,000/year (compared to 7% of others)

  did not have a current government-issued photo ID card. All of these differences, except for the Hispanic citizens alone, were statistically significant.

- The 2007 academic study of Hoosiers was cited above with respect to registered voters, but it also surveyed voting-age citizens in Indiana, both registered and not. That study found that approximately **16.1**% of voting-age Indiana citizens did not have a current government-issued photo ID card.[xi] That same study found that 26.6% of black voting-age citizens had no current government-issued photo ID card, compared to 13.6% of white voting-age citizens.

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Estimates using government records

- Private researchers and government entities have also tried to quantify the number of their voting-age citizens without government-issued photo ID, usually by comparing census tabulations to motor vehicle records. The 2005 Carter-Baker Commission, for example, estimated that **12**% of voting-age Americans do not have a driver's license.[xii] Research collected by its predecessor, the 2001 Carter-Ford Commission, showed that 5-10% of voting-age Americans had neither driver's licenses nor other state-issued photo ID.[xiii]

- A 2005 study by researchers at the University of Wisconsin-Milwaukee estimated that approximately **20**% of Wisconsin voting-age residents did not have a driver's license or state-issued photo ID.[xiv] The same study also found that, of Wisconsin residents:
  - 23% of residents 65 and above
  - 52% of nonwhite residents 18+ (compared to 17% of white residents)
  - 78% of black men 18-24 (compared to 36% of white men 18-24)
  - 63% of Hispanic women 18-24 (compared to 25% of white women 18-24)

  did not have a driver's license or state-issued photo ID.

- The Georgia chapter of the AARP has estimated that about 153,000 Georgians older than 60 who voted in 2004 do not have government-issued photo ID. It has also estimated that 36 percent of Georgians over age 75 do not have a driver's license.[xv]

- Several states have also tried to quantify the number of their registered voters without photo ID, usually by comparing registration lists to motor vehicle records. Such methods have been critiqued, particularly when either motor vehicle records or registration lists are substantially outdated, reflecting individuals who have died or moved out of state.
  - In 2006, the Michigan Secretary of State estimated that about 370,000 (5%) of the state's registered voters had no driver's license or state-issued photo ID.[xvi]
  - The Missouri Department of Revenue estimated that 169,215 registered Missouri voters did not have the required photo ID in that state; the Secretary of State estimated that approximately 240,000 registered voters did not have the right ID.[xvii]
  - In Georgia, estimates have ranged from 198,000 registered voters to 676,246 registered voters without driver's licenses or state-issued photo ID,[xviii] but both estimates have been heavily criticized.

Studies of turnout

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- Another set of studies tries to estimate the impact of restrictive ID laws on voter turnout, by analyzing past voting patterns and trying to extrapolate the degree of change in any given election based on the ID laws.[xix] These studies' methods vary, and there are substantial differences in the results, and substantial disputes about the validity of each approach. Only a few studies analyze data from 2006, the first federal election in which a photo identification law was actually in place.[xx] Moreover, even these studies are constrained by the limited pool of data, because only a few elections have taken place under the new restrictive laws.

Studies of voter attitudes

- On the other side of the coin, some seek to justify restrictive ID laws, despite their demonstrated impact on American citizens, by claiming that they will increase public confidence in the election process. A careful new study, forthcoming in the *Harvard Law Review*, casts serious doubt on the validity of such assertions. The data show no support for the notion that requiring identification will increase voter confidence; the study found no statistically significant correlation between the rate at which citizens were asked to produce photo ID and their perception that either voter fraud generally, or voter impersonation in particular, exists.[xxi] That is, there appears to be no empirical confirmation thus far that photo ID laws make citizens feel more secure about their elections.

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[i] *See* Justin Levitt, Analysis of Alleged Fraud in Briefs Supporting Crawford Respondents (2007), at http://www.truthaboutfraud.org/pdf/CrawfordAllegations.pdf.

[ii] Brief for Respondent Marion County Election Board at 8-9, Crawford v. Marion County Election Board, Nos. 07-21, 07-25 (U.S. Dec. 3, 2007).

[iii] *Id.* at 9-10.

[iv] Shannon McCaffrey, *Votes of Some Who Lacked Photo ID in November Didn't Count*, THE LEDGER-ENQUIRER (Columbus, Ga.), Jan. 29, 2008.

[v] Robert A. Simms, Ga. Deputy Sec'y of State, Testimony Before the U.S. Senate Comm. on Rules and Admin.: In-Person Voter Fraud: Myth and Trigger for Disenfranchisement? 5, Mar. 12, 2008; *see also* Shannon McCaffrey, *More Than 400 Voters Lacked Photo IDs in Feb. 5 Primary*, THE LEDGER-ENQUIRER (Columbus, Ga.), Feb. 14, 2008 (reporting 296 voters without ID casting provisional ballots that were not counted).

[vi] Matt A. Barreto *et al.*, The Disproportionate Impact of Indiana Voter ID Requirements on the Electorate (2007), available at http://depts.washington.edu/uwiser/documents/Indiana_voter.pdf.

[vii] Matt A. Barreto *et al.*, Voter ID Requirements and the Disenfranchisement of Latino, Black and Asian Voters (2007), available at http://www.brennancenter.org/dynamic/subpages/download_file_50884.pdf.

[viii] Dr. Robert Pastor et al., Voter IDs Are Not the Problem: A Survey of Three States (2008), available at http://www.american.edu/ia/cdem/pdfs/VoterIDFinalReport1-9-08.pdf.

[ix] *See* Pastor, *supra note* **Error! Bookmark not defined.**, at 8 (concluding that approximately 1.2% of registered voters in the selected states had no government-issued photo identification); U.S. Election Assistance Comm'n, The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2005-2006, at 8 (2007), *available at* http://www.eac.gov/clearinghouse/docs/the-impact-of-the-national-voter-registration-act-on-federal-elections-2005-2006/attachment_download/file (reporting at least 172,810,006 registered voters as of the 2006 general election).

[x] *See* Brennan Center for Justice, Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification 3 (2006), *available at* http://www.brennancenter.org/dynamic/subpages/download_file_39242.pdf.

[xi] Matt A. Barreto *et al.*, The Disproportionate Impact of Indiana Voter ID Requirements on the Electorate (2007), available at http://depts.washington.edu/uwiser/documents/Indiana_voter.pdf.

[xii] Commission on Federal Election Reform, *Building Confidence in U.S. Elections* 73 n.22 (Sept. 2005).

[xiii] *See* John Mark Hansen, Coordinator, Task Force on the Federal Election System, *Report*, at VI-4 *in Task Force Reports to Accompany the Report of the National Commission on Election Reform* (Aug. 2001); National Commission on Election Reform, *To Assure Pride and Confidence in the Electoral Process*, at 32 (Aug. 2001) ("5-7% of adults do not possess a driver's license or other photo identification, and are disproportionately poor and urban") [*hereinafter* "Ford-Carter Report"].

[xiv] John Pawasarat, *The Driver License Status of the Voting Age Population in Wisconsin* 21-22 (June 2005), *available at* http://www.uwm.edu/Dept/ETI/barriers/DriversLicense.pdf.

[xv] *See* Deanna Wrenn, *Three States Debate Requiring Voters to Show ID*, VENTURA COUNTY STAR, Mar. 31, 2005, at 6; Carlos Campos, *Photo ID Bus Gets Little Use*, ATLANTA J.-CONST., Dec. 19, 2005; Nancy Badertscher, *State Bus Will Roll for Voter IDs*, ATLANTA J.-CONST., Aug. 9, 2005; Sonji Jacobs, *Cox Lashes Out at Photo ID Plans*, ATLANTA J.-CONST., Mar. 19, 2005.

[xvi] Dawson Bell, *Court Jumps Into Dispute Over Voter ID Checks*, DETROIT FREE-PRESS, Apr. 27, 2006.

[xvii] Weinschenk v. Missouri, 203 S.W.3d 201, 206 (Mo. 2006).

[xviii] Sonji Jacobs & Megan Clarke, *No ID? Votes Cast Can Become Castoffs*, ATLANTA J.-CONST., Nov. 2, 2007; Nancy Badertscher, *22 Percent of Elderly Voters Lack Proper ID*, ATLANTA J.-CONST., June 24, 2006; *see also* M.V. Hood III & Charles S. Bullock, III, Worth a Thousand Words? (April 2007) (unpublished manuscript), at http://www.brennancenter.org/dynamic/subpages/download_file_50886.pdf (reviewing an estimate that 305,074 registered voters have no valid driver's license or state-issued photo ID card, and finding disproportionate impact on racial minorities and elderly voters).

[xix] *See generally* Brief of R. Michael Alvarez *et al.* as Amici Curiae in Support of Petitioners, at 10-14, Crawford v. Marion County Election Board, Nos. 07-21, 07-25 (U.S. Nov. 13, 2007); *see also* Jeffrey Milyo, The Effects of Photographic Indentification [sic] on Voter Turnout in Indiana: A County-Level Analysis (Inst. of Pub. Pol'y, Univ. of Mo., Report 10-2007, 2007).

[xx] R. Michael Alvarez *et al.*, The Effect of Voter Identification Laws on Turnout (Caltech Soc. Sci. Working Paper No. 1267, 2007), at http://www.brennancenter.org/dynamic/subpages/download_file_50882.pdf; Jason D. Mycoff *et al.*, The Effect of Voter Identification Laws on Aggregate and Individual Level Turnout (2007) (unpublished manuscript), at http://www.brennancenter.org/dynamic/subpages/download_file_50900.pdf; Jeffrey Milyo, The Effects of Photographic Indentification [*sic*] on Voter Turnout in Indiana: A County-Level Analysis (Inst. of Pub. Pol'y, Univ. of Mo., Report 10-2007, 2007).

[xxi] Stephen Ansolabehere & Nathaniel Persily, Vote Fraud in the Eye of the Beholder 19-22 (Columbia Law Sch. Pub. Law & Legal Theory Working Paper Group, Paper No. 08-170, 2008), *available at* http://ssrn.com/abstract=1099056 (forthcoming HARV. L. REV. 2008). This research also reveals no support for the notion that the potential for in-person impersonation fraud will cause voters to refrain from voting. The study found no statistically significant correlation between the perception that impersonation fraud exists and the propensity to turn out to vote. *Id.* at 16-18.

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Testimony of Maude Hurd, National President
Association of Community Organizations for Reform Now (ACORN)
Submitted for the Record to
Committee on the Judiciary
U.S. Senate, Washington, D.C on
"Protecting the Constitutional Right to Vote for All Americans"
May 20, 2008

Chairman Leahy, Ranking Member Specter, and members of the Senate Committee on the Judiciary, I want to thank you for holding the hearing, "Protecting the Constitutional Right to Vote for All Americans", to discuss the Supreme Court decision in *Crawford* and its aftermath, including the myth of voter fraud perpetuated by the *Crawford* decision which threatens to disenfranchise thousands of voters. On behalf of the Association of Community Organizations for Reform Now (ACORN), I submit the following testimony and ask that it be included in the record. ACORN is the nation's largest community organization representing low- and moderate-income families, with more than 350,000 members in 850 neighborhood chapters across 40 states. In 2004, ACORN ran the nation's largest voter registration drive, helping to register 1.1 million new voters and this year, ACORN is expected to help register 1.2 million new voters.

This is a historic election. By all indications, turnout is expected to be record-setting because of increased voter participation from minorities, women and young people. In response, it is more important than ever that Congress encourage voter participation and remove barriers that inhibit it. ACORN thanks you and the Judiciary Committee for your continued leadership and commitment to protecting the foundation of our democracy by protecting every individual's right to vote. My testimony will focus on the myth of voter fraud; ACORN's work to enhance voter participation; and allegations about ACORN's voter participation work.

Background

In the wake of the *Crawford* decision, many partisan operatives have continued to erect barriers to voter participation through legislative measures that impose onerous voter identification requirements. These bills, introduced in states across the country, threaten to disenfranchise thousands of eligible voters. Proponents of voter ID legislation argue that voter ID is necessary to combat organized voter fraud. Upon further inspection however, these arguments do not withstand scrutiny. In fact, the state of Indiana, during oral arguments before the Supreme Court in *Crawford*, admitted that it had not prosecuted one case of voter fraud. During this hearing, J. Bradley King, Co-Director of Division of Elections for the Indiana Secretary of State acknowledged that to his knowledge no one in Indiana has been charged and prosecuted for voter fraud.

Voter fraud is a crime; however, there is no single accepted definition of voter fraud. In order to unravel the myth of voter fraud it is useful to develop a working definition. Voter fraud is a subset of election fraud. According to the Politics of Voter Fraud[1], the U.S. Department of Justice defines election fraud as "conduct that corrupts the process by which ballots are obtained, marked, or tabulated; the process by which election results are canvassed and certified; or the

[1] See *Politics of Voter Fraud* by Lorraine C. Minnite, Ph. D. on behalf of Project Vote

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process by which voters are registered." By extension, voter fraud is the intentional corruption of the electoral process.

Voter fraud is extremely rare. At the federal level, records show that only 24 people were convicted or pleaded guilty to illegal voting between 2002 and 2005. This number includes 19 people who were ineligible to vote – five because they were still under state supervision for felony convictions; 14 who were not U.S. citizens; and five people who voted twice in the same election. State evidence is also negligible and not because states have failed to enact laws to punish voter and election fraud but because instances of such fraud are very rare.

There are numerous state laws in place that criminalize voter and election fraud. For example, in Texas, a person can be convicted of a third degree felony for voting in an election for which a person knows the person is not eligible to vote. In Pennsylvania, giving or receiving money in exchange for voting a certain way can bring a prison term of seven years and $15,000 in fines. Pennsylvania has also enacted laws punishing individuals who vote when they are not registered to vote. However, given the low incidents of fraud, these so-called ballot security measures like voter ID, are nothing more than an attempt to undermine the foundations of our democracy by disenfranchising voters, many of whom are people of color.

ACORN's Work to Enhance Voter Participation

ACORN works to expand voter participation to reflect the diversity of the American electorate and to empower people to see how their participation in the political process can influence the issues they face in their daily lives. Increasing voter participation among underrepresented groups is an important step toward winning a voice and material improvements for low- and moderate-income communities.

ACORN has helped more than 1.6 million Americans register to vote from low-income and historically disenfranchised communities. Due to our highly successful voter registration campaigns, ACORN, unfortunately has come under attack by those who fear that Latino, African American and low-income voters may not support the same candidates they do. As a result, some critics have placed ACORN's voter registration work under extreme scrutiny and have consistently made slanderous accusations regarding its registration processes. However, there is not a single documented allegation that ACORN has ever knowingly submitted a fraudulent application or sought to get an ineligible person to cast a ballot. In fact, the highly publicized controversy over the firing of U.S. Justice Dept. attorneys has shed some light on coordinated attempts to block ACORN's voter registration program from very high levels.

Despite these claims, ACORN adheres to stringent quality control procedures and establishes close relationships with local and state elections officials to ensure quality. ACORN staff and canvassers take part in voter registration training sessions that teach them to collect complete and valid registration cards. Registration drive workers also learn about the serious consequences of registration irregularities and know that ACORN will terminate them and refer them to law enforcement should they fail to advise supervisors about potentially bad applications. In the past, a handful of people working for us have tried to pad their hours by turning in fake cards. These individuals, in turn, were referred to prosecutors.

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In addition, voter registration drive supervisors are trained in identifying suspicious activity and follow detailed protocols to investigate and address irregularities. ACORN staff members call every person who registers through out voter registration drives to verify their information. One of ACORN's quality control protocols is to cooperate with Board of Elections officials, and consequently, ACORN staff proactively reaches out to elections officials and requests feedback about the accuracy of voter registration card submissions. It should be noted that most Board of Elections officials welcome this approach.

Over the years, partisan operatives have pointed to ACORN as an example of rampant voter fraud. During this hearing, Cleta Mitchell asserted that ACORN's activities in Washington were evidence of group-sponsored voter fraud. This is not the first time partisan operatives have cited our work in Missouri and Washington State as blatant examples of ACORN's so-called attempt to fraud our electoral system. The facts, however, do not support these allegations.

In fact, Missouri state law required that ACORN turn in all voter registration applications collected even if ACORN workers suspected some applications to be inaccurate or incomplete. Following the law and beginning in late September 2006, ACORN staff members turned in batches of voter registration cards to the Republican Director's office, including questionable cards as required by law. Also included with these submissions were ACORN's own quality control procedure reports alerting Board of Election workers to potential problem applications. Over the course of its entire 2006 voter registration drive in St. Louis, ACORN submitted more than 25,000 voter registration applications to the St. Louis Board of Elections. In accordance with ACORN policy, staff members followed up with that office and made inquiries as to whether there were any problems with the applications. In response to those inquires, the Board of Election repeatedly stated that there were no problems.

Furthermore, an ACORN attorney met personally with the Republican Director and asked if his office had identified any troublesome voter registration applications that could be construed as fraudulent. The Director informed him that there were not. Less than an hour after the attorney's meeting with Republican Director Leiendecker, the attorney received a call from a *St. Louis Post Dispatch* reporter, who was writing a story about the Republican Director's allegation that ACORN submitted 5,000 false applications as part of a voting scheme.

A similar situation unfolded during a voter registration drive in Kansas City, Missouri; however, the outcome was much different. When ACORN identified suspicious voter registration cards in that city and notified the Board of Elections, law enforcement, not the media, got involved. ACORN worked closely with law enforcement and four workers were indicted for submitting fraudulent voter registration applications on behalf of ACORN. When Board of Elections officials cooperate with community voter registration workers, the result is that individuals seeking to commit fraud are brought to justice and maintaining accurate voter lists is a more effective process.

In King County in Washington State, a handful of temporary ACORN workers attempted to defraud ACORN by pretending to register people they had not registered. They turned in about 1,800 voter registration forms, many of which appeared to be fraudulent. ACORN national and state staff worked with prosecutors to compile the information they needed to take appropriate

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action. Consequently, King County prosecutors indicted seven people they believed were the perpetrators of this fraud and also announced that ACORN did NOT face charges stemming from this incident.

ACORN has helped more than 39,400 Washington State citizens apply to register to vote between 2004 and 2006. While the temporary employees involved in this case and in a handful of similar cases represent a tiny fraction of employees involved in our voter registration operations, these incidents nevertheless concern us greatly. As you know, when any employer hires thousands of employees, there will likely be a small percentage who are later deemed unsuitable.

ACORN and officials in King County, WA, reached an agreement regarding ACORN's voter registration drives in Washington State. In the agreement, ACORN committed to performing a range of practices to help us better identify and prevent future problems with voter registration cards collected during our voter registration drives. In the meantime, we have continued to tighten our quality control procedures so that we can improve our ability to identify fraudulent cards and bring workers who break the law to the attention of prosecutors.

ACORN members are proud of our voter registration work. We help register those who most need to make their voices heard in this election: African Americans, Latinos and low-income citizens. We encourage people to register to vote and go to the polls on Election Day so that they can have a voice on issues that matter to low and moderate- income families, including good jobs, quality education, affordable health care and safe neighborhoods. We also defend the rights of citizens to vote in this country by advocating for fair election laws. ACORN and our allies have appealed to the courts and successfully blocked unfair laws that made it difficult for people to register and vote.

Recommendations

In order to enhance voter participation and protect the constitutional right to vote for all Americans, ACORN makes the following recommendations:

- Support S. 2305, "The Voter Caging Prohibition Act of 2007." Specifically, S. 2305 would (1) clearly define and criminalize voter caging; (2) prohibit persons other than election officials from challenging a voter's eligibility based on voter caging; (3) provide that the right to register to vote or vote shall not be denied by election officials if the denial is based on voter caging and not corroborated by independent evidence.
- Support S. 1487, "Ballot Integrity Act of 2007." This bill includes protections for third party voter registration, voter rolls list maintenance/purging controls, and better poll worker training.
- Support S. 804, "The Count Every Vote Act of 2007." This bill provides for greater voter registration and voting protection.

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Congress must act to ensure that our electoral system is open and transparent and develop and pass legislation that will eliminate harmful barriers to voter participation. ACORN stands ready to help move legislation forward that will maximize voter participation and protect every individual's right to vote. Should you have any questions or need additional information, please contact Darren Fenwick, ACORN's Senior Legislative Representative, at 202.547.2500 or via email at legrep5@acorn.org.

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SETTLEMENT & COMPLIANCE AGREEMENT

This SETTLEMENT & COMPLIANCE AGREEMENT is by and between King County, a municipal corporation organized under the laws of the State of Washington ("King County") and the Association of Community Organizations for Reform Now ("ACORN"). King County and ACORN are sometimes collectively referred to in this agreement as the "parties."

RECITALS

WHEREAS, King County has concluded that it may have valid administrative, civil, and criminal cause of actions against ACORN stemming from ACORN's actions during a voter registration operation in King County during the 2006 election cycle; and

WHEREAS ACORN denies any liability for such conduct; and

WHEREAS, the parties wish to resolve this dispute without litigation and in a manner that protects the interest of the public and ensures the future integrity of the voter registration process, that reimburses King County for out-of-pocket expenses associated with its investigation into this matter, and that allows ACORN to gather voter registrations in a manner consistent with the laws of the State of Washington; and

WHEREAS, the parties have reached an agreement acceptable to themselves;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

SPECIFIC TERMS:

(1) Parties:

a. King County is a municipal corporation organized under the laws of the State of Washington.

b. ACORN is an Arkansas corporation, based in Louisiana.

(2) Scope of the Agreement:

a. This agreement applies to any voter registration operation conducted by ACORN that uses paid canvassers to gather registrations, to any large-scale voter registration operation coordinated by ACORN, or to any voter registration operation for which ACORN is being financially reimbursed at the national level or the funding for which has been coordinated by ACORN at the national level.

b. This agreement does not apply to small volunteer efforts by ACORN members, such as attending a community event or door knocking their

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neighbors, nor to registrations collected by ACORN staff as part of their community organizing activities.

c. This agreement is not triggered simply because there has been a local-level financial contribution towards a voter registration operation. To the extent funds are raised in the State of Washington for use by the Washington chapter of ACORN for registration activities, the local Washington chapter will meet with the county to discuss applicable procedures to assure that ACORN will be in compliance with state law.

d. This agreement applies within King County, Washington, unless extended by the provisions of the following paragraph.

e. If this agreement is signed by the Washington Secretary of State, or his lawful designee, prior to July 27, 2007, then the agreement shall apply to any ACORN voter registration operation conducted within the State of Washington. In this event, the term "county" as used in this agreement shall refer to any county in which ACORN is conducting voter registration operations.

(3) Compliance with State law:

a. ACORN agrees to comply with Washington State law, including but not limited to RCW 29A.84.130, at all times during any voter registration operation.

b. ACORN agrees to submit all voter registration forms within one week (seven days) of the voter registration form being completed and received by ACORN, as required by RCW 29A.08.115. If ACORN fails to comply with this requirement, absent a force majoure or impossibility of performance, it agrees to pay a $250 penalty per late registration, up to a maximum of $1,000 per late submission.

c. If ACORN does not submit registrations within a week of the registration being gathered, ACORN agrees to stop gathering applications at the local office until ACORN has sent a national staff person to the local office and retrained the local office on submission procedures.

d. Failure by ACORN to submit a registration within one week of its being completed will not penalize the registration applicant, assuming the registration is not fraudulent.

e. If ACORN submits voter registrations after the deadline for submission of registrations (30 days before any special, primary, or general election), as set forth in RCW 29A.08.140, the registrations will not be processed before the next election and ACORN agrees not to challenge the county or state decision to not add the registration applicants to the election roll for the next election.

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(4) Management issues:

a. ACORN agrees that any local voter registration operation will be supervised by a single, salaried individual (a "responsible organizer") who is ultimately responsible for the voter registration operation.

b. ACORN may hire a separate quality control officer or combine those duties into the duties of the responsible organizer's position, at its discretion. The quality control officer shall be specifically responsible for ensuring compliance with ACORN's internal quality control procedures and the terms of this agreement.

c. ACORN agrees that ACORN national management will review on at least a weekly basis all quality control forms completed by its local voter registration operation. ACORN will maintain a list of the individuals responsible for conducting this national level review and will implement a procedure by which the fact of the national-level review can be confirmed.

d. ACORN agrees to take immediate steps to address any failure to comply with ACORN's own internal quality control process or the terms of this agreement.

e. ACORN agrees that ACORN national management will notify the County Prosecutor and County Elections immediately upon a determination that there is a systemic quality control problem, a failure to follow ACORN's own quality control procedures, or a violation of the terms of this agreement.

f. ACORN agrees to immediately notify the County Prosecutor and County Elections if any ACORN employee is fired for submitting a fraudulent or suspicious registration.

(5) Training:

a. All ACORN political organizers and quality control officers shall receive training, consistent with ACORN's national quality control process and including the requirements of this agreement, at the national level.

b. ACORN shall prepare a training video as to proper voter registration procedures to be shown to all canvassers prior to their employment. This video must be delivered by ACORN to the Washington Secretary of State for approval at least 45 days prior to its first use. This video does not and should not preclude appropriate live training of canvassers on an ongoing basis by ACORN staff.

c. ACORN agrees to inform all canvassers about the potential criminal consequences for submitting fraudulent registrations. All canvassers shall sign a written acknowledgment of these potential criminal consequences in the presence of either a political organizer or quality control officer, who shall also sign the document.

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(6) Quality control issues:

a. ACORN will maintain a list of canvassers that sets forth the initials the canvasser will place on each registration card that he or she obtains. These initials to be distinguishable from employee to employee.

b. ACORN agrees that on each voter registration the canvasser who obtained the registration will place his or her initials in upper right corner of the registration form.

c. ACORN agrees to create a procedure whereby the quality control officer, responsible organizer or responsible organizer's designee, certifies, under penalty of perjury, that all registrations in a given batch were received from the employee initialing the registration.

d. Submission of a voter registration form without the canvasser initials will incur a $250 penalty per registration form. However, this penalty shall not apply if ACORN' submits registrations without initials in a clearly segregated batch accompanied by a letter setting forth the reason why the registrations lack canvasser initials and the steps ACORN will take to address this deficiency.

e. A registration form lacking an initial will still be processed by the county in accordance with state law.

f. ACORN agrees to encourage all individuals completing a voter registration form to date the form. If no date is given, the canvasser will write the date the registration was obtained in the top right corner of the voter registration form.

(7) Suspect registrations:

a. ACORN will prepare a revised "election official verification sheet" for approval by King County. This sheet, in addition to the existing information, shall allow ACORN to indicate with specificity which registrations have been deemed "suspect" (potentially fraudulent) after ACORN review.

b. ACORN agrees to create a new "suspect registration cover sheet" for suspect registrations that allows ACORN to set forth the basis for designating the registration as "suspect."

c. ACORN agrees to segregate all "suspect" registrations upon their submission to the county and to complete the new suspect registration cover sheet for each suspect registration.

d. The revised "election official verification sheet" and new "suspect registration cover sheet" are to be prepared by ACORN and submitted for review and approval to King County by August 31, 2007. These forms are to be approved by King County prior to ACORN initiating a new voter registration operation.

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(6) Quality control issues:

a. ACORN will maintain a list of canvassers that sets forth the initials the canvasser will place on each registration card that he or she obtains. These initials to be distinguishable from employee to employee.

b. ACORN agrees that on each voter registration the canvasser who obtained the registration will place his or her initials in upper right corner of the registration form.

c. ACORN agrees to create a procedure whereby the quality control officer, responsible organizer or responsible organizer's designee, certifies, under penalty of perjury, that all registrations in a given batch were received from the employee initialing the registration.

d. Submission of a voter registration form without the canvasser initials will incur a $250 penalty per registration form. However, this penalty shall not apply if ACORN' submits registrations without initials in a clearly segregated batch accompanied by a letter setting forth the reason why the registrations lack canvasser initials and the steps ACORN will take to address this deficiency.

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d. The revised "election official verification sheet" and new "suspect registration cover sheet" are to be prepared by ACORN and submitted for review and approval to King County by August 31, 2007. These forms are to be approved by King County prior to ACORN initiating a new voter registration operation.

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e. When delivering registrations to the county, ACORN shall include two copies of the "election official verification sheet." The county will date stamp both sheets upon receipt and return one copy to ACORN.

f. The procedures described in this section shall be set forth in ACORN's internal training document.

(8) County and state oversight:

a. Prior to commencing any voter registration operation in a given county, ACORN agrees to send to the county prosecuting attorney one copy of its voter registration quality control manual and all associated quality control forms, one copy of any agreements it has with other entities that relate to the basis of payments for the voter registration operation, and the names and contact information for the local ACORN responsible organizer, local quality control representative, and national ACORN contact person.

b. ACORN agrees to allow the county prosecuting attorney or the state attorney general to review all ACORN's quality control documents (that are not protected by the attorney-client privilege or other legal privilege) and any agreements or internal documents relating to the basis of payments for a voter registration operation, in their entirety, at any time after appropriate notice and in the presence of legal counsel for ACORN (or other agreed ACORN representative). This provision applies both to ACORN's national involvement in voter registration operations and ACORN's local voter registration operations in Washington State.

c. ACORN will designate one national contact person as its representative for communications concerning this agreement. At its discretion, the county may notify this individual of any breaches of this agreement. Upon such notice, ACORN will cease operation of its voter registration operation until an ACORN national representative has visited the local operation to review training procedures (this requirement may be waived with the agreement of the county).

(9) ACORN criminal liability:

a. ACORN agrees that submission of registrations that have been fraudulently collected by an ACORN employee and not reviewed pursuant to the quality control procedures, or willfully turning in fraudulent cards, may constitute grounds for criminal prosecution of ACORN as a corporate entity unless such cards have been segregated by ACORN pursuant to the requirements of section 7 of this agreement.

b. ACORN agrees that violation of the terms of this agreement may be used as evidence in the State of Washington in future criminal prosecutions against ACORN employees, ACORN management, or ACORN as a corporate entity.

c. Minor violations or a violation of a specific term of this agreement alone cannot be used as the sole basis of a future criminal prosecution against

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ACORN employees, ACORN management or ACORN as a corporate entity.

(10) Penalties:

a. If ACORN violates any term of this agreement, it agrees to pay a penalty according to the following schedule:

i. Violation reported by ACORN within 14 days of commission = no penalty.

ii. Violation reported by ACORN within 30 days of commission = $250 per violation.

iii. Violation reported by ACORN after 30 days of commission or brought to ACORN's attention by the county after 30 days of commission = $1,000 per violation.

b. A specific penalty provision contained within the body of this agreement supersedes the penalties in this section. ACORN may be penalized under this agreement only once per violation.

c. All penalties are to be paid to the county in which the voter registration form triggering the violation was either obtained or submitted.

d. The penalty terms of this agreement do not preclude the county from pursuing a civil or criminal claim against ACORN.

(11) Duration of Agreement:

a. This agreement shall remain in effect until December 31, 2012.

(12) ACORN financial responsibility:

a. ACORN agrees to reimburse King County for costs associated with its investigation into ACORN's 2006 registration operations in the amount of $25,000. This amount to be paid to the King County Department of Records, Elections & Licensing Services by August 10, 2007.

AGREEMENT NOT TO SUE AND DISPUTE RESOLUTION:

1. Upon signing this agreement, King County, agrees that it will not pursue any administrative, civil, or criminal remedies against ACORN stemming from its activity in King County during the 2006 election cycle.

2. Nothing in this agreement shall be construed to limit King County or the State of Washington's right to pursue any future violations of state criminal laws. Likewise, nothing in this agreement shall be construed to limit the right of the United States to pursue future violations of federal criminal laws dealing with fraud or the submission of materially false voter registrations.

3. If there is a dispute regarding this agreement, the parties agree to use their best efforts to resolve it directly and/or through their attorneys. If they are unable to

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resolve a dispute, either party may bring an action in King County Superior Court to enforce their respective rights, and the prevailing party shall be entitled to recover its reasonable attorneys' fees and all litigation expenses.

NOTICES:

1. All notices required or permitted hereunder shall be in writing, and shall be: (i) delivered in person or by private messenger or overnight courier service where evidence of delivery is obtained, (ii) sent by certified mail, postage prepaid, with return receipt requested, or (iii) dispatched by facsimile transmission (accompanied with reasonable evidence of receipt of transmission and with a confirmation copy mailed no later than the next business day after transmission), to the parties as follows:

TO KING COUNTY:

SHERRIL HUFF, Director
King County Records, Elections and Licensing
King County Administration Building
500 Fourth Avenue, Room 553
Seattle, WA 98104-2337
Facsimile: (206) 296-0108

With Copy To:

Stephen Hobbs
Senior Deputy Prosecuting Attorneys - Civil Division
W400 King County Courthouse
Seattle, WA 98104-2312
Facsimile: (206) 296-0191

TO ACORN:

Washington ACORN
134 SW 153rd St
Suite D
Burien, WA 98166

Brian Mellor
Senior Counsel for ACORN
196 Adams Street
Dorchester, MA 02122

Steve Bachman
ACORN General Counsel
51420 Hunters Crossing Ct
Granger IN 46530

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Legal Department
c/o ACORN
1024 Elysian Fields Ave
New Orleans, LA 70117

With Copy To:

John Wolfe
701 5th Avenue
Suite 6110
Seattle, WA 98104
Facsimile (206) 447-9374

2. Such notice shall be effective (a) if given by facsimile, when dispatched if sent before 5:00 p.m. Pacific Time on a business day or, if not, then the first business day after sent; (b) if given by mail, three days after mailing, and (c) if given by any other means, when actually received at the address indicated above. Any party may change its address or facsimile number for notices by giving notice of such change in the manner provided for giving notices, provided that the new location must be accessible via facsimile and within the United States and accessible to the general public during normal business hours.

GENERAL TERMS:

1. *Interpretive.* This agreement constitutes the entire agreement and understanding among the parties, and replaces and supersedes all prior oral or written agreement and understandings.

2. *Venue and Governing Law.* Venue for all disputes arising under or connected with this agreement shall be in the Superior Court for King County. This agreement shall be governed by and interpreted in accordance with Washington law.

3. *Negotiated Agreement.* The parties hereby acknowledge that this agreement has been reached as a result of arms length negotiations with each party represented by counsel. No presumption shall arise as a result of one party or the other having drafted all or any portion of this Agreement.

4. *Counterparts.* This agreement may be executed by the parties in counterparts, each of which, when executed shall be deemed an original instrument and binding against the party signing thereon.

5. *Severability.* If any section, sentence, clause, or portion of this agreement is declared unlawful or unconstitutional for any reason, the remainder of this agreement shall continue in full force and effect.

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6. *Authority.* Each party represents and warrants to the others that the individuals signing below have full power, authority and legal right to execute and deliver this Agreement and thereby to legally bind the party on whose behalf such person signed.

7. *Binding Effect; Assignability.* This agreement shall bind and inure to the benefit of the parties and their respective receivers, trustees, insurers, successors, subrogees, transferees and assigns.

8. *Effective Date.* This agreement shall become effective as of the date it is fully executed below.

KING COUNTY, a Washington municipal corporation

DATE: 24 July 2004

Ron Sims,
King County Executive

DATE: 20 July 2007

Daniel Satterberg,
King County Prosecuting Attorney

Association of Community Organizations for Reform Now

DATE:_____

Pursuant to paragraph 2.d, this agreement becomes effective throughout the State of Washington if it is signed by the Washington Secretary of State, or his lawful designee, by July 27, 2007.

DATE: July 25, 2007

Sam Reed,
Washington Secretary of State

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Reviewed and Approved as to Form:

DATE:_____ _____

_____

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Prepared Testimony of Professor Pamela S. Karlan
Before the Senate Committee on the Judiciary
"Protecting the Constitutional Right to Vote for All Americans"
May 20, 2008

I appreciate the opportunity to testify before you today. Quite frankly, I worry that the United States Supreme Court's recent decision in *Crawford v. Marion County Election Bd.*,[1] may presage a repudiation of a century's worth of progress and commitment to expanding the right to vote. They mark a return to the attitude espoused by the Court towards the end of the nineteenth century, when it declared itself "unanimously of the opinion that the Constitution of the United States does not confer the right of suffrage upon any one."[2]

Eventually, the Supreme Court, which had long acknowledged that the right to vote is a "fundamental political right, because preservative of all rights,"[3] finally began to enforce the Constitution's various protections of the right to vote, by applying heightened judicial scrutiny to state statutes and practices that denied individuals the right to register to vote, to cast a ballot, and to have their votes fairly counted. Most notably, the Supreme Court struck down restrictive registration practices that purported to prevent fraud but in fact erected a huge barrier to political participation[4] and struck down poll taxes that conditioned the right to vote on payment of even a modest fee.[5] Congress did even more to make the Constitution's promises a reality, both by proposing a series of constitutional amendments that dramatically expanded the right to vote[6]

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[1] 128 S. Ct. 1610 (2008). I helped to represent the petitioners before the Supreme Court. The views I express in this testimony are my own alone.

[2] Minor v. Happersett, 88 U.S. 162, 178 (1875). Cf. also Bush v. Gore, 531 U.S. 98, 104 (2000) (per curiam) ("The individual citizen has no federal constitutional right to vote for electors for the President of the United States unless and until the state legislature chooses a statewide election as the means to implement its power to appoint members of the Electoral College.").

[3] Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886); see also, e.g., Bush v. Gore, 531 U.S. 98, 104 (2000) (per curiam); Kramer v. Union Free School Dist., 395 U.S. 621, 627 (1969); Harper v. State Board of Elections, 383 U.S. 663, 667 (1966).

[4] See, e.g., Dunn v. Blumstein, 405 U.S. 330 (1972) (striking down a Tennessee durational residency requirement).

[5] See, e.g., Harper v. State Bd. of Elections, 383 U.S. 663 (1966); " Harman v. Forssenius, 380 U.S. 528 (1965).

[6] E.g., U.S. Const. amend. XIX (giving women the franchise); XXIII (giving residents of the District of Columbia the right to vote in presidential elections); XXIV (forbidding poll taxes in elections for federal office); XXVI (giving 18-21 year-olds the right to

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and by enacting a series of statutes, including the Voting Rights Act of 1965[7] – the crown jewel of the Second Reconstruction – under which special federal registrars enrolled almost as many black voters in the South as had been registered in the entire preceding century.[8]

As this Committee knows, in *Crawford* the Court left in place, at least for the time being, an Indiana statute requiring voters to present currently valid, government-issued, photo ID whose address matches the address at which they are registered to vote before being permitted to vote in person. Today I want both to address the *Crawford* decision and to make some broader comments about protecting the constitutional right to vote.

In *Crawford*, the Supreme Court split three ways. Justices Souter, Ginsburg, and Breyer would (rightly, in my view) have struck down the Indiana statute – one of the most restrictive in the Nation – as an unconstitutional burden on the right to vote. They pointed out a fact that the remaining Justices also acknowledged: the Indiana statute means that tens of thousands of Indiana citizens, including already registered voters whose underlying eligibility to vote has *never* been questioned, could not tomorrow appear at a polling place and cast a ballot that will be counted. Although it is difficult for most middle-aged, middle-class, able-bodied suburban Americans to believe this, there are millions of our fellow citizens who do not hold currently valid drivers' licenses or U.S. passports, the two documents most likely to satisfy the Indiana requirement.[9] Even though the dissenters would have used a sliding-scale form of scrutiny, rather than orthodox strict scrutiny to analyze the Indiana statute, they recognized that the state's purported countervailing interest – prevention of fraud – was something of a make-weight, given the utter absence of evidence of in-person voter impersonation and the state's failure to make other efforts to protect the integrity of the election process that would rightly place the burden on the state, rather than on individual voters.

In an especially troubling move, three Justices would have completely shut the door to any challenge to the Indiana statute. In an opinion by Justice Scalia, they asserted that voter ID laws are valid even if they impose an insurmountable burden on *some* voters – for example, elderly voters born at home who lack access to certified birth certificates or voters who lack the

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vote).

[7] 42 U.S.C. §§ 1973 et seq.

[8] Chandler Davidson, *The Voting Rights Act: A Brief History*, in Controversies in Minority Voting: The Voting Rights Act in Perspective 21 (Bernard Grofman & Chandler Davidson eds. 1992).

[9] Indeed, in an episode whose notoriety has only recently been eclipsed by the famous exclusion of a dozen nuns with expired passports by a pollworker who lived in the same convent with them, Representative Julia Carson spent hours trying to force pollworkers to allow her to use her congressional ID card to vote because the workers could not understand that an ID for a particular Congress in fact contains an implicit expiration date.

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money to acquire the underlying identity documents Indiana requires before it issues the nominally free voter ID card .[10] Justice Scalia's opinion even went so far as to characterize as "an indulgence – not a constitutional imperative"[11] – the state's paltry efforts to ameliorate the draconian effects of the voter ID law on elderly citizens, citizens living in long-term care facilities, and voters who possess the requisite ID but forgot to bring it to the polls (and whose votes will only be counted if the voter then completes an arduous process of later verifying her identity).

That left three Justices, led by Justice Stevens, who announced the judgment of the Court, in the middle. These Justices refused to entertain a facial challenge to the Indiana statute, but left open the possibility of as-applied challenges, where individual voters who face a "special burden" in obtaining the documents Indiana requires may obtain a remedy. This result continued a series of cases in which the current Court has rejected facial challenges, even to statutes with conceded constitutional problems and even in cases involving fundamental rights.[12]

What troubles me about Justice Stevens's controlling opinion is both its substance and its practical effect. Facts matter in striking the balance between individuals' right to vote and the government's interest in maintaining the integrity of the election system and the controlling opinion is notably short on facts.

First, a voter ID requirement is quite similar to a poll tax.. As an historical matter, poll taxes were often a substitute for voter registration: an individual wishing to vote was required to pay the tax to obtain a receipt and presentation of a receipt at the polls on Election Day was what entitled this individual to vote.[13] Today, Indiana does something very similar: a voter who wishes to vote is required to obtain a government document – normally, documents that either require payment of a fee themselves (e.g., passports or drivers' licenses) or payment of a fee for the necessary underlying documentation (e.g., a certified birth certificate) – and present that document at the polls in order to vote. And the fee to get a birth certificate is the contemporary equivalent of the $1.50 poll tax that *Harper* struck down.

Moreover, charging individuals to vote is not the same thing as charging them for

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[10] In a stunning footnote, Justice Scalia basically dismissed the Court's poll tax and filing fee cases, dismissing them as "early right-to-vote decisions, purporting to rely upon the Equal Protection Clause." 128 S. Ct. at ___ [*10], n.*.

[11] Crawford, 128 S. Ct. at ___ [*48].

[12] See also Washington State Grange v. Washington State Repub. Party, 128 S. Ct. 1184 (2008); Gonzales v. Carhart, 127 S. Ct. 1610 (2007).

[13] That, incidentally, caused a problem when employers paid poll taxes in their workers' names, then rounded up the workers on Election Day, took them to the polls, provided them with a receipt, and pressured the workers to support the employer's preferred candidate.

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discretionary government services – such as admission to public parks or tuition at public colleges. The Supreme Court has consistently recognized that there are some important processes that affect fundamental rights over which the government enjoys a monopoly and that here the government cannot condition access on paying a fee.[14] And requiring individuals to show identification to board an aircraft does not implicate a constitutional right to fly, let alone (given rising fares) a constitutional right to fly for free.

But even if the burden on an individual voter is not invariably significant, the state's interest on the other side of the balance is completely conjectural. Justice Stevens acknowledged that "[t]he record contains no evidence of any [in-person, voter-impersonation] fraud actually occurring in Indiana at any time in its history. "[15] Indeed, he acknowledged that there were only "scattered instances of in-person voter fraud" anywhere in the United States.[16] To buttress his point, he referred to an anecdote involving Boss Tweed and the New York City municipal elections of 1868. That the state was not really committed to addressing the threat of future fraud, all we need to know is that the state has done nothing to address the indisputably more common problem of improper absentee voting, and did nothing to modernize its voting rolls until it was sued by the federal government.

Even more troubling than the controlling opinion's reliance on possible fraud as a justification for placing a significant restriction on the right to cast a ballot was the opinion's identification of a state interest "in protecting public confidence in the integrity and legitimacy of representative government."[17] That claim boils down to the following: once a state has whipped up an illusory fear that there may be in-person voter impersonation fraud, the state can use that manufactured fear as a justification to impose voter ID requirements. Here, I can say nothing more powerful than to paraphrase the great Justice Brandeis in his concurrence in *Whitney v. California*:[18]

> Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burnt women. It is the function of speech to free men from the bondage of irrational fears. To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the

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[14] See, e.g., M.L.B. v. S.L.J. 519 U.S. 102 (1996) (discussing various cases involving access to the courts).

[15] 128 S. Ct. at ___ [*22].

[16] *Id.* at___ [*24].

[17] *Id.* at ___ [*26-*27].

[18] 274 U.S. 357, 376 (1927).

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evil to be prevented is a serious one.

So, too, with voting. Fear of fraud cannot alone justify preventing thousands of Americans from casting votes. Cynical politicians fear impersonators and disenfranchise the elderly, the disabled, the nonaffluent, college students, and retired nuns. And do not doubt that even if such laws are *written* in ostensibly nondiscriminatory ways, there is a real danger that they will be applied, by cynical, ignorant, undertrained, or harried poll workers in discriminatory ways.

Moreover, public confidence in the integrity of the electoral process can be undermined more dangerously by a perception – a perception far more grounded in empirical evidence – that significant numbers of qualified American citizens have been turned away from the polls or prevented from having their ballots counted. There are already more nuns in Indiana that have been disenfranchised in one election than all the proven in-person vote fraud in Indiana's history. What does that say about public confidence?

To be sure, civil rights groups, individual voters, and political organizations will start bringing – and winning, I expect – as-applied challenges to various states' voter ID laws. But here I agree with what Justice Scalia wrote in his concurrence about a critical problem with as-applied challenges:

> This is an area where the dos and don'ts need to be known in advance of the election, and voter-by-voter examination of the burdens of voting regulations would prove especially disruptive. A case-by-case approach naturally encourages constant litigation. . . . Judicial review of [states'] handiwork must apply an objective, uniform standard that will enable them to determine, *ex ante*, whether the burden they impose is too severe.[19]

One of the reasons we pressed the Supreme Court take up a facial challenge to the Indiana voter ID law was precisely because we have an momentous election upcoming later this year. If the 2008 election is anywhere near as close as the 2000 presidential election or a number of recent congressional elections, there will be a logistical and litigation nightmare. The fallout could do far more to reduce confidence in our election process, not to mention confidence in the judiciary, than any phantom specter of in-person voter impersonation.

Consider, for example, Indiana (or one of the several other states that have recently adopted draconian voter ID requirements) were to be the Florida of 2008, with only a few hundred votes separating the two presidential candidates. Hundreds, or perhaps thousands of voters bring suit, either because their ballots were not counted, or because they were turned away from the polls, or because long lines and tangles made it impossible for them to vote, or because they lacked underlying documentation. Is there *any* reasonable prospect that all their claims could be adjudicated in time to meet the so-called safe harbor provision of the Electoral Count

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[19] Crawford, 128 S. Ct. at ___ [*46-*47].

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Act of 1887? Is there not a substantial risk that whatever a court decides with respect to particular ballots, much of a closely divided public will assume that judges are deciding the case based on its effects on the outcome of a particular contest?

So what can be done beyond the kind of piecemeal litigation to which the Supreme Court's decision in *Crawford* consigns us? My own view is that Congress should use its undoubted power under the Elections Clause of Article I, § 4 and the enforcement provision of the Fourteenth Amendment[20] to forbid states from enforcing voter qualifications that require citizens to obtain documents from the government until *all* documents necessary to acquire the documents entitling a citizen to vote are provided by the government at no cost to individual citizens and through processes and procedures that make those documents readily accessible. That is what other advanced western democracies do before requiring voter identification.

More broadly, as this Committee considers how to protect the constitutional right of all qualified American citizens to cast a ballot and have it counted for the candidates and ballot propositions of their choice, it should look for ways to reinforce the treatment of the right to vote as an *affirmative* right that the government has an obligation to foster, and not simply as a private act with which the government cannot interfere.

This laissez-faire vision of voting does not work when citizens' ability to exercise a right depends on governmental action. A citizen who is handed an official ballot written in a language she does not understand is effectively denied the right to vote. A citizen who lives in a county that uses antiquated voting machines that frequently break down may effectively be prevented from voting by other responsibilities that make it impossible for him to wait in line for hours to cast a ballot. If punitive offender disenfranchisement statutes bar over one million black men from voting, despite public opinion surveys that show overwhelming support for reenfranchising offenders who have completed their sentences, their disenfranchisement is not just their own business: it deprives the black community as a whole of political power, and can skew election results sharply to the right, creating legislative bodies hostile to civil rights and economic justice for the franchised and disenfranchised alike. If four-hour lines to vote in urban precincts in Ohio deter voters there from casting their ballots, their absence can swing a presidential election, thus

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[20] For discussions of Congress's power to safeguard the right to vote, see, e.g., Cook v. Gralike, 531 U.S. 510, 523-24 (2001) (Art. I, § 4 "encompasses matters like notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns") (internal quotation marks omitted); Foster v. Love, 522 U.S. 67, 72 n.2 (1997) (Congress has "the power to impose 'the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved.") (internal quotation marks omitted); Katzenbach v. Morgan, 384 U.S. 641 (1966) (discussing the breadth of Congress' power under section 5 of the Fourteenth Amendment); see also City of Boerne v. Flores, 521 U.S. 507, 519 (1997) (reaffirming congressional enforcement power with respect to voting eligibility requirements like literacy tests).

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impairing the political interests of voters across the country. Although we stand by ourselves in the voting booth, and cast a secret ballot, no one really votes alone.

So what would it mean to develop an affirmative conception of the right to vote under which the government has an obligation to facilitate citizens' exercise of the franchise? One concrete context involves voter registration. A bedrock principle of the fourteenth amendment with respect to other government-recognized or -created entitlements is that the notice the government must give someone before it deprives her of life, liberty, or property should be of the type that "one desirous of actually informing" the individual "might reasonably adopt." A "mere gesture" is not enough.[21]

What if we applied this view to voting, and treated the right to vote as a kind of liberty or property that was inherent in the very notion of citizenship? When the government cares about whether a citizen fulfills an obligation – from registering for the draft to staying clean on parole to showing up for jury duty – it makes affirmative efforts to ensure that citizens are informed about their obligations and participate. For example, the government mails jury summonses to individuals' homes with prepaid mailers for returning the forms, and follows up with those individuals who do not respond. It provides Selective Service registration forms at every post office. Probation and parole officers often go out into the community to supervise their charges.

By contrast, when it comes to voting, the government relies largely on individual initiative. And some states have created hurdles that make registration difficult and time consuming. For example, one out of six individuals who tried to register to vote in Maricopa County, Arizona (the state's most populous county) had his registration papers rejected for failure to comply with the state's restrictive new voter identification bill.

Treating voting as an affirmative right of citizenship could also help to reframe the way courts, legislatures, and the public think about the relationship between voter participation and vote fraud. Conservatives often claim that there is an inevitable tradeoff between making it easier for citizens to vote and increasing the likelihood of fraud. Though those tradeoffs might exist as a theoretical matter, the available evidence suggests that the number of qualified citizens who are barred from the polls by so-called "voter integrity" measures far exceeds whatever fraud is actually prevented.[22] And there is no reliable evidence whatsoever that voters stay away from the polls because they believe unqualified individuals are voting. (Indeed, there is a far more structural explanation for low turnout: many voters believe that their votes will not matter because they live in jurisdictions without competitive elections.)

Just as important as the evidence is the way the potential tradeoff is discussed. In the

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[21] Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 315 (1950).

[22] See, e.g., Spencer Overton, Stealing Democracy: The New Politics of Voter Suppression (2006).

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criminal justice system, where individuals' freedom is at stake, the public understands that protections such as the requirement that a defendant be proven guilty beyond a reasonable doubt before he is convicted may occasionally result in acquitting guilty people. But our system is willing to bear that risk in order to protect the innocent – hence the phrase "better a hundred guilty men go free than that one innocent person be convicted." By recognizing that voting, like physical freedom, is a fundamental constitutional right, perhaps we can move towards a similar perspective with respect to the franchise. My colleague Professor Spencer Overton has estimated that photo identification requirements might "deter over 6700 legitimate votes for every single fraudulent vote prevented."[23] Surely we would be unwilling, as a nation, to say "better that 6700 innocent people go to jail" – even for one night – "than that one guilty man go free." Moreover, the many people who are prevented from voting are far likelier to affect election outcomes than the few, if any, ineligible people who impersonate other votes at the polls.

Beyond registration, recognizing that voting is an affirmative right, and that the government must therefore provide individuals with the means to exercise their right could also serve as a springboard for attacking, both politically and through litigation, states' failure to construct efficient, fair, and reliable voting systems. The reforms instituted in the wake of the 2000 election often fail to deliver on this promise. The "Help America Vote Act," almost as euphemistic a moniker as the USA PATRIOT Act, for example, requires states to provide provisional ballots to individuals who appear at a polling place only to find that their names are somehow missing from the rolls, but it says nothing about whether states must ultimately count those ballots, and many elections officials have refused to count such ballots if the voter was entirely qualified to vote but showed up at the wrong polling station. Similarly, the electronic voting machines many jurisdictions adopted in the wake of the butterfly ballot/hanging chad disasters can be difficult for elderly and disabled voters to use, and may lack audit trails that allow the public to be confident that votes are being accurately counted.

The politics we have is itself a function of who votes. That was the point of Dr. Martin Luther King Jr.'s great "Give Us the Ballot" speech in 1957. If America's electorate is more representative of all its people, the people themselves will push for legislation that more fully serves their needs. But if the electorate is skewed against poor or disabled or elderly or immigrant or less affluent citizens, then the government's policies will be skewed as well. And this will do more to undermine public confidence in the legitimacy of our government than any remembrance of Boss Tweed and the 1868 New York mayoral election could ever do.

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[23] Spencer Overton, Voter Identification, 105 Mich. L. Rev. 631, 635 (2007).

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United States Senate
Committee on the Judiciary
May 20, 2008
"Protecting the Constitutional Right to Vote for All Americans"
Testimony of J. Bradley King
Co-Director, Indiana Election Division, Office of the Secretary of State of Indiana

Thank you, Mister Chairman and members of the Committee. My name is Brad King. I serve as Co-Director of the Indiana Election Division, the state agency which helps voters, poll workers, and local officials to conduct elections throughout Indiana.

I would like to take a few moments to:

(1) describe Indiana's voter ID law, particularly the exemptions and procedures it includes to protect the right of voters to cast their ballots;

(2) note that there is no evidence that the enactment of this law had any measurable impact in suppressing the right of eligible voters to vote in Indiana's hotly contested primary election earlier this month; and

(3) discuss the impact of Indiana's voter ID law on voter turnout, which has increased in presidential primaries (rather than decreased), since the law was enacted.

1. Public Law 109-2005 (the Indiana Voter ID law)

Indiana's voter ID law (Public Law 109-2005) was enacted by the legislature and signed into law on April 27, 2005. Within days, a lawsuit was filed challenging the constitutionality of the law, which was upheld by the United States Supreme Court three years later on April 28, 2008.

Indiana's Voter ID Law requires Indiana residents to present a photo ID before casting a ballot at the polls on Election Day (or before casting an absentee ballot in person at a county election office).

Under this law, an ID must meet four requirements to be acceptable for voting purposes. The ID must:

1. Display the voter's photo;
2. Display the voter's name, which must conform with the name on the voter's registration record;
3. Display an expiration date that is either current, or expired ***no earlier*** than the date of the last Indiana General Election (November 7, 2006); and
4. Be issued by an agency of the State of Indiana or the U.S. government.

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Generally, an Indiana driver's license, an Indiana photo ID card, a U.S. Passport, or a military ID is sufficient to meet these requirements.

The voter ID law also includes several exemptions and procedures designed to both ensure compliance with the voter ID requirement, while safeguarding the right of an eligible voter to cast a ballot:

- **Exemption if voting an absentee ballot by mail.** An Indiana voter who is at least 65 years of age, is a voter with disabilities, or will be confined or absent from the voter's county on election day is entitled to receive an absentee ballot by mail. **A voter ID is not required to be presented by a voter who casts an absentee ballot by mail**. Unlike absentee voting in person, there is no practical method to confirm the identity of an absentee voter by mail since the voter will not personally appear before an election official when the absentee ballot is returned.

- **Exemption if a voter confined due to illness or injury casts an absentee ballot before a "traveling" absentee board.** An Indiana voter who is confined due to illness or injury is not required to present a voter ID when casting an absentee ballot before an absentee board which has traveled to the voter's place of confinement.

- **Exemption if an elderly voter or voter with disabilities who lives in a state-licensed facility where the voter's polling place is also located.** An Indiana voter who resides in a state-licensed care facility is not required to present a voter ID when casting a ballot when the voter's polling place is located in the same facility where the voter resides.

- **Exemption for voters with limited incomes.** An Indiana voter who is "indigent and unable to obtain proof of identification without payment of a fee" may cast a ***provisional ballot*** at the polls without presenting a voter ID.

  The voter may then personally appear before the county election board by noon, 10 days after election day and execute an affidavit to claim this exemption. The "ten day window of opportunity" for a voter to present evidence or take action to ensure that the voter's provisional ballot is counted is generous by comparison with the 48 hour or similar short periods available in other states for this purpose.

  If instead of voting at the polls on election day, an indigent voter casts an absentee ballot before election day at a county election office, the voter can complete the affidavit to claim this exemption at the same time that the voter casts the absentee ballot. There is no requirement for this voter to make a "second trip" to the county election office after the election.

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Further, if the voter executes the affidavit to claim this exemption, the voter ID law does not permit the voter's claim of indigency to be disputed or denied. Under Indiana Code 3-11.7-5-2.5(c) and (d), if the county election board determines that the voter was challenged solely on the basis of failure to present a voter ID, and has now executed the required affidavit, "the county election board *shall* find that the voter's provisional ballot is valid..."

Since a voter's economic status can change from one election to the next, (meaning that a person who is now indigent may not remain so), the voter's affidavit of indigency is not a continuing exemption, but must be claimed in later elections if it still applies to the voter.

- **Exemption for voters with religious objections to being photographed.** An Indiana voter who "has a religious objection to being photographed" may cast a ***provisional ballot*** at the polls without presenting a voter ID.

  The voter may then personally appear before the county election board by noon, 10 days after election day and execute an affidavit to claim this exemption. The "ten day window of opportunity" for a voter to present evidence or take action to ensure that the voter's provisional ballot is counted is generous by comparison with the 48 hour or similar short periods available in other states for this purpose.

  If instead of voting at the polls on election day, a voter with a religious objection to being photographed casts an absentee ballot before election day at a county election office, the voter can complete the affidavit to claim this exemption at the same time that the voter casts the absentee ballot. There is no requirement for this voter to make a "second trip" to the county election office after the election.

  Further, if the voter executes this affidavit, the voter ID law does not permit the voter's claim of religious objection to be disputed or denied. Under Indiana Code 3-11.7-5-2.5(c) and (d), if the county election board determines that the voter was challenged solely on the basis of failure to present a voter ID, and has now executed the required affidavit, "the county election board *shall* find that the voter's provisional ballot is valid..."

  Since a voter's religious views can change from one election to the next, (meaning that a person who currently has a religious objection to being photographed may not continue to have that objection), the voter's affidavit of religious objection is not a continuing exemption, but must be claimed in later elections if it still applies to the voter.

- **Exemption for voters whose identification has recently expired.**

  The voter ID Law recognizes that an individual may have obtained an ID that would otherwise be valid, but may have recently expired. As a result, the voter ID Law contains a "grace period" which permits the voter to present an otherwise

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acceptable ID which expired on or after the date of the last general election. This "grace period" could permit the use of an expired, but otherwise valid, ID for almost 2 years since its expiration.

- **Procedures to assist voters who lose or forget to bring ID to the polls.**

The voter ID Law recognizes that a voter may forget to bring ID to the polls, may have lost their ID, or had their ID destroyed or stolen. To prevent the need for the voter to cast a provisional ballot in such cases, poll workers are instructed to ask the voter to present voter ID *before* the voter signs the precinct's poll list. If time permits, the voter can then retrieve a forgotten ID and return to the polls to present the ID before the polls close.

If the voter cannot present the ID before the polls close, the voter may cast a ***provisional ballot*** at the polls without photo identification. If, before noon, 10 days after election day, the voter provides ID to the county voter registration office and executes an affidavit stating that the voter is the same individual who appeared at the polls on election day and cast a provisional ballot, then the county election board *shall* find that the voter's provisional ballot is valid (unless there is some unrelated challenge to the voter's eligibility) Indiana Code 3-11.7-5-2.5(b).

This voter **can even obtain a voter ID after election day,** and before the expiration of the 10 day "window of opportunity" and present that ID to satisfy the requirements of the law. The voter's provisional ballot will then be counted.

- **Procedures requiring the Indiana Bureau of Motor Vehicles (BMV) to issue free Voter IDs and to provide extended hours for voters.**

The Indiana Voter ID law requires that the Indiana Bureau of Motor Vehicles (BMV) provide ***free*** photo identification to a citizen who will be at least 18 years of age at the next election, and who does not already have a valid ID that meets the requirements for voting.

All BMV locations that normally issue driver licenses and ID Cards have extended hours (8:30 A.M. to 8:00 P.M.) on Monday, the day before an election.

Although BMV offices are closed for all other state holidays, all BMV locations are open on Election Day from 6:00 A.M to 7:00 P.M.

Identification card applicants who are 65 years or older, and can attest that they have never been issued a birth certificate because their birth was never recorded with a state office of vital statistics, may present other forms of identification as a primary document, along with the necessary secondary document, for an Indiana identification card.

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Since August 2007, Indiana's BMV Mobile Unit has logged over 76 days of travel stopping to provide photo-IDs at over 47 locations in 24 counties and 26 cities.

- **Procedures to assist voters whose name change is not yet reflected on voter registration records.**

  Under the Indiana Voter ID law, the name on the photo ID must "conform" to the name on the voter registration record. However the name does ***not*** have to be an ***identical match***. For example, common nicknames for first names, or substitute middle names for a given first name qualify as conforming names. Likewise initials, as a substitute for a first or middle name, are an acceptable variation.

  Voters who have changed their name due to marriage, adoption or divorce may rely on Indiana's long-standing law authorizing change of name or address procedures by voters at the polling place. Indiana law allows a voter to provide the current version of the voter's name by simply writing the new name on the precinct poll list next to the voter's current entry (Indiana Code 3-7-41). By documenting the voter's change of name on the poll list, the voter can then present ID which conforms with the voter's new name.

Indiana's Voter ID Law was narrowly tailored and carefully crafted to:

(1) restore and enhance voter confidence in the integrity of elections;
(2) deter illegal voting, and
(3) ensure that an eligible voter casts one, but only one, ballot on election day.

2. The Indiana Voter ID Law has not suppressed the right to vote in Indiana.

Despite vocal concerns expressed by some opponents of Indiana's Voter ID Law, there is no evidence that the law has had any measurable impact in suppressing the right of eligible voters to vote in Indiana's elections.

The Indiana Voter ID Law took effect on July 1, 2005. Since that date, Hoosier voters have cast ballots in a total of 8 elections under the Voter ID Law's requirements:

1.	November 8, 2005	Elections in 3 small towns
2.	January 18, 2006	Special school district election in 1 district
3.	May 2, 2006	Statewide primary election
4.	November 7, 2006	Statewide general election
5.	May 8, 2007	Statewide municipal primary election
6.	November 6, 2007	Statewide municipal election
7.	March 11, 2008	Special election 7th Congressional District
8.	May 6, 2008	Statewide primary election

The small town elections in November 2005 and the special school district election in January 2006 had a total of fewer than 1,500 ballots cast.

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Since almost no elections were conducted in Indiana after the Indiana Voter ID Law was enacted in April 2005 until the May 2006 state primary, election officials and poll workers had an entire year of transition to develop and provide extensive poll worker training and voter education before the May 2006 primary election.

In both 2006 statewide elections, both 2007 statewide elections, and in the 2008 special election, there were no reports that the implementation of the Indiana Voter ID Law had resulted in the widespread disfranchisement of voters throughout the state, or even that a significant percentage of voters had been required to cast provisional ballots for any reason (including compliance with the Voter ID Law).

As an illustration of the impact of the Voter ID law in these elections, the Marion County Election Board, which administers elections in Indianapolis (the county with the largest number of registered voters in Indiana), stated that in the November 2007 municipal election, *34 voters had been required to cast provisional ballots as a result of enforcement of the Voter ID Law, out of a total of 165,862 ballots cast in that election.*

In other words, approximately **two-hundredths of one percent** of voters casting ballots for the election of the Mayor of Indianapolis were either unable or unwilling to present ID that complied with the Voter ID law.

Initial reports regarding the presidential primary conducted throughout Indiana earlier this month are consistent with the *striking lack of evidence* that enforcement of the Voter ID Law has disfranchised Hoosier voters.

After the May 6, 2008 primary, the Office of the Secretary of State surveyed Indiana's the 20 counties which had experienced the largest increase in voter registration before the primary for issues relating to Voter ID. The survey indicated that no county reported any issues regarding Voter ID that were not resolved on the spot, or resolved through the number of fail-safe provisions under the National Voter Registration Act of 1993 (NVRA) or Indiana state law that are designed to ensure that Hoosier voters do not leave a poll without casting a vote, and that voters only cast a provisional ballot as a last resort when no other method is available.

The Secretary of State's Office toll-free and widely publicized Information Hotline received more than 1,300 calls during the May 2008 primary; only 2 of these calls related to enforcement of Indiana's Voter ID Law.

In one case, the caller reported that a poll worker presiding over a precinct polling place (the "inspector") had asked one voter to provide a Voter ID with an "updated address." If this report was accurate, the precinct inspector had committed an error; Indiana's Voter ID Law does not require that the address on the ID be current to meet the requirements of the Law. In this case, the voter was offered a provisional ballot. The County Clerk was notified of the reported event, and advised to emphasize this point during poll worker training.

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In the second case, a caller reported that a student in St. Joseph County was not allowed to vote after presenting a State of California identification card. The student had previously received an absentee ballot from California, but wanted to vote in Indiana's election. The student was offered a provisional ballot, but declined.

In addition to these two phone calls, the Office of the Secretary of State received additional phone calls from the media advising the office of another Voter ID issue in St. Joseph County regarding 10 to 12 members of the order of The Sisters of the Holy Cross.

Indiana Secretary of State Todd Rokita made the following statement regarding The Sisters of the Holy Cross:

"Indiana's Voter ID Law applies to everyone. From all accounts that we've heard, the sisters were aware of the Photo ID requirements and chose not to follow them.

The sisters could have cast provisional ballots, and received assistance obtaining the proper photo ID within 10 days. Alternatively, they could have, because they are 65 years of age or older, voted by absentee ballot. We have a number of safety nets in place if someone appears at the polling place without his or her photo ID.

Under Indiana's Voter ID law, we are all treated equally. It is my hope that the sisters will obtain the proper ID in order to participate in the November General Election."

Indiana's history regarding provisional ballots also indicates that the enactment of the Indiana Voter ID Law has not had the effect of disfranchising Hoosier voters.

Indiana adopted legislation during 2002 to permit the use of provisional ballots, effective January 1, 2004. Indiana's provisional ballot legislation was enacted before the Help America Vote Act of 2002 (HAVA) required the use of provisional ballots in federal elections, and before the Indiana Voter ID Law was adopted in 2005.

Indiana election officials strive to make use of provisional ballots only as a last resort. If possible, precinct poll workers and county election officials work to solve any problem on election day. For example, before issuing a provisional ballot, a county may instead issue a certificate of error to permit a voter to cast a regular ballot if the county has made a mistake in printing poll lists or maintaining the voter's registration record.

It is important to note that when provisional ballots are cast, this may occur for reasons totally unrelated to the enforcement of the Indiana Voter ID Law, such as when a voter attempts to vote in a precinct where the voter does not reside, or is not registered to vote. In these cases, the provisional ballot should ***not*** be counted under Indiana law since the voter is in fact not eligible to vote in that precinct.

During both the 2004 general election and the 2006 general election, only a tiny fraction of voters cast provisional ballots (rather than regular official ballots).

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In the 2004 election, 5,862 provisional ballots were cast in all of Indiana. This number represented only **two-tenths of one percent** of the more than 2,500,000 ballots cast.

In the 2006 election, 3,873 provisional ballots were cast in all of Indiana. This number represented only **two-tenths of one percent** of the more than 1,700,000 ballots cast.

In the 2008 primary election, only preliminary information is available regarding the number of provisional ballots cast.

As a result of Indiana's 10 day "window of opportunity" for provisional ballot voters (and a similar extended deadline to receive ballots from military and overseas voters), Indiana's counties were not able complete the processing of provisional ballots until last Friday afternoon (May 16, 2008). Further, county election officials are not required to send reports to the Election Division setting forth the total number of provisional ballots cast and counted until today (May 20, 2008).

However, the Office of the Secretary of State has conducted a survey of the 15 Indiana counties with greatest number of registered voters. These counties include urban areas with a total of 52% of Indiana's voters.

The preliminary results of this survey showed that 1,767 provisional ballots had been cast in these counties. This number represented ***slightly less than*** **two-tenths of one percent** of the more than 972,000 ballots cast in the presidential primary in these counties.

If the preliminary information is confirmed, and the same results are reported by the counties with the remaining 48% of Indiana's voters, then about 3,500 provisional ballots were cast in the May 6, 2008 Indiana presidential primary. Since approximately 1,683,600 presidential primary votes were cast in Indiana, the estimated number of provisional ballots cast would again be **two-tenths of one percent** of the ballots cast.

Therefore, the available information indicates that despite the enactment of the Indiana Voter ID Law in 2005:

1. **The raw number of provisional ballots cast in these Indiana elections has *fallen* since the Voter ID Law took effect.**
2. **The percentage of provisional ballots cast in these Indiana elections has *remained the same* since the Voter ID Law took effect.**

This impact of this information becomes more striking when the effect of increased voter turnout since the 2004 primary election is taken into account.

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3. Voter turnout increased dramatically when comparing the 2004 and 2008 presidential primaries (notwithstanding the enactment of Indiana's Voter ID Law). Voter turnout information provides no evidence to support the idea that significant numbers of voters are choosing not to participate in elections as a result of the Law.

In comparing voter turnout statistics between elections, it is important to begin with some basic information:

- Voter participation is generally higher in presidential primaries and presidential elections, and lower in other general election year primaries and elections.
- If large numbers of inaccurate and outdated voter registrations are present on the registration lists (as was admittedly the case in Indiana in 2004 and 2006), the turnout percentage for an election is artificially lowered as a result if all registered voters are included.
- Municipal elections are not comparable to general elections, since only those voters who reside in cities or towns where elections are being conducted are eligible to vote. Voters who live in unincorporated areas could not cast a ballot, even if they wished to do so.

When comparing the May 2004 presidential primary, and the May 2008 presidential primary, Indiana's voter turnout increased dramatically.

In the May 2004 presidential primary, 887,592 of 4,162,606 voters cast ballots. The **overall turnout in that election was 21%.**

In the November 2004 presidential election, 2,512,142 of 4,296,602 voters cast ballots. The **overall turnout in that election was 58%.**

In the May 2006 non-presidential primary, 849,945 of 4,375,606 voters cast ballots. The **overall turnout in that election was 19%.**

In the November 2006 general election, 1,719,351 of 4,295,687 voters cast ballots. The **overall turnout in that election was 40%.**

In the May 2008 presidential primary, the preliminary results of the post-primary survey conducted by the Office of the Secretary of State indicated that in the 15 Indiana counties containing 52% of Indiana's registered voters, 972,120 ballots were cast in the presidential primary, out of a total of more than 2,232,000 active voters in those counties.

As a result, the **estimated voter turnout among active voters in these counties was 44%.**

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Indiana had 4,318,995 voters on May 5, 2008 (the day before the primary election). Of these voters, approximately 3,912,400 voters were "active", meaning that their voter registration record appeared to list a current, accurate address. Since approximately 1,683,600 presidential primary votes were cast in Indiana, the estimated voter turnout among active voters in the entire state would be **a minimum of 39% of active voters (or 43% of all registered voters).**

The final turnout percentage for the May 2008 primary is certain to increase from this initial estimate when county election offices submit their final reports showing the total number of all ballots cast. The presidential primary candidate totals do not include all ballots cast, since some voters requested nonpartisan school board ballots, or requested a primary ballot, but did not cast vote for any presidential candidate.

Therefore, the May 2008 presidential primary turnout percentage is approximately *double* the turnout for the May 2004 presidential primary. In fact, the May 2008 primary turnout percentage *equals* the November 2006 *general election* turnout.

Yet despite the remarkable increase in both the raw number of voters and percentage of voting turnout between the May 2004 presidential primary and the May 2008 presidential primary, there has been no increase in either the number of provisional ballots issued (for any reason) or in reports of voters disfranchised by the enactment of Indiana's Voter ID Law.

In conclusion, I believe that achieving the goal of "protecting the Constitutional right to vote of all Americans" is not impeded by the Indiana Voter ID Law. Instead, protecting the right of each eligible voter to cast one, but only one, ballot, ensures that the voter's ballot will not be "cancelled out" by a ballot cast in that election by an ineligible voter.

Thank you very much for the privilege of addressing the Committee today.

List of appendices:

1. Information published by Indiana Secretary of State at www.in.gov/photoid.
2. *2008 Post Election Update*, issued May 7, 2008 by Indiana Secretary of State.
3. County and Statewide Voter Turnout Information for 2004-2007 elections, published at www.in.gov/sos/elections/elections/index.html.
4. Media advisory issued by Indiana Secretary of State, May 5, 2008, pages 1-11, 17-20, 31-33.
5. *Provisional Ballot Data*, compiled by the Office of the Indiana Secretary of State, May 16, 2008.

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APPENDIX 1

Indiana Secretary of State: Todd Rokita

PhotoID

Public Law 109-2005 requires Indiana residents to present a government-issued photo ID before casting a ballot at the polls on Election Day.

Your photo ID must meet 4 criteria to be acceptable for voting purposes. It Must:

1. Display your photo

2. Display your name, and the name must conform to your voter registration record. Conform does not mean identical. Below are examples of names that would conform to "Robert John Crew"

- Robert John Crew
- Robert J. Crew
- Robert Crew
- R. John Crew
- R. J. Crew
- Bob John Crew
- Bob J. Crew
- Bob Crew
- John Crew
- J. Crew

3. Display an expiration date and either be current or have expired sometime after the date of the last General Election (November 7, 2006)

- Including Military IDs with expiration does of "INDEF"

4. Be issued by the State of Indiana or the U.S. government

In most cases, an Indiana driver license, Indiana photo ID card, Military ID or U.S. Passport is sufficient.

A student ID from an Indiana State school may only be used if it meets all of the 4 criteria specified above. A student ID from a private institution may not be used for voting purposes. For more **Information for College Students** click here.

If you are unable or unwilling to present ID meeting these requirements, you may cast a provisional ballot. If you cast a provisional ballot, you have until noon 10 days after the election to follow up with the county election board and either provide the necessary documentation or affirm one of the law's exemptions applies to you.

Frequently Asked Questions

- How do I get an ID?
- Are there exemptions?

More Information

- Voter Education Publications
- General Voter Information

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- 2006 Vote with ID Plan
- Task Force Roster

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Indiana Secretary of State: Todd Rokita

PhotoID

Obtaining a Photo ID

If you do not possess an ID that is acceptable for voting purposes, Public Law 109-2005 requires the BMV to issue an Indiana State ID Card free.

To obtain a free ID card for voting purposes from any BMV branch that issues driver licenses and ID cards, you will need to supply the necessary documentation, as explained on the BMV's Indiana Identification Documentation List web page or print off the "Here's What You'll Need..." flyer to take with you to the BMV. You may also contact the Hoosier Voter Hotline at 1-866-IN-1-VOTE or the BMV at (317) 233-6000.

For more information and convenience:

- BMV Branch Locator
- BMV Branch Current Wait Time Calculator
- Comprehensive List of Acceptable Documents of Identification

How do I get a driver license or ID card if I don't have a birth certificate?
In most cases, to obtain a photo ID you would need to supply a U.S. Birth Certificate. However, **Individuals who are 65 years or older**, and attest that they have never been issued a Birth Certificate because their birth was never recorded with any State Office of Vital Statistics, may present other forms of identification as a primary document, along with the secondary document, for an Indiana driver license or identification card.

Individuals who are 65 years or older may present, as primary documents:

- Medicaid/medicare Card
- Social Security Benefits Statement
- Property Deed
- Property Tax Statement
- Bank Statements
- US Veteran's Access Photo ID Card
- Marriage/Divorce Decree
- Pension Statement

Please not that Secondary Documents, and other documents proving residency, are still required for most transactions. For more information on acceptable documents of identification, please consult the Indiana Identification Documentation List

Those individuals who are younger then 65 years of age but who do not have an original copy of their birth certificate may:

- bring another document from the Primary Group such as a U.S. passport or a Veteran's identification card,
- or they may contact the health department or department of vital statistics in their county or state of birth to obtain a new copy of their original birth certificate.

PLEASE NOTE: To be accepted by the BMV, birth certificates must be original copies issued by the health department or department of vital statistics in the applicant's county or state of birth. Birth certificates issued by hospitals or other organizations will not be accepted.

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Back to Photo ID.in.gov

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Indiana Secretary of State: Todd Rokita

PhotoID

Exemptions

Exemptions do exist for the indigent, those with a religious objection to being photographed, and those living in state-licensed facilities that serve as their precinct's polling place. If you are wishing to claim an exemption from the photo ID requirement based on indigence or a religious objection, you may do so in one of two ways:

1. Go the polls on Election Day, and cast a provisional ballot. Within 10 days of the election, visit the county election office and affirm that an exemption applies to you.
2. Vote absentee-in-person at the county election office before Election Day, and while there, affirm that an exemption applies to you.

If you are a resident at a state-licensed facility that serves as your polling place, you may claim the exemption at the polls on Election Day.

If you are unable or unwilling to present photo ID on Election Day, you may cast a provisional ballot. Upon casting a provisional ballot, you have until noon 10 days after the election to follow up with the County Election Board and either provide photo ID or affirm one of the law's exemptions applies to you.

Also, if you qualify to vote absentee-by-mail or absentee-by-traveling board, and you chose to vote as such, you are not required to present photo ID. Please view the Absentee Voting section of the Voter Information Portal to view the absentee ballot applications and the Absentee Voter's Bill of Rights.

Back to Photo ID.in.gov

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APPENDIX 2

Indiana Secretary of State Todd Rokita
Media Contact: Bethany Derringer
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www.IndianaVoters.com

For Immediate Release
May 7th, 2008

May 7th, 2008
2008 Post Election Update

(Statehouse) May 7, 2008 – Indiana Secretary of State Todd Rokita comments and provides a post election update on Tuesday's Primary Election.

"Yesterday, Indiana's citizens and election process were tested with phenomenal voter turnout and increased attention on a national level. While the turnout slowed tabulation or caused extra ballots to be printed in a few counties, our election process experienced no systemic issues for which we had not planned," stated Secretary of State Todd Rokita.

➢ **The Indiana Secretary of State Information Hotline**

The Indiana Secretary of State's office operated the Hoosier Voter Hotline from 5:30 AM to 8:00 PM on Election Day. During the day, the team received **1368** calls from the voting public. Over 99% of these calls were Hoosiers confirming their voter registration status or polling place locations. All other issues were communicated or resolved with the county clerk or the election official at the precinct level. Examples of some of these calls are listed below.

There were nine calls regarding poll worker conduct from voters. Three calls concerned voters upset with Inspectors who asked them to hide, remove, or turn inside-out, shirts of a political nature that are typically forbidden in polling places. Staff informed these callers of Indiana's law prohibiting individuals from carrying campaign or political party-related materials into the polling place (IC 3-14-3-16). One call concerned a poll inspector who left their polling place to "make sure her kids got on the bus". The County Clerk was notified of the poll worker behavior and required to provide additional poll workers where necessary. All voters were able to cast ballots at their correct polling location.

There were a total of five calls regarding polling place issues. Two voters called upset that they were not informed that the polling location had been moved. Two voters called regarding the poor set-up of their polling place (backs to voters, machines and votes could be read by others and small confines). One voter called with concerns that his polling place was located in an area of town with massive road construction preventing all the voters from easily accessing the location (Georgetown, IN in Floyd County). In all instances, the county was notified of any violations relating to Indiana Code 3-11-8-3.2(c), which requires a county election board to effectively report any polling place relocations or access limitations. All voters were able to cast ballots at their correct polling location.

There were 7 calls from voters regarding voting systems in their polling place. Six voters were concerned that the optical scan ballots they cast were placed in a ballot box instead of being run

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through the tabulation equipment. One voter believed that the poor lighting in his polling place coupled with the bright screen of the new voting equipment, made it difficult for the visually impaired and elderly to see the buttons that need to be pushed to select the candidate of their choosing. In all instances, the county was notified of any violations relating to Indiana Code 3-11-14-19, which requires which requires that county to provide secure housing for ballots until the election board arrives with the appropriate replacement machine or technician. All voters were able to cast ballots at the correct precinct.

There were 3 calls about electioneering. One voter called regarding a missing disclaimer on a push card at a polling place. Two voters called regarding Obama supporters entering the polling place with voters in view of their activity. The Office of the Secretary of State dispatched a special investigator to the scene, but at the time of arrival, the polling place inspector had asked the campaign supporters to leave the premises. The poll workers and county officials were reminded to effectively administer Indiana laws prohibiting electioneering. (See. IC 3-14-3-16). Indiana law states that a person who knowingly does any electioneering within the polls or the chute commits a Class A misdemeanor. This includes expressing support or opposition to any candidate or political party.

➢ **Ballot Preparation and Training**

On Election Day, approximately sixty percent of Hoosier voters cast ballots on direct recording electronic type machines, which did not require paper ballots. Twenty-seven counties use primarily optical scan machines.

While not every situation or occurrence can be anticipated, high voter turnout and the need for additional ballots in optical scan counties were two key topics of direct discussion between county clerks and the Secretary of State's office. These discussions were held during Secretary of State presentations at conference clerks' meetings and through direct emails and communication leading up to the election. Most counties responded to these discussions by preparing large number of additional ballots, with some counties using the highest county turnout number from the 2004 General Election as a guideline.

Many clerks also trained inspectors at the precinct level to closely monitor the number of ballots and alert the county immediately of shortages. As a consequence, most counties successfully prepared for the need for such a surplus of ballots, a variation from additional Indiana primaries.

Nonetheless, a few counties did experience issues related to ballot shortages.

Porter County

At noon on Election Day, the Office of the Secretary of State's inquired on the supply of ballots in Porter County. The county election board advised the office that 15% more ballots were ordered and distributed than for past elections, but that a quickly decreasing supply caused the board to deputize several county police officers. They dispatched emergency ballots to precincts to deliver back-up supplies of ballots. Additionally, extra ballots were ordered from a vendor and flown to Valparaiso airport - arriving late in the afternoon. Despite attempting to deliver additional ballots throughout the day, increase demand continued.

At approximately 5:00 p.m. the Porter County Election board authorized an appeal to the County Superior Court for an extension of polling hours. At 5:40 P.M. Porter County Superior Court (3) Judge Julia M. Jent ordered that all polling places in Porter County would remain

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open until 7:00 p.m., and that pursuant to Indiana law, those casting votes after 6:00 p.m., would vote by provisional ballot (see IC. 3-11-7 et seq. and IC 3-11-8).

The polls in Porter County closed at 7:00 p.m. (CST). The votes were tabulated and announced in an orderly fashion at the offices of the Porter County Election Board. According to the election board, as of noon today the (unknown number) of provisional ballots cast remain under lock and key and have not been certified or counted by the election board. It is our understanding that the election board will meet tomorrow afternoon to begin the process of considering any challenges made to the provisional ballots. For Judge Jent's order, please see the attached file.

Jackson County
Five of the county's precincts ran out of ballots toward mid-afternoon. The county made arrangements in time to accommodate voters. The poll workers had to hand count those ballots though, because they are copies and the paper is not readable in the op scan reader. Preliminary estimates show approximately 200 of these emergency ballots used in the 5 precincts.

Hancock County
A few precincts in the Wilkinson community ran out of ballots. Election officials, with the assistance of local police escorts, dispatched emergency ballots to these precincts in time for waiting voters to cast ballots.

➢ **Vote Tabulation Issues in Lake County**
Indiana Election law requires that a bipartisan team of election commissioners deliver absentee ballots to the appropriate precinct where they are then counted with the votes cast on Election Day. The county election board may choose to have a centralized absentee ballot count according to Indiana Code 3-11.5-1-1.1. Lake County chose to count their absentee ballots at a centralized location on Election Day rather than going by the best practice in counties with large populations.

Precinct counting is the best practice in a county of high population in order to utilize the hundreds of precinct workers already assembled throughout the county on Election Day to help tabulate the absentee results. Other areas of high population, such as Marion County, use this process in order to get results quickly and to stop suspicions from rooting and festering.

Final Lake County election results were not posted by the county until after 5:00 a.m. this morning. For those results, please see the attached file.

➢ **Indiana's Photo ID Law**
For the eighth election in a row, Indiana's Photo ID law was successfully implemented across the state. The Office of the Indiana Secretary of State surveyed the top 20 counties for increased voter registration for issues relating to Photo ID. Out of that survey, no county indicated any issues that were not resolved on the spot, or resolved through the number of fail-safe provisions that make sure Hoosier voters do not leave a poll without casting a vote.

Out of over 1300 calls to our Secretary of State's Office Information Hotline, we received two calls relating to Indiana's Photo ID. One inspector had asked one voter to have an "updated address" on their Photo ID. Indiana's Photo ID law does not require that the address be up-to-date to qualify. The voter was offered a provisional ballot. The County Clerk was notified of the poll worker training issue. Please see **http://www.photoID.in.gov** for more information.

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Additionally, our team was notified of a student in St. Joseph County who was not allowed to vote with a California identification card. The student had previously received an absentee ballot from California, but wanted to vote in Indiana's election. The student was offered a provisional ballot, but declined.

Phone calls from the media put the office on notice of another photo-ID situation in St. Joseph County. Secretary of State Todd Rokita made the following statement regarding The Sisters of the Holy Cross:

"Indiana's Voter ID Law applies to everyone. From all accounts that we've heard, the sisters were aware of the Photo ID requirements and chose not to follow them."

"The sisters could have cast provisional ballots, and received assistance obtaining the proper photo ID within 10 days. Alternatively, they could have, because they are 65 years of age or older, voted by absentee ballot. We have a number of safety nets in place if someone appears at the polling place without his or her photo ID."

"Under Indiana's Voter ID law, we are all treated equally. It is my hope that the sisters will obtain the proper ID in order to participate in the November General Election."

➢ **Voter Turnout and Provisional Ballots**

On Election Day, the Office of the Indiana Secretary of State maintained ongoing communications with 90 of Indiana's 92 Counties (DeKalb and Perry County were not successfully reached during the hours the polls were open). All counties indicated that voter turnout was noticeably increased.

Initial voter turnout percentages will be made available by Friday, May 9th, 2008. However, voter turnout statistics are reported to the state by the county election boards as part of the county's review and confirmation of the official results. Indiana law allows voters who have cast provisional ballots to appear before the county election board up to noon 10 days after election day (May 16, 2008) to present documentation or other evidence that their provisional ballot should be counted.

Likewise, Indiana provides that if a military voter or civilian living overseas has an absentee ballot postmarked no later than election day, then that absentee ballot will be counted if it is otherwise valid, so long as the absentee ballot is received by the county election board by the noon 10 days after election day deadline."

As a final note, Secretary Rokita wished to thank all of those who worked hard to implement Indiana's election process.

"Our election process is citizen-driven. Volunteers take time out of their busy schedules to ensure that the election is operated at the hands of the people. I wish to thank the 30,000 poll workers and our counties' election officials for working diligently to ensure an accurate and fair election process," stated Sec. Rokita.

For more information, please contact Bethany Derringer at 317-233-8655 or by email at BDerringer@sos.in.gov.

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APPENDIX 3

2004 Primary Election
Tuesday, May 4, 2004

Primary Election Turnout and Registration

County	Registered Voters	Voters Voting	Turnout	In Person	Absentee	Absentee
Adams	19,420	4,078	21%	3,899	179	4%
Allen	219,271	34,039	16%	31,102	2,937	9%
Bartholomew	47,964	13,109	27%	12,160	949	7%
Benton	6,353	2,315	36%	2,197	118	5%
Blackford	9,863	2,147	22%	1,944	203	9%
Boone	34,763	9,241	27%	8,570	671	7%
Brown	13,247	3,321	25%	3,084	237	7%
Carroll	14,040	3,856	27%	3,716	140	4%
Cass	25,652	6,021	23%	5,445	576	10%
Clark	65,388	15,512	24%	14,019	1,493	10%
Clay	19,296	5,652	29%	5,350	302	5%
Clinton	22,046	5,625	26%	5,223	402	7%
Crawford	9,001	2,491	28%	2,424	67	3%
Daviess	18,682	4,104	22%	3,798	306	7%
Dearborn	35,153	5,954	17%	5,624	330	6%
Decatur	15,069	3,922	26%	3,597	325	8%
DeKalb	27,740	4,907	18%	4,594	313	6%
Delaware	86,148	21,701	25%	19,321	2,380	11%
Dubois	27,815	7,339	26%	7,000	339	5%
Elkhart	93,599	20,628	22%	19,672	956	5%
Fayette	18,293	4,226	23%	3,897	329	8%
Floyd	58,295	7,840	13%	7,312	528	7%
Fountain	12,970	3,289	25%	3,124	165	5%
Franklin	16,066	2,632	16%	2,452	180	7%
Fulton	14,393	2,710	19%	2,596	114	4%
Gibson	22,542	4,893	22%	4,259	634	13%
Grant	52,429	12,456	24%	11,597	859	7%
Greene	19,660	5,565	28%	5,137	428	8%
Hamilton	144,290	39,006	27%	37,629	1,377	4%
Hancock	42,511	10,589	25%	10,179	410	4%
Harrison	28,006	6,578	23%	6,150	428	7%
Hendricks	69,477	21,298	31%	20,364	934	4%
Henry	33,305	10,363	31%	9,740	623	6%
Howard	59,007	12,743	22%	12,163	580	5%
Huntington	24,142	6,309	26%	5,908	402	6%
Jackson	27,826	5,638	20%	5,316	322	6%
Jasper	20,631	4,362	21%	4,157	205	5%
Jay	13,962	3,876	28%	3,604	272	7%
Jefferson	21,233	4,611	22%	4,180	431	9%
Jennings	20,866	4,669	22%	4,044	625	13%
Johnson	80,821	19,189	24%	18,265	924	5%
Knox	27,687	7,492	27%	6,861	631	8%
Kosciusko	47,587	10,022	21%	9,661	361	4%
LaGrange	14,486	3,049	21%	2,881	168	6%
Lake	344,467	65,193	19%	61,710	3,482	5%
La Porte	77,442	13,067	17%	12,172	895	7%
Lawrence	34,610	7,387	21%	6,585	802	11%

2004 Primary Election
Tuesday, May 4, 2004

Primary Election Turnout and Registration

County	Registered Voters	Voters Voting	Turnout	In Person	Absentee	Absentee
Madison	96,172	23,658	25%	22,230	1,428	6%
Marion	570,560	106,892	19%	102,796	4,096	4%
Marshall	28,495	5,630	20%	5,192	438	8%
Martin	8,022	3,622	45%	3,199	423	12%
Miami	23,905	6,567	27%	6,199	368	6%
Monroe	99,829	14,002	14%	12,116	1,886	13%
Montgomery	25,391	8,135	32%	7,654	481	6%
Morgan	44,257	9,859	22%	9,082	777	8%
Newton	10,483	2,506	24%	2,338	168	7%
Noble	28,542	5,667	20%	5,423	244	4%
Ohio	4,757	965	20%	800	165	17%
Orange	15,520	5,107	33%	4,720	385	8%
Owen	13,763	3,592	26%	3,226	320	9%
Parke	12,029	4,004	33%	3,765	239	6%
Perry	15,609	4,554	29%	4,096	458	10%
Pike	10,279	3,011	29%	2,723	288	10%
Porter	86,589	14,271	16%	13,548	723	5%
Posey	19,659	3,870	20%	3,596	274	7%
Pulaski	9,210	2,935	32%	2,728	207	7%
Putnam	22,530	7,002	31%	6,581	421	6%
Randolph	18,930	5,397	29%	5,188	209	4%
Ripley	19,975	3,679	18%	3,411	268	7%
Rush	12,090	4,145	34%	3,867	278	7%
St. Joseph	174,013	30,559	18%	28,363	2,196	7%
Scott	17,910	4,341	24%	3,685	656	15%
Shelby	24,140	6,184	26%	5,890	294	5%
Spencer	14,825	2,193	15%	2,080	113	5%
Starke	16,556	3,577	22%	3,367	210	6%
Steuben	22,455	5,143	23%	4,863	280	5%
Sullivan	15,865	4,401	28%	3,979	422	10%
Switzerland	6,675	1,849	28%	1,713	136	7%
Tippecanoe	84,158	15,176	18%	14,614	562	4%
Tipton	13,544	3,573	26%	3,211	362	10%
Union	5,726	1,392	24%	1,298	94	7%
Vanderburgh	123,265	17,341	14%	15,849	1,492	9%
Vermillion	12,898	3,844	30%	3,601	243	6%
Vigo	75,515	20,948	28%	18,820	2,128	10%
Wabash	25,101	5,477	22%	5,240	237	4%
Warren	6,218	1,799	29%	1,674	125	7%
Warrick	43,007	8,420	20%	7,859	561	7%
Washington	17,436	4,061	23%	3,793	267	7%
Wayne	50,460	10,845	21%	10,262	583	5%
Wells	19,925	3,607	18%	3,382	220	6%
White	16,961	4,301	25%	4,137	164	4%
Whitley	21,843	4,477	20%	4,177	300	7%
	4,162,606	**887,592**	21%	**831,017**	**56,521**	6%

44821.161

2004 General Election
Tuesday, November 2, 2004

General Election Turnout and Registration

County	Registered Voters	Voters Voting	Turnout	In Person	Absentee	Absentee
Adams	19,638	13,558	69%	12,239	1,319	10%
Allen	226,006	131,987	58%	116,206	15,781	12%
Bartholomew	49,334	28,934	59%	25,526	3,377	12%
Benton	6,398	4,051	63%	3,662	389	10%
Blackford	9,734	5,504	57%	4,681	823	15%
Boone	36,461	23,160	64%	20,091	3,069	13%
Brown	13,661	7,828	57%	6,949	879	11%
Carroll	14,229	8,779	62%	8,036	743	8%
Cass	25,603	14,524	57%	12,324	2,200	15%
Clark	75,179	42,870	57%	38,580	4,290	10%
Clay	19,716	10,969	56%	9,872	1,097	10%
Clinton	22,486	12,098	54%	10,789	1,309	11%
Crawford	9,175	4,695	51%	4,202	493	11%
Daviess	19,082	10,832	57%	9,383	1,449	13%
Dearborn	36,491	21,290	58%	19,286	2,004	9%
Decatur	15,594	10,385	67%	8,820	1,565	15%
DeKalb	28,578	15,877	56%	14,240	1,637	10%
Delaware	86,041	48,704	57%	43,059	5,645	12%
Dubois	28,369	17,457	62%	15,772	1,685	10%
Elkhart	99,035	61,873	62%	55,713	6,160	10%
Fayette	17,804	9,696	54%	8,532	1,164	12%
Floyd	54,542	35,066	64%	31,976	3,090	9%
Fountain	13,359	7,917	59%	7,209	708	9%
Franklin	16,646	10,083	61%	9,180	903	9%
Fulton	14,581	8,811	60%	7,889	922	10%
Gibson	23,114	14,958	65%	12,995	1,963	13%
Grant	53,389	28,072	53%	24,872	3,200	11%
Greene	20,095	13,601	68%	12,115	1,486	11%
Hamilton	154,034	106,083	69%	94,973	11,110	10%
Hancock	43,632	28,091	64%	25,694	2,397	9%
Harrison	28,611	17,524	61%	15,902	1,622	9%
Hendricks	76,576	53,108	69%	47,738	5,370	10%
Henry	33,830	20,955	62%	18,845	2,110	10%
Howard	60,839	37,442	62%	33,257	4,185	11%
Huntington	24,691	15,979	65%	14,454	1,525	10%
Jackson	28,128	18,260	65%	16,612	1,648	9%
Jasper	17,451	12,149	70%	11,090	1,059	9%
Jay	14,116	8,368	59%	6,916	1,452	17%
Jefferson	21,847	13,286	61%	11,128	1,970	15%
Jennings	21,376	11,002	51%	8,594	2,408	22%
Johnson	86,144	51,558	60%	46,702	4,856	9%
Knox	26,798	16,130	60%	13,953	2,177	13%
Kosciusko	49,735	28,828	58%	26,135	2,693	9%
LaGrange	14,915	9,100	61%	8,293	807	9%
Lake	353,826	193,472	55%	180,789	12,683	7%
La Porte	79,335	43,278	55%	39,330	3,948	9%
Lawrence	35,819	18,451	52%	15,333	3,118	17%

44821.162

2004 General Election
Tuesday, November 2, 2004

General Election Turnout and Registration

County	Registered Voters	Voters Voting	Turnout	In Person	Absentee	Absentee
Madison	97,680	55,742	57%	49,588	6,154	11%
Marion	603,390	323,673	54%	296,243	27,430	8%
Marshall	29,478	18,156	62%	15,782	2,374	13%
Martin	8,148	5,186	64%	4,132	874	17%
Miami	24,582	13,844	56%	12,312	1,532	11%
Monroe	104,586	51,066	49%	41,943	9,123	18%
Montgomery	26,032	14,858	57%	13,207	1,651	11%
Morgan	45,478	26,466	58%	23,463	3,003	11%
Newton	10,550	5,920	56%	5,375	545	9%
Noble	29,021	15,934	55%	14,629	1,305	8%
Ohio	4,980	2,997	60%	2,462	535	18%
Orange	15,413	8,936	58%	7,836	1,100	12%
Owen	14,695	7,929	54%	6,794	1,135	14%
Parke	12,162	7,082	58%	6,517	565	8%
Perry	15,681	8,523	54%	7,226	1,297	15%
Pike	10,845	6,358	59%	5,547	811	13%
Porter	88,666	65,780	74%	60,784	4,996	8%
Posey	18,668	12,174	65%	11,248	926	8%
Pulaski	9,444	5,800	61%	5,162	638	11%
Putnam	23,054	13,490	59%	12,110	1,380	10%
Randolph	18,919	11,371	60%	10,457	914	8%
Ripley	19,508	11,962	61%	10,672	1,290	11%
Rush	12,076	7,572	63%	6,642	930	12%
St. Joseph	175,762	109,510	62%	95,230	14,280	13%
Scott	17,947	8,800	49%	7,489	1,311	15%
Shelby	24,892	16,353	66%	14,468	1,885	12%
Spencer	15,237	10,165	67%	8,931	1,234	12%
Starke	16,193	9,299	57%	8,205	1,094	12%
Steuben	22,480	13,010	58%	11,551	1,459	11%
Sullivan	16,003	8,716	54%	7,610	1,106	13%
Switzerland	6,926	3,723	54%	3,322	401	11%
Tippecanoe	92,980	52,875	57%	48,279	4,596	9%
Tipton	13,622	8,023	59%	6,772	1,251	16%
Union	5,626	3,397	60%	3,085	312	9%
Vanderburgh	126,822	72,011	57%	64,333	7,678	11%
Vermillion	12,934	7,122	55%	6,504	618	9%
Vigo	78,449	40,344	51%	35,851	4,493	11%
Wabash	24,873	13,801	55%	12,679	1,122	8%
Warren	6,517	4,035	62%	3,661	374	9%
Warrick	43,329	26,387	61%	23,906	2,481	9%
Washington	17,923	11,145	62%	10,084	1,061	10%
Wayne	51,369	28,273	55%	25,217	3,056	11%
Wells	20,345	12,528	62%	11,157	1,371	11%
White	17,299	11,502	66%	10,510	992	9%
Whitley	19,975	13,661	68%	12,282	1,379	10%
	4,296,602	**2,512,142**	58%	**2,251,193**	**260,550**	10%

44821.163

Indiana Secretary of State: Todd Rokita

INvotes : Election Division

2005 Special Election Results

8 November 2005 Town of Cambridge City (Wayne County)
8 November 2005 Town of Montezuma (Parke County).

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44821.164

Indiana Secretary of State: Todd Rokita

INvotes : Election Division

2005 Special Election Results

Town of Cambridge City :: Election for Town Council Members

Town Council, Ward 1		
Candidate	**Party Affiliation**	**Total Votes**
Mark McCarty	Independent	223 votes
Don L. Conyers	Citizens	93 votes

Town Council, Ward 2		
Candidate	**Party Affiliation**	**Total Votes**
Debbie McGinley	Independent	180 votes
Jill King	Citizens	136 votes

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44821.165

Indiana Secretary of State: Todd Rokita

INvotes : Election Division

2005 Special Election Results

Town of Montezuma :: Election for Town Council Members

Town Council At Large		
Candidate	**Party Affiliation**	**Total Votes**
Diana Bartlow	Independent	93 votes
John W. "Jay" Norris	Independent	47 votes
Jack L. Simpson	Independent	62 votes

Town Council, Ward 1		
Candidate	**Party Affiliation**	**Total Votes**
Allen Cobb	Independent	153 votes

Town Council, Ward 3		
Candidate	**Party Affiliation**	**Total Votes**
Paul K. Bartlow	Independent	74 votes
John Penn	Independent	128 votes

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44821.166

Indiana Secretary of State: Todd Rokita

INvotes : Election Division

2005 Special Election Results

- 8 February 2005 (Warsaw Community School Corporation Board District 4)
- 8 November 2005 (Town of Winfield).

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Indiana Secretary of State: Todd Rokita

INvotes : Election Division

2005 Special Election Results

QUESTION FOR TAXPAYERS

Shall the number of town council members be increased from three (3) to five (5) members?"

	Votes
YES	255
NO	57

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44821.168

Indiana Secretary of State: Todd Rokita

INvotes : Election Division

2006 Special Election Results

- 18 January 2006 Cannelton School Board Special Election

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44821.169

Indiana Secretary of State: Todd Rokita

INvotes : Election Division

2006 Special Election Results

- Special Election Ballot Text

School Board Organization	Votes
Plan No. 1	42
Plan No. 2	169
Plan No. 3	20
Plan No. 4	55

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44821.170

2006 Primary Election
Tuesday, May 2, 2006

Primary Election Turnout and Registration

County	Registered Voters	Voters Voting	Turnout	In Person	Absentee	Absentee
Adams	19,759	3,380	17%	3,153	227	7%
Allen	229,564	37,833	16%	35,478	2,355	6%
Bartholomew	51,247	12,683	25%	11,865	818	6%
Benton	6,516	2,762	42%	2,591	171	6%
Blackford	9,789	2,249	23%	2,044	205	9%
Boone	36,138	8,603	24%	8,038	565	7%
Brown	13,463	3,619	27%	3,315	304	8%
Carroll	14,419	4,186	29%	4,014	172	4%
Cass	21,716	5,592	26%	4,888	704	13%
Clark	78,794	18,311	23%	16,564	1,747	10%
Clay	19,713	4,992	25%	4,611	381	8%
Clinton	22,830	5,269	23%	4,917	352	7%
Crawford	9,110	3,078	34%	2,659	419	14%
Daviess	19,351	3,999	21%	3,687	312	8%
Dearborn	36,691	5,521	15%	5,313	208	4%
Decatur	15,039	4,061	27%	3,624	437	11%
DeKalb	28,177	6,009	21%	5,664	345	6%
Delaware	89,085	18,833	21%	16,734	2,099	11%
Dubois	29,289	6,700	23%	6,348	352	5%
Elkhart	104,467	18,056	17%	17,100	965	5%
Fayette	18,197	4,417	24%	4,074	343	8%
Floyd	57,161	9,267	16%	8,672	595	6%
Fountain	13,319	3,994	30%	3,582	412	10%
Franklin	17,373	4,889	28%	4,567	322	7%
Fulton	14,194	2,049	14%	1,961	88	4%
Gibson	19,878	2,952	15%	2,585	367	12%
Grant	54,096	11,279	21%	10,495	784	7%
Greene	17,653	6,938	39%	6,340	598	9%
Hamilton	157,018	26,350	17%	25,183	1,167	4%
Hancock	46,159	11,168	24%	10,754	414	4%
Harrison	29,361	7,659	26%	7,428	411	5%
Hendricks	81,667	16,861	21%	15,936	925	5%
Henry	33,603	10,614	32%	9,862	752	7%
Howard	60,656	10,823	18%	10,189	634	6%
Huntington	25,731	5,333	21%	4,895	438	8%
Jackson	30,460	9,478	31%	8,884	594	6%
Jasper	18,999	4,158	22%	3,960	198	5%
Jay	13,856	4,482	32%	4,026	456	10%
Jefferson	19,144	5,275	28%	4,730	545	10%
Jennings	21,589	5,908	27%	4,866	1,042	18%
Johnson	84,266	13,702	16%	12,955	747	5%
Knox	26,798	6,316	24%	5,817	499	8%
Kosciusko	50,279	10,226	20%	9,747	479	5%
LaGrange	15,347	4,272	28%	4,067	205	5%
Lake	361,284	71,433	20%	67,557	3,876	5%
La Porte	129,084	16,133	12%	14,635	1,498	9%
Lawrence	34,275	8,766	26%	7,459	1,217	14%

44821.171

2006 Primary Election
Tuesday, May 2, 2006

Primary Election Turnout and Registration

County	Registered Voters	Voters Voting	Turnout	In Person	Absentee	Absentee
Madison	87,727	22,123	25%	19,979	2,144	10%
Marion	614,583	84,051	14%	80,379	3,672	4%
Marshall	32,084	4,926	15%	4,483	443	9%
Martin	7,312	2,977	41%	2,676	301	10%
Miami	24,787	4,626	19%	4,288	338	7%
Monroe	107,231	13,986	13%	11,678	2,308	17%
Montgomery	26,594	7,263	27%	6,871	392	5%
Morgan	38,711	8,145	21%	7,213	932	11%
Newton	10,867	2,810	26%	2,627	183	7%
Noble	29,864	4,973	17%	4,714	259	5%
Ohio	4,990	1,703	34%	1,240	463	27%
Orange	16,043	4,141	26%	3,786	355	9%
Owen	3,339	3,339	100%	3,034	305	9%
Parke	12,834	3,625	28%	3,344	281	8%
Perry	15,259	5,121	34%	4,414	707	14%
Pike	10,349	3,074	30%	2,789	285	9%
Porter	86,329	17,721	21%	16,810	911	5%
Posey	17,317	4,896	28%	4,501	395	8%
Pulaski	9,606	3,381	35%	3,128	253	7%
Putnam	23,605	3,792	16%	3,525	267	7%
Randolph	18,561	5,058	27%	4,783	275	5%
Ripley	21,251	3,880	18%	3,660	220	6%
Rush	12,596	3,596	29%	3,322	274	8%
St. Joseph	183,054	23,219	13%	21,172	2,047	9%
Scott	18,202	4,380	24%	3,697	683	16%
Shelby	25,112	6,942	28%	6,376	566	8%
Spencer	14,653	2,259	15%	2,023	236	10%
Starke	18,537	3,966	21%	3,690	276	7%
Steuben	23,439	4,303	18%	4,050	253	6%
Sullivan	16,080	4,349	27%	3,920	429	10%
Switzerland	7,103	1,747	25%	1,613	134	8%
Tippecanoe	85,629	15,267	18%	14,675	592	4%
Tipton	13,532	3,985	29%	3,601	384	10%
Union	6,138	2,019	33%	1,867	152	8%
Vanderburgh	124,178	16,133	13%	14,635	1,498	9%
Vermillion	12,836	4,434	35%	4,157	277	6%
Vigo	79,512	20,266	25%	18,264	2,002	10%
Wabash	24,873	6,070	24%	5,792	278	5%
Warren	6,453	1,980	31%	1,803	177	9%
Warrick	47,749	8,084	17%	7,603	481	6%
Washington	18,872	5,720	30%	5,190	530	9%
Wayne	51,372	9,754	19%	9,190	564	6%
Wells	21,191	4,364	21%	4,005	359	8%
White	17,472	5,816	33%	5,526	290	5%
Whitley	20,808	5,203	25%	4,773	430	8%
	4,375,238	**849,945**	**19%**	**788,699**	**61,345**	**7%**

2006 General Election
Tuesday, November 7, 2006

General Election Turnout and Registration

County	Registered Voters	Voters Voting	Turnout	In Person	Absentee	Absentee
Adams	19,736	9,480	48%	8,758	722	8%
Allen	228,579	89,934	39%	81,523	8,411	9%
Bartholomew	50,918	21,558	42%	19,319	2,239	10%
Benton	6,149	2,745	45%	2,473	272	10%
Blackford	9,475	4,143	44%	3,598	545	13%
Boone	35,626	14,209	40%	12,672	1,537	11%
Brown	12,729	6,306	50%	5,407	899	14%
Carroll	13,818	6,550	47%	6,033	517	8%
Cass	21,550	11,408	53%	8,838	2,570	23%
Clark	77,156	34,084	44%	30,535	3,549	10%
Clay	19,187	8,824	46%	7,726	1,098	12%
Clinton	21,657	8,168	38%	7,329	839	10%
Crawford	8,743	4,135	47%	3,590	545	13%
Daviess	18,375	8,083	44%	7,077	1,006	12%
Dearborn	36,239	13,457	37%	12,406	1,051	8%
Decatur	14,988	7,123	48%	6,221	952	13%
DeKalb	28,323	10,955	39%	10,044	909	8%
Delaware	85,389	32,794	38%	28,772	4,022	12%
Dubois	28,807	13,330	46%	12,092	1,238	9%
Elkhart	103,697	44,722	43%	41,764	2,958	7%
Fayette	17,814	7,050	40%	6,256	794	11%
Floyd	55,598	25,768	46%	23,404	2,364	9%
Fountain	13,023	5,816	45%	5,289	527	9%
Franklin	17,482	7,177	41%	6,563	614	9%
Fulton	13,957	7,166	51%	6,514	712	10%
Gibson	19,756	12,241	62%	10,671	1,570	13%
Grant	53,052	19,616	37%	17,965	1,921	10%
Greene	17,860	10,925	61%	9,440	1,485	14%
Hamilton	159,299	60,243	38%	56,097	4,146	7%
Hancock	47,656	18,062	38%	16,416	1,646	9%
Harrison	28,477	13,876	49%	12,636	1,240	9%
Hendricks	81,194	32,263	40%	29,949	2,314	7%
Henry	32,751	15,363	47%	14,055	1,308	9%
Howard	60,852	27,252	45%	24,824	2,428	9%
Huntington	24,982	9,851	39%	9,074	777	8%
Jackson	30,042	14,111	47%	12,539	1,572	11%
Jasper	18,763	7,674	41%	7,147	527	7%
Jay	13,743	6,680	49%	5,759	921	14%
Jefferson	19,179	10,573	55%	9,152	1,421	13%
Jennings	21,813	10,040	46%	7,527	2,513	25%
Johnson	81,369	31,249	38%	29,108	2,141	7%
Knox	26,237	13,176	50%	11,403	1,773	13%
Kosciusko	49,554	19,355	39%	17,957	1,398	7%
LaGrange	15,049	6,684	44%	6,160	524	8%
Lake	357,833	103,490	29%	97,507	5,983	6%
La Porte	77,841	31,591	41%	28,726	2,865	9%
Lawrence	33,111	13,513	41%	11,233	2,280	17%

44821.173

2006 General Election
Tuesday, November 7, 2006

General Election Turnout and Registration

County	Registered Voters	Voters Voting	Turnout	In Person	Absentee	Absentee
Madison	86,996	40,234	46%	34,934	5,300	13%
Marion	613,881	203,737	33%	190,863	12,874	6%
Marshall	30,095	14,256	47%	12,593	1,656	12%
Martin	7,332	4,023	55%	3,519	504	13%
Miami	23,913	9,638	40%	8,654	984	10%
Monroe	104,246	34,379	33%	26,353	7,937	23%
Montgomery	26,558	9,527	36%	8,754	773	8%
Morgan	38,712	16,299	42%	14,719	1,590	10%
Newton	10,401	4,373	42%	3,944	429	10%
Noble	28,853	11,959	41%	11,066	887	7%
Ohio	4,893	2,470	50%	1,895	575	23%
Orange	15,433	6,344	41%	5,659	685	11%
Owen	14,335	6,132	43%	5,166	966	16%
Parke	12,472	5,550	44%	4,675	875	16%
Perry	14,795	6,867	46%	5,599	1,268	18%
Pike	9,995	5,370	54%	4,550	820	15%
Porter	104,326	42,446	41%	39,724	2,722	6%
Posey	16,551	10,293	62%	9,776	517	5%
Pulaski	9,420	4,999	53%	4,321	678	14%
Putnam	22,928	9,698	42%	8,660	1,038	11%
Randolph	18,235	8,227	45%	7,378	608	7%
Ripley	20,515	8,593	42%	7,742	851	10%
Rush	12,049	5,538	46%	4,941	597	11%
St. Joseph	180,827	80,744	45%	71,176	9,568	12%
Scott	17,632	6,612	38%	5,678	934	14%
Shelby	25,151	11,924	47%	10,577	1,347	11%
Spencer	14,485	8,215	57%	6,937	1,278	16%
Starke	17,562	7,641	44%	6,693	948	12%
Steuben	23,300	9,215	40%	8,426	789	9%
Sullivan	15,334	7,350	48%	6,376	974	13%
Switzerland	6,855	2,793	41%	2,461	332	12%
Tippecanoe	85,571	34,620	40%	32,180	2,440	7%
Tipton	12,884	6,122	48%	5,157	965	16%
Union	5,159	2,587	50%	2,297	290	11%
Vanderburgh	124,453	56,286	45%	48,734	7,552	13%
Vermillion	12,383	5,709	46%	5,283	426	7%
Vigo	75,211	30,237	40%	24,131	6,106	20%
Wabash	23,875	8,002	34%	7,454	548	7%
Warren	6,365	3,137	49%	2,822	315	10%
Warrick	45,373	20,801	46%	18,859	1,942	9%
Washington	18,575	9,257	50%	8,254	1,003	11%
Wayne	50,284	16,748	33%	15,238	1,510	9%
Wells	20,444	9,589	47%	8,603	986	10%
White	17,127	7,808	46%	7,223	585	7%
Whitley	20,475	10,189	50%	9,252	937	9%
	4,295,687	**1,719,351**	40%	**1,548,844**	**170,552**	10%

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2007 Municipal Primary
Tuesday, May 8, 2007

Primary Election Turnout and Registration

County	Registered Voters	Voters Voting	Turnout	In Person	Absentee	Absentee
Adams	15,975	1,245	8%	1,165	80	6%
Allen	231,929	24,668	11%	1,684	26,352	107%
Bartholomew	50,718	1,920	4%	1,690	230	12%
Benton	6,205	-	-	-	-	-
Blackford	9,537	1,031	11%	910	121	12%
Boone	36,139	3,272	9%	2,792	480	15%
Brown	12,672	-	-	-	-	-
Carroll	13,693	-	-	-	-	-
Cass	21,038	1,078	5%	814	264	24%
Clark	73,642	9,879	13%	8,429	1,450	15%
Clay	19,303	1,294	7%	1,097	197	15%
Clinton	21,083	1,410	7%	1,247	163	12%
Crawford	8,621	-	-	-	-	-
Daviess	17,613	93	1%	91	2	2%
Dearborn	35,015	1,636	5%	1,393	243	15%
Decatur	14,931	1,718	12%	1,462	256	15%
DeKalb	28,493	758	3%	706	52	7%
Delaware	84,590	8,799	10%	7,023	1,776	20%
Dubois	28,927	216	1%	191	25	12%
Elkhart	104,747	6,479	6%	6,014	465	7%
Fayette	17,919	2,259	13%	2,048	211	9%
Floyd	53,342	4,689	9%	4,083	606	13%
Fountain	11,617	474	4%	452	22	5%
Franklin	16,158	-	-	-	-	-
Fulton	13,977	1,081	8%	1,006	75	7%
Gibson	19,671	1,158	6%	856	302	26%
Grant	51,841	4,813	9%	4,070	743	15%
Greene	18,178	2,216	12%	1,773	443	20%
Hamilton	163,455	19,854	12%	18,962	892	4%
Hancock	46,092	3,012	7%	2,822	190	6%
Harrison	28,831	-	-	-	-	-
Hendricks	83,140	4,499	5%	4,256	243	5%
Henry	29,816	4,170	14%	3,431	739	18%
Howard	61,415	9,210	15%	8,643	567	6%
Huntington	25,548	3,359	13%	3,083	276	8%
Jackson	29,330	2,612	9%	2,346	266	10%
Jasper	19,165	-	-	-	-	-
Jay	11,425	308	3%	278	30	10%
Jefferson	19,416	2,126	11%	1,892	234	11%
Jennings	21,871	835	4%	725	110	13%
Johnson	81,634	4,870	6%	4,659	211	4%
Knox	25,929	3,579	14%	3,162	417	12%
Kosciusko	50,032	1,543	3%	1,473	70	5%
LaGrange	14,990	-	-	-	-	-
Lake	263,614	65,239	25%	61,364	3,875	6%
La Porte	74,686	6,151	8%	5,732	419	7%
Lawrence	33,412	3,619	11%	2,878	741	20%

44821.175

2007 Municipal Primary
Tuesday, May 8, 2007

Primary Election Turnout and Registration

County	Registered Voters	Voters Voting	Turnout	In Person	Absentee	Absentee
Madison	87,798	10,501	12%	8,154	2,347	22%
Marion	622,870	40,814	7%	39,010	1,804	4%
Marshall	28,297	961	3%	796	165	17%
Martin	7,371	602	8%	573	29	5%
Miami	23,974	967	4%	884	83	9%
Monroe	67,560	3,148	5%	2,123	1,025	33%
Montgomery	25,601	2,239	9%	2,098	141	6%
Morgan	39,522	2,887	7%	2,175	712	25%
Newton	10,386	-	-	-	-	-
Noble	25,857	1,652	6%	1,575	77	5%
Ohio	4,218	155	4%	104	51	33%
Orange	15,512	342	2%	288	54	16%
Owen	14,208	-	-	-	-	-
Parke	12,352	-	-	-	-	-
Perry	14,746	-	-	-	-	-
Pike	9,838	711	7%	573	138	19%
Porter	105,859	9,096	9%	8,622	476	5%
Posey	16,846	1,944	12%	1,686	258	13%
Pulaski	9,399	-	-	-	-	-
Putnam	22,375	-	-	-	-	-
Randolph	18,173	852	5%	787	65	8%
Ripley	20,391	86	-%	85	1	1%
Rush	12,093	-	-	-	-	-
St. Joseph	182,526	11,952	7%	10,844	1,108	9%
Scott	17,827	2,044	11%	1,467	577	28%
Shelby	25,105	-	-	-	-	-
Spencer	14,611	294	2%	200	94	32%
Starke	17,562	1,044	6%	788	256	25%
Steuben	22,447	318	1%	298	20	6%
Sullivan	15,225	878	6%	598	180	21%
Switzerland	6,632	-	-	-	-	-
Tippecanoe	87,319	-	-	-	-	-
Tipton	11,907	949	8%	829	120	13%
Union	5,970	-	-	-	-	-
Vanderburgh	126,428	5,069	4%	3,976	1,093	22%
Vermillion	10,895	623	6%	565	58	9%
Vigo	74,067	10,279	14%	7,997	2,282	22%
Wabash	23,427	673	3%	609	64	10%
Warren	6,434	-	-	-	-	-
Warrick	43,872	534	1%	463	71	13%
Washington	18,755	1,527	8%	1,185	342	22%
Wayne	50,294	4,378	9%	4,107	271	6%
Wells	20,402	-	-	-	-	-
White	17,219	1,077	6%	975	100	9%
Whitley	19,646	522	3%	457	65	12%
	4,155,191	**336,290**	**8%**	**281,593**	**57,965**	**17%**

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2007 Municipal Election
Tuesday, November 6, 2007

General Election Turnout and Registration

County	Registered Voters	Voters Voting	Turnout	In Person	Absentee	Absentee
Adams	19,195	5,309	28%	4,793	516	10%
Allen	269,248	56,538	21%	51,519	5,019	9%
Bartholomew	64,828	6,483	10%	5,962	521	8%
Benton	7,778	1,042	13%	975	67	6%
Blackford	11,317	1,921	17%	1,695	226	12%
Boone	40,395	3,709	9%	3,163	546	15%
Brown	15,452	-	-	-	-	-
Carroll	15,980	1,165	7%	1,049	116	10%
Cass	30,232	4,656	15%	3,479	1,177	25%
Clark	87,616	13,287	15%	12,266	1,021	8%
Clay	23,297	1,959	8%	1,704	255	13%
Clinton	24,084	3,332	14%	2,985	347	10%
Crawford	11,201	243	2%	200	43	18%
Daviess	23,505	3,421	15%	2,866	555	16%
Dearborn	41,586	3,442	8%	2,956	486	14%
Decatur	18,000	3,094	17%	2,570	524	17%
DeKalb	32,951	2,139	6%	2,005	134	6%
Delaware	104,522	15,136	14%	12,819	2,317	15%
Dubois	32,691	5,015	15%	4,508	507	10%
Elkhart	127,443	12,705	10%	11,669	1,036	8%
Fayette	20,754	3,097	15%	2,745	352	11%
Floyd	60,590	9,178	15%	8,477	701	8%
Fountain	13,481	1,072	8%	1,022	50	5%
Franklin	19,538	710	4%	651	59	8%
Fulton	16,709	2,312	14%	2,129	183	8%
Gibson	28,145	2,123	8%	1,740	383	18%
Grant	66,178	8,379	13%	7,607	772	9%
Greene	28,543	2,797	10%	2,354	443	16%
Hamilton	182,789	24,118	13%	22,893	1,225	5%
Hancock	53,914	4,518	8%	4,039	479	11%
Harrison	31,793	382	1%	346	36	9%
Hendricks	104,355	-	-	-	-	-
Henry	37,140	5,507	15%	4,315	1,192	22%
Howard	74,400	10,316	14%	9,491	825	8%
Huntington	33,642	4,180	12%	3,886	294	7%
Jackson	37,695	4,718	13%	4,143	575	12%
Jasper	25,712	1,420	6%	1,277	143	10%
Jay	17,236	2,323	13%	2,062	261	11%
Jefferson	24,696	4,377	18%	3,736	641	15%
Jennings	26,158	1,773	7%	1,103	670	38%
Johnson	92,773	12,796	14%	11,888	908	7%
Knox	31,179	5,182	17%	4,575	607	12%
Kosciusko	54,123	1,440	3%	1,351	89	6%
LaGrange	18,315	74	3%	74	-	-
Lake	330,996	65,332	20%	61,939	3,393	5%
La Porte	89,472	8,700	10%	7,859	841	10%
Lawrence	39,614	5,602	14%	4,286	1,316	23%

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2007 Municipal Election
Tuesday, November 6, 2007

General Election Turnout and Registration

County	Registered Voters	Voters Voting	Turnout	In Person	Absentee	Absentee
Madison	109,487	19,658	18%	15,227	4,431	23%
Marion	698,292	165,862	24%	154,827	11,035	7%
Marshall	31,744	2,730	9%	2,405	325	12%
Martin	12,220	509	4%	291	218	43%
Miami	29,049	2,072	7%	1,863	209	10%
Monroe	83,960	10,363	12%	7,958	2,405	23%
Montgomery	28,365	4,327	15%	3,943	384	9%
Morgan	46,918	4,161	9%	3,209	952	23%
Newton	11,884	316	3%	301	15	5%
Noble	32,563	3,152	10%	2,945	207	7%
Ohio	4,591	783	17%	593	190	24%
Orange	22,962	416	2%	370	46	11%
Owen	22,892	569	2%	462	107	19%
Parke	16,162	212	1%	201	11	5%
Perry	18,299	4,119	23%	3,188	931	23%
Pike	11,830	1,068	9%	871	197	18%
Porter	120,208	15,693	13%	14,799	894	6%
Posey	26,481	2,164	8%	1,842	322	15%
Pulaski	11,922	391	3%	346	45	12%
Putnam	27,614	2,737	10%	2,432	305	11%
Randolph	20,922	3,042	15%	2,816	226	7%
Ripley	28,526	2,144	8%	1,847	297	14%
Rush	14,060	2,385	17%	1,857	528	22%
St. Joseph	212,320	31,422	15%	27,652	3,770	12%
Scott	21,257	1,717	8%	1,466	251	15%
Shelby	37,366	3,352	9%	3,008	343	10%
Spencer	19,244	1,198	6%	899	299	25%
Starke	24,970	356	1%	283	73	21%
Steuben	27,443	2,144	8%	1,989	155	7%
Sullivan	19,316	1,553	8%	1,273	280	18%
Switzerland	7,625	465	6%	406	59	13%
Tippecanoe	98,507	16,080	16%	11,809	4,271	27%
Tipton	17,361	1,656	10%	1,271	385	23%
Union	7,187	-	-	-	-	-
Vanderburgh	144,748	16,291	11%	13,914	1,791	11%
Vermillion	15,528	1,224	8%	1,146	78	6%
Vigo	92,004	12,063	13%	9,309	2,754	23%
Wabash	31,751	3,765	12%	3,463	302	8%
Warren	7,287	46	1%	45	1	2%
Warrick	52,261	247	-%	238	9	4%
Washington	22,848	1,814	8%	1,420	394	22%
Wayne	58,253	8,216	14%	7,575	539	7%
Wells	34,643	2,347	7%	2,096	251	11%
White	21,915	1,450	7%	1,250	200	14%
Whitley	22,979	1,719	7%	1,536	183	11%
	4,989,025	**695,020**	**14%**	**621,812**	**72,519**	**10%**

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APPENDIX 4

SECRETARY OF STATE
STATE OF INDIANA

MEDIA ADVISORY

Todd Rokita
Secretary of State

Members of the Indiana, National, and Foreign Press Corps,

Welcome to Indiana! If you are not lucky enough to call our state home, we hope that you enjoy your time in our state. Hoosiers are ready to make their mark on national, state, and local politics during our 2008 Primary Election, an election that may have an impact on national presidential politics for the first time in 40 years.

Our local election officials, in conjunction with over 30,000 poll workers statewide, continue to drive Indiana's successful election process. Their behind-the-scenes efforts over many months, which included long days and working weekends, will allow our citizens to successfully exercise our most sacred civic transaction – the right to vote.

Even though interest has risen in Indiana's primary, state and local leaders have prepared with the same intensity, integrity, and effort as they do for every Hoosier election. Because of their efforts and the efforts of many others, Indiana will continue to implement an election system that provides integrity in the process and accuracy at the polls.

This update includes information designed to give you an overview of state and local level preparations for the election, as well as a few basics to assist you during the election tomorrow. If you have any questions, comments, or concerns, please do not hesitate to contact my office on Election Day through any of the numbers provided.

Sincerely,

Todd Rokita

Todd Rokita
Indiana Secretary of State

SECRETARY OF STATE
STATE OF INDIANA

Todd Rokita
Secretary of State

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Attachment A: *County-by-county Breakdown of Voter Registrations*
Attachment B: *County-by-county Breakdown of Absentee Voting*
Attachment C: *Latest Communication; SOS, County Officials*
Attachment D: *Latest Communication; SOS, Campaigns, Parties*
Attachment E: *Map of Indiana's 92 Counties*
Attachment F: *Contact List for Indiana's 92 County Clerks and Election Boards*

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SECRETARY OF STATE
STATE OF INDIANA

Todd Rokita
Secretary of State

Voter Statistics as of 5:00 a.m. on May 5th, 2008
Indiana has **4,318,995** registered voters, according to the Statewide Voter Registration System.*
In 2008, Indiana experienced an overall increase of **303,893** voter registrations (138,297 New / 165,596 Updated), which amounts to an increase of 7.57% this year.
From the 2006 General Election, Indiana experienced an overall increase of **793,807** voter registrations (317,979 New / 475, 828 Updated).
From the 2004 General Election, Indiana experienced an overall increase of **22,393** voter registrations. The Statewide Voter Registration File did not yet exist. Numbers may be skewed due to over 600,000 duplicate or inaccurate voter records that were cleaned from the list in 2006 and 2007.

**Please See Attachment A, a county-by-county breakdown of voter registration numbers.*

Current Statistics on Absentee Ballots in Indiana:

As of 5:00 a.m. on May 5th, 2008, over **127,247** Indiana voters have cast absentee ballots. To date, 76% of those voting absentee have selected the Democrat primary ballot (138,106 Democrats/ 43,335 Republicans/246 Other).*
In 2006, Indiana voters cast 61,345 absentee ballots in the Primary Election.
In 2004, Indiana voters cast 56,521 absentee ballots in the Primary Election.
In 2002, Indiana voters 57,023 absentee ballots in the Primary Election.

**Please See Attachment B, a county-by-county breakdown of absentee ballot information.*

For an in-depth profile of Indiana's demographics, geography, education, income, health, labor force statistics, and other information, please visit: http://www.stats.indiana.edu or the Indiana Department of Workforce Development at: http://www.hoosierdata.in.gov .

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STATE OF INDIANA

Todd Rokita
Secretary of State

Table of Abbreviations Used

BMV:	Bureau of Motor Vehicles (Indiana)
CAT:	County Advisory Team
CEB	County Election Board
DRE:	Direct Record Electronic (voting machine)
EAC:	Election Assistance Commission (federal)
ES&S:	Election Systems and Software Company
FEC:	Federal Election Commission
FVAP:	Federal Voting Assistance Program
HAVA:	Help America Vote Act
IC:	Indiana Code
IEC:	Indiana Election Commission
IED:	Indiana Election Division
ISDH:	Indiana State Department of Health
OS:	Optical Scan (voting machine)
PAC:	Political Action Committee
PRO:	Provisional Ballot (IEC forms)
SVF:	Statewide Voter File
SVRS	Statewide Voter Registration System
VCPP:	Vote Center Pilot Project
VRG:	Voter Registration (IEC forms)
VRO:	Vital Records Office (ISDH)
VSTOP:	Voting System Technical Oversight Program

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STATE OF INDIANA

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Secretary of State

State and County Level Preparations for Increased Voter Turnout

Indiana's 92 counties have prepared for Primary Election Day activities with the same effort and integrity as with every election. Because of an increase in voter registrations, county election officials have been advised to anticipate and plan for increased communication resources, poll workers, volunteers, and ballots.

County Level Support

The Office of the Secretary of State has helped facilitate thousands of hours of county-level communication by phone and in-person, as well through email and the Statewide Voter Registrations System since the beginning of the year. Since April 7th, the Office has maintained ongoing discussions with the following counties:

Adams County	Fayette County	Kosciusko County	Randolph County
Allen County	Floyd County	LaGrange	Ripley County
Bartholomew County	Fountain County	Lake County	Spencer County
Blackford County	Gibson County	LaPorte County	St Joseph County
Boone County	Grant County	Lawrence County	Starke County
Brown County	Greene County	Madison County	Steuben County
Carroll County	Hamilton County	Marion County	Tippecanoe County
Cass County	Hancock County	Marshall County	Vigo County
Clark County	Harrison County	Miami County	Wabash County
Clay County	Hendricks County	Monroe County	Warren County
Clinton County	Henry County	Montgomery County	Warrick County
Daviess County	Howard County	Morgan County	Washington County
Dearborn County	Jackson County	Noble County	Wayne County
Decatur County	Jasper County	Parke County	Wells County
Delaware County	Jay County	Porter County	White County
Dubois County	Jefferson County	Posey County	Whitley County
Elkhart County	Johnson County	Putnam County	
	Knox County		

A representative sample of Indiana counties were recently surveyed on election preparations, including Allen, Lake Vanderburgh, Boone, Hendricks, Floyd, Vigo, Clark, Warrick, LaPorte, Elkhart, Bartholomew, Monroe, St. Joseph, Lawrence, Harrison, Washington, Ripley, and Putnam Counties, among others. Election officials believe they have adequately prepared for expected increases in voter turnout. Results show:

- 100 percent of counties surveyed believed that they are ready for Tuesday's election

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STATE OF INDIANA

Todd Rokita
Secretary of State

- 75 percent of counties surveyed have printed additional paper ballots for Tuesday's election. Note: counties indicating that they ***did not*** print additional

  ballots use Direct Record Electronic (DRE) voting machines – which do not require paper ballots. However, a number of DRE voting machine counties indicated that they are printing additional backup paper ballots for use in the event of an emergency. (What if a polling location runs out of ballots? See page 10.)

- All Indiana Counties surveyed believe that they have recruited sufficient numbers of poll workers and that they have been trained adequately. Many counties planned to hold extra poll worker training sessions during the past weekend for any recent additions to their poll worker roster.

- All counties surveyed indicated that their poll locations would be prepared for the election.

- As of May 5th, 92 of 92 counties have already printed their full set of poll books.

Voting Systems Testing

To assure readiness and accuracy of voting equipment, Indiana law requires that all counties conduct public tests of their voting systems no later than 14 days before every election. Counties are required to certify that the voting machines correctly tabulate votes and report this information to the Indiana Election Division (IED) no later than 7 days after completion of the tests. All tests have been conducted as of May 5, 2008.

Additional Infrastructure

To assure that all counties are adequately equipped to utilize the State Wide Voter Registration System, the State has provided 60 counties with additional hardware and network equipment including: desktop PCs, laser printers, bar code readers, label printers, flatbed Scanners, and high speed scanners for the larger counties.

While not every situation or occurrence can be anticipated, Indiana's county clerks have worked hard to prepare for the election. *Please see Attachment C for the latest communication between the Indiana Secretary of State's Office and county election officials.*

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State Level Outreach to New Voters

In response to significant increases in voter registration over the past several months, the Indiana Secretary of State's Office has reallocated resources from the General Election outreach plan to the Primary Election in order to reach out to new voters.

More than **160,000** new voters and those with records updated since the November 2007 municipal election received a postcard, mailed to their home, detailing "5 Things" voters need to know on Election Day, including:

1) Planning ahead: what to bring, where to vote and where to call for information.

2) Information on photo ID requirements.

3) Reminder that voting by Provisional Ballot is available if there is a problem with the voter's registration record or ID.

4) Notice that important information for voters such as "The Voter's Bill of Rights" including where complaints can be filed, instructions on using voting machines and sample ballots are posted at all voting locations.

5) Notice that all Indiana polling places are required to meet Americans With Disabilities Act (ADA) requirements for accessibility, and be equipped with ADA accessible voting machines.

The Secretary of State's Help America Vote Act (HAVA) Team developed and implemented a special media campaign to reach out to new voters ($30,000 of print advertising) including information on photo ID requirements, via TV, Radio, Print, and Transit advertising campaigns – See page 12). Though the campaign was statewide, special attention was paid to 20 counties with the highest number of new voter registrations since the last election. Those counties include: Marion (+27,478), Lake, (+13,539), Allen (+9,311), St. Joseph (+7,478), Hamilton (+7,255), Monroe (+6,978), Tippecanoe (+4,831), Elkhart (+4,588), Vanderburgh (+4,456), Porter (+3,758), Hendricks (+3,625), Johnson (+3,409), LaPorte (+2,712), Vigo (+2,616), Delaware (+2,590), Clark (+2,417), Madison (+2,343), Floyd (+1,929), Bartholomew (+1,741), and Morgan (+1,706).

College Student Outreach

Through campus based student outreach activities, Indiana's college student population has received focused information on registering to vote, voting and details on Indiana's

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photo ID requirements. Students registering to vote in Indiana for the first time were sent voter information postcards. The State's new voter media campaign focused on counties with large college and university student populations including:

1)	Delaware County	(Ball State)
2)	Marion County	(IU-PU Indianapolis, Butler University and others)
3)	Monroe County	(Indiana University)
4)	St. Joseph County	(Notre Dame, St. Mary's)
5)	Tippecanoe County	(Purdue University)
6)	Vanderburgh County	(University of Southern Indiana, U. of Evansville)
7)	Vigo County	(Indiana State University)

Additionally, the Secretary of State's Office spearheaded a College Student Email Campaign. Eight of the state's largest universities distributed a campus-wide email detailing information on photo ID requirements and absentee ballot options for college students. Though exact figures are not available it is estimated that these emails were sent to and received by over 115,000 students throughout the state.

A Note on College Student Voting Requirements

College Students, as with all voters, are expected to register to vote from their permanent address, ***according to the perception of the voter***. Indiana law provides that a person ***does not*** gain residency in a precinct when they move there for temporary employment, educational purposes etc., without the intent of making a permanent home there. ***If*** it is the intent of the student that their school address will be their permanent address, than they are eligible to register to vote using that address (*see*: IC 3-5-5-7).

As a result of these new voter outreach and education initiatives, the Secretary of State's Primary Election Outreach spending has increased by almost 50%

Indiana's Voter ID Law and the Primary Election

Just last week, the United States Supreme Court ruled in a 6 to 3 decision, to uphold Indiana's Voter ID law. Indiana Secretary of State Todd Rokita, as the respondent in the case, was a vigorous defendant Indiana's law throughout the two-and-a-half year adjudication process.

Indiana's Voter ID Law (Public Law 109-2005) requires Indiana residents to present a photo ID before casting a ballot at the polls on Election Day. Note that the substance of this law took effect in July, 2005. ***Prior*** to this week's Primary Election, Hoosiers have quite successfully, voted in 4 statewide elections and 4 Special Elections under the photo ID requirements.

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Under the statute, acceptebel ID must meet 4 criteria to be acceptable for voting purposes. The ID must:

1. Display the voter's photo.
2. Display the voter's name, which must conform with name on the voter registration record (*an explanation of acceptable variation follows*).
3. Display an expiration date that is either current, or expired ***no earlier*** than the date of the last Indiana General Election (in this case, November 7, 2006).
4. Be issued by an agency of the State of Indiana or the U.S. government.

Generally, an Indiana driver's license, Indiana photo ID card, U.S. Passport, or military ID is sufficient. Exemptions exist for the indigent, those with a religious objection to being photographed, and for elderly or disabled individuals living in state-licensed facilities where a precinct polling place is also located.

Persons with limited incomes, those with religious objections, and those who forget to bring adequate identification to the polls may cast a ***provisional ballot*** at the polls without photo identification. Individuals voting ***absentee-in-person*** ("early voting") at a county election office, must have an acceptable ID, however a voter could vote without an ID, if they can affirm at that time (by sworn affidavit), that they cannot afford an ID or have a religious objection to being photographed.

Persons voting absentee-by-mail are not required to show a photo ID (under that rationale that a photo would do nothing to prove identification without the person also being there for comparison). Absentee ***balloting-by-mail*** is available to ***anyone*** 65 or older, and voters with disabilities. Voters who qualify to vote ***absentee-by-traveling board***, including the home bound, are ***not*** required to show photo ID (For more information on the absentee ballot process and traveling boards, please see page 16).

The name on the photo ID must "conform" to the name on the voter registration record, however the name does ***not*** have to be an ***identical match***. For example, common nicknames for first names, or substitute middle names for a given first name qualify under the statute. Also initials, as a substitute for a first or middle name, are an acceptable variation.

Voters who have changed their name due to marriage, adoption or divorce may rely on Indiana's long-standing change of name or address procedures. Indiana allows a voter to

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provide the current version of their name by simply writing their new name on the precinct poll list next to their current entry (*see* IC 3-7-41).

Voters can also update their voter registration information at the polling site by using the VRG - 4/12 form. This form (available at the polls) allows a voter who has either moved less than 30 days before the election, or moved (anytime) within the same county and congressional district, to vote one final time at their previous precinct. Voters are required to provide their new address on the form - which will lead to their voter registration to be updated after the election.

State law requires that the Indiana Bureau of Motor Vehicles (BMV) provide ***free*** photo identification to citizens who do not already have a valid photo ID that meets state requirements for voting. For additional information, please visit http://www.photoID.in.gov.

Informing Hoosier Citizens of the Photo ID Requirement

The Indiana Secretary of State's Office has invested over $1.25 million dollars (federal and state-matching funds) on photo ID-related education and outreach efforts. This funding amount does ***not*** include funding for other voting outreach and education efforts. Many of the state's photo ID education and outreach efforts were executed as soon as the new law took effect in 2005. As noted above, the Indiana Secretary of State's Office has expanded photo ID-related outreach in an effort to focus on newly registered voters during this busy 2008 Primary Election season.

Indiana Bureau of Motor Vehicles

All BMV locations that normally issue driver licenses and ID Cards will have extended hours (8:30 AM to 8:00 PM) on Monday, the day before the electon. ***All BMV locations will also be open on Election Day from 6:00 A.M to 7:00 PM.***

Identification card applicants who are 65 years or older, and can attest that they have never been issued a birth certificate because their birth was never recorded with a state office of vital statistics, may present other forms of identification as a primary document, along with the necessary secondary document, for an Indiana identification card.

The BMV Mobile Unit

Since August of last year, Indiana's BMV Mobile Unit has logged over 76 days of travel stopping to provide photo-ID's at over 47 locations in 24 counties and 26 cities. For additional information on the Bureau of Motor Vehicles Mobile Unit, please contact Joe Frank at (317) 232-1946.

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The BMV Mobile Unit will be operating during business hours at the City Market, 200 E. Meridian Street, Indianapolis Indiana, to provide photo IDs to voters casting in-person absentee ballots at the Marion County Election Board on Monday, May 5th.

On Election Day, the BMV Mobile Unit will be available to provide free photo IDs to voters at the Indianapolis Children's Museum located at 3000 N Meridian Street, Indianapolis, IN 46208. Please visit http://www.in.gov/bmv for additional information.

Indiana Department of Health

Generally, a birth certificate is required to obtain an Indiana drivers license or non-drivers photo-ID. Certified copies of birth certificates are available from the Indiana State Department of Health (ISDH) or from a local health department office in the county where the birth occurred. Requests for birth certificates must be accompanied by specified forms of identifying documentation (one of form of a "primary document", or two of several types of "secondary documents").

Birth records in the ISDH (Vital Records Office) begin with October 1907. Prior to October 1907, records of birth were filed ***only*** with the local health department in the county where the birth occurred.

Individuals seeking birth certificates can apply in person at the ISDH Vital Records Office or at their local county health department. Voters with access to the Internet and a credit card can apply for copies of their records online. Birth certificates cost $10 for the first certified copy and $4 for each additional copy.

The ISDH Vital Records Office will be open from 8:30 – 3:00 on Election Day. Voters should contact Registrar of Records, Corey Ealy, (317) 233-7523. The ISDH Vital Records Office is located at 2 North Meridian Street, Indianapolis, IN 46204. For more information, please visit http://www.in.gov/isdh .

"What if..." Possible Election Day Situations and Responses

What if a voting machine breaks during the day?

Neither Indiana nor any other state ***has ever*** experienced systematic or statewide voting machine problems that have completely inhibited the election process. Individual precinct-level issues with voting machines have been known to occur.

In the case of precinct-level issues, all counties have individual contracts with one of five Indiana Election Commission approved voting machine vendors. Those contracts specify requirements for spare machines to be available at a central location in each county for deployment to a polling location in the case of an emergency.

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individual vote. (For example, if a voter has cast an absentee ballot, but dies prior to Election Day, state law requires the ballot be rejected.)

Absentee by Traveling Board

Confined voters and those caring for confined voters can request to have a confined voter board, or traveling board, bring an absentee ballot to their location. The traveling board is a bipartisan board that may also assist voters in completing the ballot if requested.

All voted absentee ballots are then stored in a secure location at the county election board for counting on Election Day at either the polling place, or at the county election board in the event the county is a central count county. On Election Day, bipartisan teams of election commissioners deliver absentee ballots to the appropriate precinct where it is counted with the votes cast on Election Day. In central count counties, ballots remain at the election board, are counted, and added to the precinct totals at the end of the day. In order for a county to be a central count county, a unanimous resolution must be passed by the county election board prior to Election Day.

Can a Voter Cast an In-Person Vote after Voting Absentee?

In non-central count counties, a voter can "beat" their absentee ballot to the polling place on Election Day and cast a ballot in-person. Once the previously voted absentee ballot arrives and it is discovered the voter cast a ballot at the precinct earlier in the day, the absentee ballot is spoiled and not counted. Voters generally cannot elect to "beat" their absentee ballot to the polling place in central count counties because the ballot is not distributed to precincts and the poll list is marked before the opening of the polls to indicate that the voter has already returned an absentee ballot.

Recent Absentee Ballot Reform

In conjunction with Indiana's Photo ID law, a comprehensive absentee ballot reform package was promoted and passed by the Indiana General Assembly during its 2003 through 2005 sessions. These new requirements make it more difficult to commit absentee vote fraud and make the consequences of such behavior more severe. Some of these changes include: [NOTE: The first bullet point was already law. Not a reform]

- Absentee Voter's Bill of Rights (IC 3-5-8-2.5 & IC 3-11-10-25) Counties must provide all absentee voters with a statement describing: 1)their rights and responsibilities: 2) laws covering assistance that may be given to an absentee voter, completion of ballots in secret and return of a voted ballot; 3) how election law and absentee ballot law violations are reported.

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- In the absentee ballot application, the voter must indicate the reason they qualify for absentee voting by mail, sworn under the penalty of perjury. (IC 3-11-4-18 & IC 3-11-10-24).

- Absentee ballot applications must be signed by the voter (except the disabled). Anyone assisting an absentee voter must acknowledge certain statements, sworn under the penalty of perjury. (IC 3-11-4-2 & IC 3-11-4-5). Persons assisting absentee ballot voters must be fully identified on the application.

- Restrictions were been placed on the "pre-completion" of absentee ballot applications by persons other than the voter. (IC 3-11-4-2 & IC 3-11-4-5).

- Only the absentee ballot voter, a family member, a postal employee, a bonded courier or an individual properly appointed as the voter's attorney in fact, may mail or deliver a voted absentee ballot. (IC 3-11-4-2 & IC 3-11-4-5).

- The crime of "electioneering: (a class A misdemeanor) may not be committed in the presence of a voter known to possess their absentee ballot. (IC 3-11-4-18 & IC 3-14-3-16).

- Challenged absentee ballots convert into provisional ballots - for consideration by the County Election Board. (IC 3-11.5-4-15)

Absentee Outreach: Know the Law, Know Your Rights

During the last month in which absentee voting has been taking place, the Secretary of State's Office has engaged in a special community outreach program aimed at informing county election officials, candidates and campaign workers and especially potential absentee voters themselves of the most essential absentee voting laws:

1. The pressuring of voters who are not eligible to vote absentee to do so is illegal and will not be tolerated.

2. Absentee voters have the right to mark their ballots in secret.

3. Absentee ballot voters should place their own ballot in the mail or follow legal, approved methods for having their ballot mailed or delivered.

The Indiana Secretary of State's Office has notified the presidential and gubernatorial campaigns, as well as both major state parties of electioneering and absentee ballot laws and the penalties for violating those laws. *Please see Attachment D for the latest communication between the Indiana Secretary of State's Office, campaigns, and party officials.*

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Direct Contact: How Hoosiers Report on Election Day Issues

Indiana citizens can file complaints with the Help America Vote Act team in the Office of the Indiana Secretary of State regarding polling place accessibility or any concerns regarding possible fraudulent activities on Election Day. Hoosiers may make contact by calling the toll-free number at 866-IN1-VOTE (866-461-8683). HAVA staff is on hand every day of the week throughout the year, as well as from 6:00 AM to 7:00 PM EDT on Election Day.

Hoosiers may also complete the Indiana Voter Fraud and Accessibility Grievance affidavit form, which is located on the SOS website at: http://www.in.gov/sos/elections/hava Those who complete and file this form are advised to have it notarized in order to assist investigators and prosecutors. The form is filed with the HAVA office and distributed to the proper agency for investigation and action.

Historically, Hoosiers contact the HAVA team on Election Day to receive information on the location of their polling site. Those that file grievances have issue(s) with the election process or complaints about the behavior of others around the polling site. Many complaints are taken care of immediately by contacting local election administrators to quickly deal with an issue under local jurisdiction. A small number are investigated by the state and materials are forwarded to local prosecutors if necessary.

Election Day Response Team

First implemented during the East Chicago Special Election in 2003, the Indiana Secretary of State's Office executes a program to appoint several Special Secretary of State Deputies for the purpose of making random, unannounced inspections of polling locations throughout the state on Election Day. These Deputies were charged with 1) responding to any election-related issues; and 2) spot-check polling locations for accessibility and integrity in the process.

In the 2007 May Primary and General Elections, teams of Special Deputies visited over one hundred precincts in more than a dozen Indiana Counties. Their observations and reports indicated generally a high rate of compliance with election laws and procedures. However, isolated administrative infractions were noted, such as the lack of the Indiana Voter Bill of Rights posted in a prominent location.

These infractions were followed up on with reports to county clerks and county election boards. Again, during this 2008 Primary Election, teams of volunteers, bearing Special Deputy Secretary of State credentials will be making random, unannounced visits to

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polling locations throughout the state and reporting back to the Secretary of State's Office.

The Basic Election Process and Election Official Organization

Every voter is assigned to a precinct and casts a ballot at a polling place. The voter's ballot is received by a precinct election board, which administers the election at its polling place. Precinct election officials (Poll Workers) are appointed by the county clerk (or in some counties, a county election director). The county clerk administers elections at the county level as one member of a bipartisan county election board, which consists of 3-5 members.

County election officials are provided with information and guidance regarding election laws and procedures by state officials, including the Secretary of State, who serves as Indiana's Chief State Election Official; the Indiana Election Commission, a 4 member bipartisan administrative body, and by the Indiana Election Division of the Office of the Secretary of State, an agency headed by bipartisan Co-Directors.

How are precincts created and voters assigned to them?

Precincts are established by county election officials, subject to approval by the Election Division or Election Commission. State law requires most precincts to contain no more than 1200 active voters. An eligible voter who resides within the boundaries of the precinct can vote for the candidates on the ballot in that precinct.

How are polling places chosen?

County election officials choose where each precinct's polling place will be located. Polling places must be accessible to voters with disabilities, and be located in the precinct, or nearby to ensure accessibility by these voters.

What are polling place hours?

Indiana's polling places are open from 6 am until 6 pm, prevailing local time.

Who are the poll workers and how are they chosen?

The head poll worker in each precinct is the "inspector." There are also election judges and poll clerks. Poll workers are nominated by the two major political parties, and if vacancies exist, the county election board can appoint qualified voters to serve.

Who is the county clerk, and what is the clerk's role in elections?

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A vote may be challenged by a member of the political party as not meeting these qualifications. The challenger may be a poll worker or an individual appointed as a challenger by the political party.

If the voter is challenged, the voter must proceed to sign a sworn statement that the voter does meet the party affiliation requirements. After doing so, the voter will be provided with a primary ballot listing only the candidates in that party's primary. The voter will then be permitted to vote in that party's primary.

Since the voter's ballot in both the last general election (November 2006) and in the next general election ballot (November 2008) will be secret, there is no way to prove that the voter has made a false statement on this affidavit, unless the voter reveals this. If a voter confesses to knowingly making a false statement, then the voter could be prosecuted for perjury, a felony under Indiana law.

A Brief Summary of Indiana's Provisional Ballot Process

Indiana's Provisional Ballot Overview:

In many states provisional ballots are very common—cast and counted in high numbers. The Indiana provisional ballot process works different than many states in that Provisional Ballots are looked at as a "last resort" on Election Day, not a common occurrence.

Indiana poll workers are trained to route voters through the "regular ballot" process whenever possible using procedures called "fail safes" to address common questions and concerns on Election Day.

Provisional ballots exist so that no voter is ever turned away from the polls because of a simple administrative question—a voter will always have the ability to cast a provisional ballot in order to capture the vote and the voter's eligibility can be reviewed at a later date.

The Process:

Each of Indiana's 92 counties receive poll worker training information from the state and are responsible for hold poll worker training session in order to educate our poll workers on Election Day procedures, including Provisional Ballots.

A voter will cast a provisional ballot on Election Day for a variety of reasons. In many states if there were any questions regarding a voter's record he or she would cast a provisional ballot. In Indiana, "fail-safe" procedures prevent high numbers of provisional ballots. For example if a voter's name is not on the poll book by mistake, instead of issuing a provisional ballot, the poll worker would inquire to the County of the voter's

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registration status and a certificate of error would be issued. This voter would then vote using a regular ballot. Fail safes apply to a variety of common situations including voters who have moved and the poll book no longer reflects their current address, a voter who has changed his or her name, or if an error is made on the county level with regard to a voter registration record.

If the voter casts a provisional ballot, the ballot will be kept separate from the other ballots cast in that precinct. After Election Day, the County Election board will decide whether the voter was qualified to vote in that precinct and whether the voter's ballot should be counted. The voter will be able to contact the county election board after Election Day to find out whether the voter's ballot was counted, and if it was not counted, why not.

The County Election Board can count provisional ballots until noon up to ten days after the election. If the voter had to fill out a provisional ballot due to inadequate photo identification, that voter can arrive at the Clerk's office within the 10-day period to present the appropriate ID or sign an affidavit.

How does a voter cast a provisional ballot?

Generally, the same rules and procedures that apply to casting a traditional paper ballot apply to casting a provisional ballot, but there are some special procedures that are similar to casting an absentee ballot:

a) The voter must mark the provisional ballot privately, unless the voter is entitled to and requests assistance.

b) The voter must enclose the provisional ballot inside a provisional ballot secrecy envelope provided for this purpose (Form PRO-2) and seal the envelope.

c) The voter must return the sealed envelope, with the ballot inside, to the inspector.

Historical Data on Indiana's Provisional Ballots

The following chart details Indiana's Provisional Ballot Data for 2004 and 2006 General Elections. Data for 2007 is not yet available.

Year	Non-Prov. Ballots Cast	Prov. Ballots Cast	Prov. Ballots Counted	Total Ballots Counted	% Total Prov. Ballots	Total % of Cast Ballots	Total % of Uncounted Cast Ballots

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2004	2,511,201	5,862	941	2,512,142	0.233%	99.804%	0.196%
2006	1,718,179	3,873	1,172	1,719,351	0.225%	99.843%	0.157%

The following chart details Indiana's Provisional Ballot Data compared to Provisional Ballot Data in Kentucky, Massachusetts, and Ohio for 2004 and 2006. Data for 2007 is not yet available.

2004	**Indiana**	**Kentucky**	**Massachusetts**	**Ohio**
Total Ballots Counted	2,512,142	1809102	2821607	4995745
Provisionals Cast	5862	1494	10060	157714
Provisionals Counted	941	221	2319	123716
% Counted	16.053%	14.793%	23.052%	78.443%
% Provisionals Total	0.233%	0.083%	0.357%	3.157%
% Ballots Counted	99.804%	99.930%	99.726%	99.319%
2006	**Indiana**	**Kentucky**	**Massachusetts**	**Ohio**
Total Ballots Counted	1,718,179	1305962	2999983	3592358
Provisionals Cast	3873	75	215	127758
Provisionals Counted	1172	5	49	106212
% Counted	30.261%	6.667%	22.791%	83.135%
% Provisionals Total	0.225%	0.006%	0.007%	3.556%
% Ballots Counted	99.843%	99.995%	99.994%	99.400%

Sources: Election Data from Indiana SVRS and HAVA Office, US EAC 2004 Election Administration and Voting Survey, US EAC 2006 Election Administration and Voting Survey

Today, counties may use the Indiana Statewide Voter Registration System to track and provide information to voters who cast provisional ballots and are concerned about their ballot being counted. Under Help America Vote Act requirements, voters who cast provisional ballots must have "free access" to information concerning whether or not the ballot was counted, and if not. In response, counties have established toll-free phone lines that voters may call, use the provisional ballot reporting structure in the state's Statewide Voter File, or a combination of both. In addition, IC 3-14-5-2(2) requires counties to provide copies of all provisional ballot challenge forms to the Secretary of State following the election.

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APPENDIX 5
PROVISIONAL BALLOT DATA

Indiana 2004 Primary Election				
County	Regist r d V ters	2004 Presidental Ballots Cast	Turnout	New R gistrations since 2003 Municipal
Marion Co.	570,560	98,280	17%	27,478
Lake Co.	344,467	54,693	16%	13,539
Allen Co.	219,271	30,306	14%	9,311
St. Joseph Co.	174,013	28,301	16%	7,478
Hamilton Co.	144,290	34,923	24%	7,255
Vanderburgh Co.	123,265	16,192	13%	4,456
Monroe Co.	99,829	12,748	13%	6,978
Elkhart Co.	93,599	18,717	20%	4,588
Porter Co.	86,589	12,408	14%	3,758
Delaware Co.	86,148	18,119	21%	2,590
Tippecanoe Co.	84,158	13,436	16%	4,831
Johnson Co.	80,821	16,725	21%	3,409
LaPorte Co.	77,442	11,856	15%	2,712
Vigo Co.	75,515	18,332	24%	2,616
Hendricks Co.	69,477	18,625	27%	3,625
Total	**2,329,444**	**403,661**	**17%**	**104,624**

Indiana 2004 General Election					
County	Registered Voters	2004 Presidental Ballots Cast	Turnout	New Registrations since 2004 Primary	Provisional Ballots Cast
Marion Co.	603,390	320,838	53%	32,830	1,732
Lake Co.	353,826	188,022	53%	9,359	863
Allen Co.	226,006	129,609	57%	6,735	468
St. Joseph Co.	175,762	108,619	62%	1,749	150
Hamilton Co.	154,034	104,906	68%	9,744	88
Vanderburgh Co.	126,822	70,654	56%	3,557	150
Monroe Co.	104,586	50,467	48%	4,757	68
Elkhart Co.	99,035	61,380	62%	5,436	394
Tippecanoe Co.	92,980	52,360	56%	6,391	273
Porter Co.	88,666	64,873	73%	2,518	196
Johnson Co.	86,144	51,255	59%	1,986	31
Delaware Co.	86,041	47,939	56%	5,220	62
LaPorte Co.	79,335	42,606	54%	1,893	20
Vigo Co.	78,449	39,744	51%	2,934	12
Hendricks Co.	76,576	52,302	68%	7,099	102
	2,431,652	**1,385,574**	**57%**	**102,208**	**4,609**

Indiana 2008 Primary Electi n						
County	Active Voters	2008 Presidental Ballots Cast	Turnout	New Registrations since 2007 Municipal	Estimated Provisional Ballots Cast	Source
Marion Co.	525,220	235287	45%	48,152	509	estimate county E.B. employee
Lake Co.	277,185	142001	51%	29,970	370	according to county E.B. member
Allen Co.	217,424	82656	38%	18,612	140	county E.B.
St. Joseph Co.	190,283	71570	38%	14,087	81	deputy clerk
Hamilton Co.	155,942	70341	45%	15,109	15	county E.B.
Vanderburgh Co.	131,029	44878	34%	8,674	64	county E.B.
Elkhart Co.	106,812	43994	41%	9,645	77	deputy clerk
Porter Co.	93,127	43586	47%	7,726	30	according to *Chesterton Tribune*
Tippecanoe Co.	86,210	39205	45%	9,223	220	clerk
Delaware Co.	81,586	34473	42%	4,756	50	deputy clerk
Hendricks Co.	81,424	35178	43%	7,138	22	county E.B.
Johnson Co.	77,808	32704	42%	6,777	13	clerk
Monroe Co.	71,549	34036	48%	9,985	130	county E.B.
LaPorte Co.	69,793	30463	44%	5,063	36	county E.B.
Vigo Co.	67,039	31748	47%	5,119	10	deputy clerk
	2,232,431	**972,120**	**44%**	**200,036**	**1,767**	

Statement for the Record
Senator Herb Kohl
Senate Committee on the Judiciary Hearing
May 20, 2008

Earlier this year, the Senate Special Committee on Aging held a hearing on older voters and the various barriers they face in exercising their right to vote. Witnesses shared their expertise on such issues as poll accessibility for older and disabled voters, voting within the long-term care setting, and finally, on the issue of Voter ID.

Studies have found that seniors are more likely than younger populations to lose their right to vote when Voter ID is implemented. My state of Wisconsin has been battling over its own Voter ID proposals. A 2005 study by the University of Wisconsin found that 23 percent of people age 65 and older in Wisconsin – nearly 200,000 older voters – do not have a driver's license or other photo ID.

Several factors explain this statistic. The financial cost of collecting the documents necessary to obtain a photo ID is particularly burdensome to older voters who live on fixed incomes, and can be considered akin to a poll tax. In addition, older Americans are far more likely to have disabilities than other citizens, making it more difficult for them to travel and to navigate the bureaucratic procedures required to procure a photo ID. Equally important, we learned at our hearing that, due to limited access to health care, many minority citizens born before and during the 1960s were not delivered in hospitals. Therefore, their state of birth is less likely to have a birth certificate for them on file.

Unfortunately, the Supreme Court's recent decision to uphold Indiana's requirement that voters present a government-issued ID is sure to have national implications for current and future Voter ID laws, and will allow for continued discrimination against the elderly, minority and low-income populations who are less likely to have proper identification.

The conclusion drawn from the Aging Committee hearing is that if we do not remove the barriers that prevent elderly and disabled citizens from exercising their right to vote, then we are – for all intents and purposes – disenfranchising them. The right to vote is fundamental and undeniable, and it does not expire with age.

44821.199

Statement of Senator Leahy
Chairman, Senate Judiciary Committee
Hearing on "Protecting the Constitutional Right to Vote for All Americans"
May 20, 2008

Two years ago, members of Congress stood together on the Capitol steps to reaffirm our commitment to achieving full democratic participation by reauthorizing the Voting Rights Act. This Committee played a key role in reinvigorating that landmark law. After nearly 20 hearings in the House and Senate Judiciary Committees, we found that modern day barriers to voting continue to persist in our country. Now, only months away from an important Federal election, we are here to examine barriers to the ballot box, and to look for ways to ensure that the democratic process will be open to all Americans.

Often times we associate voter disenfranchisement with actions from a foregone era. We all recall the courage and resilience of Americans who were bitten by dogs, sprayed by water hoses, or beaten by mobs simply for attempting to register to vote. We remember a time when stubborn and recalcitrant state officials used discriminatory devices such as poll taxes, grandfather clauses, and literacy tests to exclude certain segments of our population from voting. Progress has been made to forge a more inclusive democracy but new voter disenfranchisement tactics arise in every election year. This year is no different.

During the most recent mid-term elections, we witnessed overt threats by armed vigilantes attempting to intimidate Hispanic-American voters at the polls in Arizona. We witnessed cross burnings intended to intimidate African-American voters on the eve of an election in Louisiana. We also saw organized efforts in Maryland to deceive minority and low-income voters with false information about polling locations and phony endorsements.

We know from the recent hearing in the Senate Rules Committee that no credible evidence of widespread, in-person voter fraud exists. That lack of evidence, however, has not stopped efforts by Republican state legislators in some states to pass restrictive photo ID laws.

We also know that photo ID laws have already disenfranchised voters this year. Two weeks ago, a dozen elderly nuns in Indiana were turned away from the polls because they did not possess the required photo ID. I understand that several of them held expired photo IDs that were not sufficient under Indiana's restrictive law.

Fortunately, last week, the Missouri legislature opted not to follow Indiana's lead by passing a restrictive photo ID law. And just yesterday, Governor Kathleen Sebelius acted to protect voter access in Kansas. In her veto statement she declared that she could not "support creating any roadblock to prevent our citizens from adding their voices to the democratic discourse that makes our nation great."

Several members of this Committee recently sent a letter to the Attorney General asking

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him to direct the Department to vigorously enforce the Voting Rights Act so that novel photo ID laws would not infringe on the voting rights of racial minorities. We look forward to his response and to continuing our oversight of the Civil Rights Division on this issue.
Last week, the White House withdrew the controversial nomination of former Department of Justice Civil Rights Division official Hans Von Spakovsky to serve on the important Federal Election Committee. While at the Division, Mr. Von Spakovsky played a critical role in politicizing the Department and reorienting the Civil Rights Division's focus away from its traditional mission of ensuring voter participation. The Senate's refusal to confirm him to the FEC sends a strong message that we will not reward his efforts at the Justice Department to obstruct the path to the ballot box.

On the brink of an election with record numbers of new voters, our government must remain vigilant in protecting our precious right to vote. That means now, more than ever, we need a Justice Department that will work to ensure ballot access for all Americans.

Federal courts are also critical to the protection of voting rights. At key moments in our nation's history, the Federal courts have acted to protect unfettered access to the ballot box. When Virginia passed a law four decades ago requiring voters to pay a $1.50 poll tax the Supreme Court invalidated the law. Simply because the tax would apply to every voter did not make it permissible under the Constitution.

I regret that the current Supreme Court was not as protective of the fundamental right to vote last month when it failed to invalidate a restrictive Indiana law requiring voters to present specific types of photo ID. Had just two Justices been more protective of the right to vote, those Sisters of Mercy in Indiana would have been able to vote in the primary election two weeks ago. Because the burdensome law was allowed to stand, those sisters and untold others were disenfranchised. At a time when the Justice Department has departed from enforcement of voting rights in favor of advancing partisan goals, the Federal courts need to provide the check and balance that the Framers of our Constitution intended.

Our great Nation was founded on the radical idea of a participatory democracy. Our founding document begins with "We the People." Successive generations of Americans have come together to amend our Constitution six times to expand the participation of its citizenry in the election of the government—to former slaves, to women, to young people, to include the direct election of Senators, and to prohibit poll taxes. In this way, "We the people" have reiterated and affirmed the fundamental importance of the right to vote. We should all remember Judge Wisdom's analysis in the 1963 case of United States v. Louisiana, where he noted that a law that burdens a citizen from access to the franchise is a wall that must come down. His words are as true today as they were 45 years ago.

I welcome our distinguished panel of witnesses today. I look forward to your testimony.

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44821.201

Testimony of Cleta Mitchell, Esq.

Senate Judiciary Committee

May 20, 2008

My name is Cleta Mitchell. I am an attorney, specializing in the area of political law – the business and regulation of politics, lobbying, public policy and elections.

I have been involved in law and politics for more than thirty years. It is a privilege for me to appear here today to discuss with the Committee the integrity of America's elections and voting process.

The goal of every organization, campaign and entity with which I am involved is assuring that our voting systems are secure, that only legally eligible voters cast ballots and that every legally cast ballot is counted to the highest degree of certainty and accuracy. From the Republican National Lawyers Association to the American Conservative Union to the informal groups of lawyers who practice political law as I do for Republican candidates and conservative organizations…we all are dedicated to that principle.

Yet, there are well-organized forces furiously at work even as we speak, seeking to block this principle from ever being effectuated.

These are the people and the groups who contend that there is no voter fraud and no people who try to illegally influence the election process – and that any of us who believe otherwise are and must be racists.

Why do some people and organizations so resent and so forcefully object to efforts to assure the integrity of our voting procedures?

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It absolutely mystifies me that there has emerged over the past several decades an entire industry – well financed and well organized, supported by the mainstream media and the liberal elites in this country – which is determined to stymie any effort to assure that our voting systems are secure, that only legally eligible voters cast ballots and that every legally cast ballot is counted to the highest degree of certainty and accuracy.

Let us simply review the goals and objectives of the activist voting "rights" left over the past fifteen years.

In 1993, President Clinton signed the National Voter Registration Act, NVRA, more commonly known as the Motor Voter act. This legislation, in which the federal government for the first time in the nation's history imposed a national voter registration process for every state. The proponents believed that since poor people who somehow were obstructed in becoming registered voters nonetheless managed to obtain drivers' licenses and public assistance from the government and that such government applications should also serve as voter registration applications thereby assuring that these otherwise poor and disenfranchised individuals would suddenly become active voters.

According to Dr. John Samples, Director, Center for Representative Government of the Cato Institute in testimony to the Senate Committee on Rules and Administration entitled "The Motor Voter Act and Voter Fraud" on March 14, 2001, the results of the Motor Voter Act have produced *more* opportunity for fraudulent activities surrounding voter registration and voting, but without a commensurate increase in voter turnout or participation. And, pertinent to our discussion here today, Motor Voter has made it *more* difficult for jurisdictions to maintain clean and accurate voter rolls.

Dr. Samples testified:

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"The Motor Voter Act made it harder to verify the identity of voters seeking to register. It also considerably complicated the states' task of keeping the registration rolls clean. For example, to remove a voter who has moved from the rolls of a voting district, the local jurisdiction has two choices. First, they could get written confirmation of the move from the citizen. Lacking that, the jurisdiction had to send a notice to the voter. If the notice card was not returned and the person did not vote in two general elections for Federal office after the notice was sent, then the jurisdiction could remove their name from the rolls.

The cost of these mailings is significant. In Indiana, for example, such a mailing would have a price tag of about $2 million or about twice the Election Division's entire annual budget. Given this price tag and the limited resources of most local election boards, we should not be surprised that the registration rolls throughout the nation are enormously inaccurate. In some counties, election administrators report, the voting roll numbers are bigger than the voting-age population.

In the short time since Election 2000, we have seen startling new evidence of the disorder of registration rolls in several states. In Indiana, for example, the Indianapolis Star looked closely at the rolls. They concluded that tens of thousands of people appear on the voter rolls more than once, that more than 300 dead people were registered, and that three convicted killers and two convicted child molesters were on the rolls. In general, experts believe one in five names on the rolls in Indiana do not belong there. A recent study in Georgia found more than 15,000 dead people on active voting rolls statewide. Alaska, according to Federal Election Commission, had 502,968

> *names on its voter rolls in 1998. The census estimates only 437,000 people of voting age were living in the state that year. Similar studies in other states would no doubt return similar data.*

So let me now get this straight: the activists who brought us Motor Voter – which allows people to become registered voters by way of getting a drivers license or applying for public assistance (where they are given a government –issued document authorizing their receipt of public assistance) are now saying that it is burdensome to have to present such government issued documents when appearing to vote.

So are the activists saying that Motor Voter has *failed*? How did these voters who have no identification get registered to vote in the first place?

The voter rights activists defy common sense and logic. A poor person presumably qualifies for and receives government assistance – which requires government issued documents for receipt of that assistance.

Do these elderly persons receive social security and medicare payments? Presumably so. The documents required to receive public assistance suffice under Indiana law as voter identification for voting purposes.

What, pray tell, is *wrong* with that?

The burden is not just minimal, it virtually non-existent!

But notwithstanding the facts and the common sense and logic that is always absent from these discussions, we are here today to bemoan the burden of producing proof of identity in order to cast a ballot.

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I can't enter most office buildings in Washington DC without producing my photo identification.

I can't get on a train or a plane without producing my photo identification.

I can't get a key to my hotel room without producing my photo identification.

I can't claim my luggage from the bellman without producing my photo identification.

I can't use a credit card in many stores or cities without producing my photo identification.

I can't rent a pullcart for my golf clubs at Hains Point public golf course in the District of Columbia without surrendering my drivers license until I return the pull-cart to the starter.

And I can't get into the United States Capitol for a meeting without producing my photo identification. So here's a question for you, Senators: are you saying that it is an egregious denial of citizens irghts to require photo identification for voting while denying the opportunity for these same aggrieved individuals to gain entrance to *their* United States Capitol without a photo ID?

Of course, the arguments against photo identification for voting are not based on common sense, common practice or logic. Some of us believe that voting is a sacred duty and trust and that the act of voting should be accompanied by at least as much care and responsibility as renting a pullcart at the golf course.

Instead, the voting rights activists, simply assert there is not any vote fraud and therefore no need for safeguards. Well, that was simple. No vote fraud – so the only possible reason anyone could support these

measures like photo identification to show you really are the person who is lawfully registered to vote is that well, you must be a racist. Has to be that because of course, there is NO vote fraud.

Today we are asked to slice and dice the different 'types' of voter fraud. We are here today to discuss whether there exists "in person voter fraud". What is *that* about – and what does that mean? If a person, *any* person, takes any steps whatsoever to vote illegally that IS 'in-person' vote fraud – whenever and wherever it occurs.

And it is a moving target: no in-person vote fraud so need for photo id's.

Well, then perhaps we need to make certain that people produce photo id and proof of residence when *registering* to vote. Oh, no – that would be too burdensome. We've already cooked that goose by allowing the drivers license application or the application for public assistance to double as a voter registration application.

So presumable the applicant who is now a driver or a recipient of public assistance has a government issued document to use as proof of identity for voting.

It is circular…and illogical. And we are always back at the basic dispute: that there is no voter fraud so we don't need safeguards against something that doesn't exist.

Frankly, I am tired of the **Professional Vote Fraud Deniers Industry**. Because that is what it is. A massive, well-funded industry of people and groups who deny the existence of vote fraud in order to make certain that there are no watchdogs, no safeguards and no protections in place to keep vote fraud from happening.

No vote fraud? Really? Then how about these facts…

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- Headline: *The Seattle Times,* October 30, 2007 "Three plead guilty in fake voter scheme". The story reads "Three of seven defendants in the biggest voter-registration fraud scheme in Washington history have pleaded guilty and one has been sentenced, prosecutors said Monday. The defendants were all temporary employees of ACORN, the Association of Community Organizations for Reform Now, when they allegedly filled out and submitted more than 1,800 fictitious voter-registration cards during a 2006 registration drive in King and Pierce counties."

- From the Monroe Free Press, Monroe Louisiana, November 5, 2007 "Were Votes Bought with Toilet Tissue, Vanilla Wafers?" The story: "The Lousiana Ethics Commission will be investigating allegations of vote buying stemming from the state-wide elections held last year. An incumbent state senator learned that a non-profit group was instructing families to whom it was distributing food to vote for his opponent or "the food would stop." The Monroe Free Press prides itself on being the "voice of the Monroe Area African-American community"

- November 15, 2007 –from The Politico "Twenty percent of students polled by their peers at New York University said they'd exchange their vote in the next presidential election for an iPod touch. Sixty-six percent would exchange it for free tuition. And fifty percent said they'd lose the right forever for $1 million. Ninety percent of the students who said they'd give up their vote for the money also said they consider voting "very important" or "somewhat important"; only 10 percent said it was "not important." Also, 70.5 percent said they believe that one vote can make a difference — including 70 percent of the students who said they'd give up their vote for free tuition.

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- 2004 – In the State of Washington, in a race for governor in which the difference between the two candidates statewide was less than 2000 votes, following facts appeared in the Plaintiffs trial brief:

Subsequent discovery has revealed that the counties, principally but not exclusively King County, counted hundreds of votes cast by persons who were disqualified from voting as felons, and a smaller but significant number of persons who voted twice, or who voted using the voter names and registrations of persons who had died prior to the election. Discovery has also confirmed what the press reports were indicating, that King County's election processes, and its compliance with its processes, were grossly inadequate. Many felons were permitted to vote. More than a thousand votes were cast by persons whom King County had failed to ensure were qualified and registered voters, and whose identities can not now be determined. These votes, like those of felons, double voters, and "deceased" voters, were illegal.

- 2001 -- The state of Missouri established a bi-partisan commission to review the events of November 7, 2000 in which 1,233 persons who were not legally qualified to vote in the State of Missouri nonetheless cast ballots upon obtaining court orders, falsely claiming to be eligible. The evidence demonstrated that a concerted effort was planned in *advance* of election day to not only illegally extend the hours for voting beyond the statutory period but also to obtain court orders authorizing votes to be cast by persons not legally eligible to vote. Clearly, this was a plan to violate the integrity of the voting system in the state of Missouri – which succeeded. Key findings include votes cast by:
    * convicted felons
    * people who voted at least twice, possibly more than twice
    * deceased persons

* persons registered at vacant lots
* multiple names registered at the same address – which addresses are not multiple family dwellings, nursing homes, dorms, hospitals or group homes
* The primary lawsuit brought by the Democrats in Missouri to keep the polls open beyond the statutory poll closing time had a lead plaintiff who was deceased. When the fact was brought to the attention of the attorney, he responded that it was another person by the same name who had not been allowed to vote – a review of the records revealed that *that* individual had voted earlier in the day without difficulty.

I can go on and on. The facts are the facts *despite* the yeoman and unceasing efforts of those in the **Professional Vote Fraud Deniers Industry** to deny the existence, the patterns, the practices of dishonorable persons and organizations to engage in vote fraud. It reminds me of the former Soviet Union's official position that it was never at war in Afghanistan in the 1980's…hoping no one would notice the dead soldiers who came home in increasing numbers in coffins or the returning soldiers who were just supposed to stick with the Soviet party line and deny that there was a war…or that they had been in it.

Here is a fact: there ARE people who steal or attempt to steal votes. There ARE people who willingly sell their votes. That is illegal.

Efforts to uphold and enforce the laws of every jurisdiction that prohibit illegal activities related to voting are NOT racist. It is time to join together to take every possible step **to assure that our voting systems are secure, that only legally eligible voters cast ballots and that every legally cast ballot is counted to the highest degree of certainty and accuracy.**

Thank you.

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Voice of the Monroe Area African-American Community
Free Press

Were votes bought with toilet tissue, vanilla wafers?

11/05/07

The Louisiana Ethics commission may be busy in a few weeks trying to unravel complaints of illegal activities in the October 20th elections statewide.

Included among the complaints will be one expected to be filed by Representative Willie Hunter who claims that a Federally tax exempt organization in Lake Providence gave boxes of food and household supplies to voters and told them to vote for his opponent and a slate of candidates endorsed by the Louisiana Democratic Party.

Hunter claims that hundreds of families were given boxes of food two days before the election then told that the food would stop if Frances Thompson was not elected State Senator. He said he is preparing a formal ethics complaint that will not change election results but will stop illegal activity in the future.

The Free Press contacted one Lake Providence woman who said she was called just before election day and told that food and household supplies would be distributed at the office of the Louisiana Center Against Poverty.

She said when she arrived she was told to sign in and she and others listened to two lectures about the importance of voting for Frances Thompson for State Senator. She said she did not recognize the first woman but the second was The Reverend Carolyn Hunt, a Monroe Minister who also heads the Girl Power organization.

She said The Reverend Hunt told them to vote the numbers on the ballot which included Secretary of Agriculture Bob Odom and Rep. Frances Thompson. She said Hunt made it clear that unless these persons were elected the food boxes would stop.

After the lecture each was given two boxes, one containing food items such as vanilla wafers, crackers, potatoes or other dry

goods. The other contained toilet tissue, mouthwash, cleaning supplies, body lotion and other supplies.

Inside each box was a voting ticket.

Another Lake Providence woman said she was concerned because it did not appear that asking people to vote for a candidate to get food was legal. That's why she said she reported the boxes she received without using any of the items.

Tony Sellers of "Feed the Children" based in Oklahoma said his organization delivered a truck load of supplies to the offices of the Louisiana Center Against Poverty on October 18th. He said the truck contained food and household supplies for 400 families. He said another sponsor was the Cornerstone Family Church. He said the order was placed by the Center Against Poverty with a note that funds will be overnighted to cover the cost of the rush order.

However, Sellers said that Feed the Children is non-political and does not allow distributors to give speeches, support candidates or even to give sermons or religious speeches.

"If that happened it would definitely be against our policy." Said Sellers.

Sellers said the truck made the delivery on October 18th, two days before the election. He said usually a trailer of food for 400 families cost $7,200, which covers the cost of the food, delivery costs and other overhead.

Both organizations receiving the foods are Tax Exempt organizations that are prohibited from political activity.

Sellers said "Feed the Children" has an investigation unit that is presently investigating the Lake Providence area complaints.

Senator Charles Jones, who founded the Louisiana Center Against Poverty, said the agency feeds thousands of poor people every year and has never placed conditions upon the receipt of food.

When the agency distributes foods through the Poverty Center, Jones said, it is usually paid for from state funds through his Senatorial District. However, since he was not aware of the October 18th activity, he said Tuesday he was not sure of the source of the $7,200 payment.

Jones said he does not know about the specific complaint but doubts that anyone in his agency placed conditions on receiving food.

He said the underlying tone of the allegations seems to suggest

that he supported Frances Thompson's Senate bid over Rep. Willie Hunter.

"I supported Willie Hunter. I spent 14 hours with him on the radio. I announced it in the Free Press and in Irma's paper (Dispatch) and everywhere else. If anyone is trying to suggest that I did anything except support Willie Hunter they are not telling the truth." Jones said. When asked Tuesday about the allegations made by the Lake Providence residents concerning her, The Reverend Carolyn Hunt said she would have to contact someone else before she could answer. Then she said, "no comment."

Wednesday just before press time she left a message on the Free Press Answering service that said, "I called to respond to your question on yesterday and the answer is 'no' it did not happen."

Contacted again Wednesday about Hunt's denial, one of the complainants told the Free Press, "She might say it didn't happen but half the community saw it."

The Reverend Hunt is a relative of Senator Jones and is aide to Senator Jones.

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Most at NYU say their vote has a price

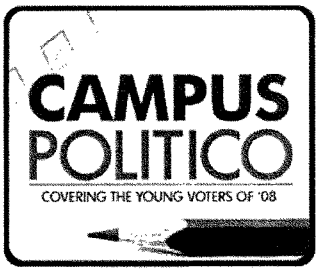
By L y Quaterman Washington Square News
November 14, 2007 07:26 PM EST

Two-thirds say they'll do it for a year's tuition. And for a few, even an iPod touch will do.

That's what NYU students said they'd take in exchange for their right to vote in the next presidential election, a recent survey by an NYU journalism class found.

Only 20 percent said they'd exchange their vote for an iPod touch.

But 66 percent said they'd forfeit their vote for a free ride to NYU. And half said they'd give up the right to vote forever for $1 million.



But they also overwhelmingly lauded the importance of voting.

Ninety percent of the students who said they'd give up their vote for the money also said they consider voting "very important" or "somewhat important"; only 10 percent said it was "not important."

Also, 70.5 percent said they believe that one vote can make a difference — including 70 percent of the students who said they'd give up their vote for free tuition.

The class — "Foundations of Journalism," taught by journalism department chairwoman Brooke Kroeger — polled more than 3,000 undergraduates between Oct. 24 and 26 to assess student attitudes toward voting.

"The part that I find amazing is that so many folks think one vote can make a difference," Sociology Department Chairman Dalton Conley said. He added, "If we take them at their word, then perhaps they really think votes matter, and that's why someone might pay a year's tuition to buy theirs."

Sixty percent of the students who said they'd give up their vote for tuition also described their families' income as upper-middle or high.

Their reasons for giving up their votes varied.

"At the moment, no candidate who truly represents my political beliefs has a chance of winning a presidential election," one male junior studying film and television at the Tisch School of the Arts wrote on the survey.

"It is very easy to convince myself that my vote is not essential," wrote a female CAS sophomore. "After all, I'm from New York, which will always be a blue state."

Other students wrote that they were disgusted by the thought.

"I would be reversing history — a lot of people fought so that every citizen could be enfranchised," said a female in her second year at the Stern School of Business.

One CAS junior went even further, writing that "anyone who'd sell his lifelong right to vote should be deported."

Lily Quateman reports for New York University's Washington Square News. Washington Square News is partnering with Campus Politico for the 2008 elections.

Would you give up your vote for anything? If so, what would it take? Post a comment here and let us know.

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A Report of The Heritage Center for Data Analysis

New Analysis Shows Voter Identification Laws Do Not Reduce Turnout

David B. Muhlhausen, Ph.D., and Keri Weber Sikich

CDA07-04 September 10, 2007

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CDA07-04 September 10, 2007

NEW ANALYSIS SHOWS VOTER IDENTIFICATION LAWS DO NOT REDUCE TURNOUT

DAVID B. MUHLHAUSEN, PH.D., AND KERI WEBER SIKICH

OVERVIEW

The 2000 presidential election sparked a firestorm of debate relating to election reform in the United States. Since then, academics, the media, and elected officials have proffered opinions and implemented policies related to this important political issue. Topics that have been addressed in recent years range from modernizing voting machines and updating voter registration rolls to implementing stricter identification requirements for voting.

In 2002, Congress passed the Help America Vote Act (HAVA).[1] HAVA affects only federal elections and, among other things, requires that the states provide for provisional voting; create a computerized, centralized list of registered voters; and ensure that new voters who register by mail present identification before being allowed to vote in person. HAVA established the Election Assistance Commission (EAC) to serve as "a national clearinghouse and resource for information and review of procedures with respect to the administration of federal elections."[2] Additionally, many state legislatures have enacted their own election reform legislation.[3]

Of the many election reforms currently being considered, one that has incited some of the most cantankerous debate is that of voter identification at the polls. For many, the idea of requiring voters to present identification in order to vote is anathema, tantamount to the poll taxes that were once used to prevent African–Americans from voting.[4] They contend that requiring identification at the polls will lead to lower voter turnout, especially among the poor, certain minorities, and the elderly. For others, such as the Protect Arizona Now organization that lobbied in favor of identification requirements for Arizona voters, the problem of voter fraud makes voter identification requirements a common-sense solution.[5] The standard argument goes that if a person has to show identification to board a plane or cash a check, why shouldn't he have to do the same in order to vote? Additionally, the proponents of stricter voter identification requirements argue that such a policy would bolster the public's faith in the legitimacy of elections and lead to greater voter turnout, not less.

Both sides raise valid concerns. However, even a cursory glance at the literature on voter identification requirements shows that there is a dearth of

1. Public Law 107-252.
2. Election Assistance Commission, "About the EAC," at *www.eac.gov/about.asp?format=none* (June 28, 2007).
3. For a review of recent state legislative activity on voter identification laws, see National Council of State Legislatures, "Requirements for Voter Identification," February 1, 2007, at *www.ncsl.org/programs/legismgt/elect/taskfc/voteridreq.htm* (July 23, 2007)
4. John Fund, *Stealing Elections. How Voter Fraud Threatens Our Democracy* (San Francisco: Encounter Books, 2004), p. 137.
5. Protect Arizona Now, "Background Information," at *www.pan2004.com/background.htm* (July 24, 2007).

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empirical research on this issue. While there have been a few studies to address the effect of voter identification requirements using election data,[6] more research is needed in order to appropriately assess the legitimacy of either side's claims.

In response to this debate, the EAC awarded a grant to Rutgers University's Eagleton Institute of Politics and the Moritz College of Law at Ohio State University to study voter identification requirement laws. The resulting study, *Report to the U.S. Election Assistance Commission on Best Practices to Improve Voter Identification Requirements Pursuant to the Help America Vote Act of 2002*,[7] included a statistical analysis of the effect of voter identification requirements on voter turnout during the 2004 election by Professor Timothy Vercellotti of the Eagleton Institute.[8] A new version of the analysis with Timothy Vercellotti and David Anderson as authors was presented to the 2006 American Political Science Association conference.[9] Hereinafter, this study will be referred to as the "Eagleton Institute study."

The Eagleton Institute study found that more stringent voter identification requirements appeared to reduce voter turnout in 2004.[10] In the media, their study has been cited as demonstrating that the strengthening of voter identification requirements to reduce fraud has the side effect of suppressing minority voter turnout.[11]

This Center for Data Analysis report attempts to replicate the part of the Eagleton Institute study that used the publicly available November 2004 Current Population Survey (CPS).[12] This analysis was done because several aspects of the Eagleton Institute study cast doubt on the validity of its findings:

- The Eagleton Institute used one-tailed hypothesis tests instead of the more commonly accepted two-tailed tests. The one-tailed test allows researchers to double their chances of finding statistically significant results.
- The 2004 voter identification laws of certain states were misclassified. For example, Arizona and Illinois were incorrectly classified as requiring voters to provide identification and state their name for authentication, respectively. However, in 2004 Arizona only required voters at polling stations to sign their name for authentication, while Illinois required poll workers to match the signatures of voters
- Some of the variables used to predict the decision to vote were used inappropriately. For example, the Eagleton Institute study used the November 2004 CPS family income variable, which is an ordinal variable of unequal income ranges, as an interval-ratio variable. Using categorical variables as interval-ratio variables can lead to estimation problems.

After addressing these issues, our reanalysis finds that some of the original findings of the Eagleton Institute study are unfounded. Controlling for factors that influence voter turnout, voter identification laws largely do not have the negative impact on voter turnout that the Eagleton Institute suggests When statistically significant and negative relation-

6 Timothy Vercellotti and David Anderson, "Protecting the Franchise, or Restricting It? The Effects of Voter Identification Requirements on Turnout," American Political Science Association conference paper, Philadelphia, Pa., August 31–September 3, 2006, and John R Lott, Jr., "Evidence of Voter Fraud and the Impact that Regulations to Reduce Fraud Have on Voter Participation Rates," Department of Economics, SUNY Binghamton, August 18, 2006

7. *Report to the U S. Election Assistance Commission on Best Practices to Improve Voter Identification Requirements Pursuant to the Help America Vote Act of 2002*, Eagleton Institute of Politics, Rutgers, The State University of New Jersey, and Moritz College of Law, Ohio State university, June 28, 2006

8 Timothy Vercellotti, "Appendix C: Analysis of Effects of Voter ID Requirements on Turnout," in *Report to the U S. Election Assistance Commission on Best Practices to Improve Voter Identification Requirements Pursuant to the Help America Vote Act of 2002*

9 Vercellotti and Anderson, "Protecting the Franchise, or Restricting It?"

10. *Ibid*

11. Christopher Drew, "Lower Voter Turnout Is Seen in State that Require ID," *The New York Times*, February 21, 2007, p. A16; Richard Wolf, "Study Stricter Voting ID Rules Hurt '04 Turnout," *USA Today*, February 19, 2007, p A5, Matthew Murray, "EAC Blasted Again for Burying Study," *Roll Call*, April 9, 2007, Tom Baxter and Jim Galloway, "Wonk Alert: Study Says the Heavier the Voter ID Requirements, the Lower the Turnout," *Atlanta Journal-Constitution*, February 21, 2007, Metro News.

12. Current Population Survey, November 2004. Voting and Registration Supplement, machine-readable data file, conducted by the Bureau of the Census for the Bureau of Labor Statistics, 2005.

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ships are found, the effects are so small that the findings offer little policy significance. For example, our analysis indicates that:

- White survey respondents in photo identification states are 0.002 percent less likely to report voting than white respondents from states that only required voters to state their name
- African–American respondents in non-photo identification states are 0.012 percent less likely to report voting than African–American respondents from states that only required voters to state their name.

In other cases, no effect was found.

- In general, respondents in photo identification and non-photo identification states are *just as likely* to report voting compared to respondents from states that only required voters to state their name.
- African–American respondents in photo identification states are *just as likely* to report voting compared to African–American respondents from states that only required voters to state their name.
- Hispanic respondents in photo identification states are *just as likely* to report voting compared to Hispanic respondents from states that only required voters to state their name.

BACKGROUND

When discussing voting behavior, it is important to consider the factors that influence whether an individual votes or not. According to the "Calculus of Voting" model, an individual will vote when the rewards from voting are positive and will abstain when they are not. The equation for the Calculus of Voting model is as follows:

$$R = PB - C + D.$$

The rewards (R) from voting are determined by multiplying the benefits (B) an individual receives when his preferred candidate wins over a less preferred candidate by the probability (P) that his vote will make a difference plus the benefits one receives from voting as an act of fulfilling one's duty or civic obligation (D) minus the costs of voting (C).[13] This is the standard, rational model of voting and will be used to inform the following discussion of voter identification requirements and their effect on voter turnout.

The voter identification issue is often framed as being torn between the opposing aims of "access and integrity."[14] By this we mean that it is commonly perceived that while voter identification laws may be effective at preventing ineligible individuals from voting (integrity), they may have an adverse effect on the ability of every eligible voter to vote (access). There have been only a few empirical studies on the impact of voter identification requirements,[15] but this does not translate into a lack of opinions on this topic.

Advocates for more stringent voter identification laws contend that this reform is vital to prevent voter fraud.[16] As more and more elections are won by slim margins, proponents of identification requirements argue that the chances are greater that voter fraud could affect election outcomes.[17] The potential for a small number of voters to have a significant impact on the outcome of an election became all too evident in the 2000 presidential election. Given that George W. Bush was declared the winner in Florida (and the next President) by a margin of 537 votes, it follows that even a small number of fraudulent votes (537+1) would matter a great deal.[18] In 2004, there were allegations of voter fraud in the Washington gubernatorial election in which Christine Gregoire won by a margin of 129

13 William Riker and Peter Ordeshook, "A Theory of the Calculus of Voting," *The American Political Science Review*, Vol 62, No 1 (March, 1968), pp. 25–42

14. Spencer Overton, "Voter Identification," *Michigan Law Review*, Vol. 105, No 631 (February 2007), p. 636

15 Lott, "Evidence of Voter Fraud and the Impact that Regulations to Reduce Fraud Have on Voter Participation Rates," and Vercellotti and Anderson, "Protecting the Franchise, or Restricting It?"

16 Protect Arizona Now, "Background Information "

17. Commission on Federal Election Reform, *Building Confidence in U.S. Elections*, September 2005, p 18, at *www.american.edu/iacfer/report/full_report pdf* (July 24, 2007). Additionally, John Fund writes that "Election fraud .can be found in every part of the United States, although it is probably spreading because of the ever-so-tight divisions that have polarized the country and created so many close elections lately." Fund, *Stealing Elections*, p 5

18. M.V Hood III and Charles S. Bullock, "Worth a Thousand Words? An Analysis of Georgia's Voter Identification Statute," April 2007, p 1, at *http //electionlawblog.org/archives/GA%20Voter%20ID%20(Bullock%20&-%20Hood) pdf* (July 24, 2007).

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votes.[19] Certainly the potential of voter fraud is a matter of concern.

Broadly defined, voter fraud is "the intentional corruption of the electoral process by voters."[20] While voter fraud manifests itself in different forms, examples include individuals who vote but are ineligible (such as non-citizens and felons), individuals who vote multiple times in various precincts, and individuals who vote using someone else's name. Because of the lack of research and the difficulty of collecting data on voter fraud, the extent to which these kinds of voter fraud occur is unknown. Additionally, for similar reasons, we are unaware of the extent to which voter identification laws would curb the type of voter fraud they are intended to prevent.

However, there are some examples of recorded voter fraud. The Department of Justice asserts that since the inception of the Attorney General's Ballot Access and Voting Integrity Initiative in 2002, 120 people have been charged with election fraud, of which 86 have been convicted.[21] Additionally, the *Milwaukee Journal Sentinel* reports that prosecutors in Milwaukee filed charges against 14 individuals for voter fraud in the 2004 election.[22] Of the 14, 10 were felons accused of voting and four were accused of double voting. Prosecutors obtained five convictions. For proponents of strict voter identification requirements, the knowledge that any voter fraud occurs is sufficient to argue that more needs to be done to curb this problem.[23]

The most prevalent critique of the voter fraud argument is that "voter-fraud anecdotes are often misleading, incomplete, and unrepresentative."[24] Proponents of this view contend that upon closer examination of claims of voter fraud, such charges turn out to be either nonexistent or infrequent. For instance, the Brennan Center for Justice at the New York University School of Law found that in 2004, voter fraud occurred 0.0009 percent of the time in the gubernatorial election in Washington and 0.00004 percent of the time in Ohio. They report that these percentages are akin to the likelihood of an American's being killed by lightning.[25]

Opponents of voter identification requirements also argue that the few instances of voter fraud that may be prevented by identification laws do not outweigh the thousands of legitimate voters who would be disenfranchised because they lacked the necessary identification.[26] These critics argue that identification laws will have a negative impact on the ability of certain minorities, the elderly, the disabled, and the poor to vote.[27] It is presumed, and some studies have found, that people from these groups are less likely to possess drivers' licenses or other government-issued identification.[28] It is also assumed that many from these groups would be unable or unwilling acquire the necessary docu-

19 Commission on Federal Election Reform, *Building Confidence in U.S. Elections*, p 4

20. Lorraine Minnite, "The Politics of Voter Fraud," Project Vote, p. 6, at *http://projectvote.org/fileadmin/ProjectVote/Publications/Politics_of_Voter_Fraud_Final.pdf* (July 24, 2007).

21 U S Department of Justice, "Fact Sheet. Protecting Voting Rights and Prosecuting Voter Fraud," press release, October 31, 2006, at *www.usdoj.gov/opa/pr/2006/November/06_crt_738.html* (July 23, 2007).

22. Bill Glauber, "Her first vote put her in prison; Woman is one of five from city convicted of voter fraud," *Milwaukee Journal Sentinel*, May 21, 2007, p. A1.

23 Overton, "Voter Identification," p 648

24 *Ibid.*, p. 644.

25. Brennan Center for Justice at NYU School of Law, "The Truth About 'Voter Fraud,'" September 2006, p 1, at *www.brennancenter.org/ dynamic/subpages/download_file_38347 pdf* (July 24, 2007).

26. Brennan Center for Justice at NYU School of Law and Spencer Overton, "Response to the Report of the 2005 Commission on Federal Election Reform," September 19, 2005, p 2, at *www.carterbakerdissent.com/final_carterbaker_rebuttal092005.pdf* (July 24, 2007).

27. *Ibid* , p. 3

28 See John Pawasarat, "The Driver License Status of the Voting Age Population in Wisconsin," June 2005, at *www.uwm.edu/Dept/ETI/barriers/DriversLicense.pdf* (July 24, 2007); Hood and Bullock, "Worth a Thousand Words?"; and Brennan Center for Justice at NYU School of Law, "Citizens Without Proof. A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification," November 2006, at *www.federalelectionreform.com/pdf/Citizens%20Without%20Proof pdf* (July 25, 2007).

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mentation. Critics of strict identification laws further argue that the costs (in both time and money) of obtaining such documentation would be a deterrent to voting and would likely result in lower voter turnout among poor voters and those who do not have easy access to government offices.[29] It is for this reason that "ID requirements are compared to modern poll taxes."[30]

While it is difficult to accurately assess the number of eligible voters who would be rendered unable to vote because they lack proper identification, some studies have attempted to estimate such figures by looking at the percentage of the population who do not have driver's licenses. For instance, a Wisconsin study found that when considering the entire state, 80 percent of men and 81 percent of women had valid driver's licenses. In contrast, only 45 percent of African–American men and 51 percent of African–American women had valid driver's licenses. The percentages for Latinos were also lower (54 percent for men and 41 percent for women).[31] Similarly, a Georgia study found that among registered voters, non-whites, women, and the elderly were less likely to have government-issued photo identification (either a driver's license or state identification).[32]

Although these figures shed light on the types of people who are less likely to have driver's licenses, it is unadvisable to focus on this statistic alone. First, the data still cannot tell us whether those individuals without driver's licenses have some other form of identification, such as an employee ID, student ID, social security card, or any other form of identification currently accepted in many states. Second, it cannot tell us about future behavior. Do voters in photo identification states who lack the necessary identification obtain the required identification (such as a driver's license) when the state law is changed? Take for instance the previous study conducted in Wisconsin, which currently does not require identification before voting (except for those requirements set forth in HAVA for new voters). Although approximately half of African-Americans in the state are currently without driver's licenses, we do not know if those individuals will get driver's licenses or state IDs if Wisconsin were to require voters to show identification before voting.

For these reasons, proponents of voter identification requirements are convinced that requiring identification at the polls would not be an excessive burden to voters. As previously mentioned, identification is required for many things that are considerably less important than voting (flying in a plane, buying alcohol, etc.). As "voting is equally important," if not more important, the argument goes that it makes sense for someone to be required to show identification in order to cast a ballot.[33] Additionally, Senior Research Scientist John Lott at the University of Maryland Foundation points out that as "almost 100 countries require photo identifications to vote," the United States would be hardly alone in requiring voters to show some form of identification at the polls.[34]

Those who oppose voter identification at the polls argue that other reforms are better suited to preventing voter fraud. For instance, critics of voter identification point to absentee ballots as "the Achilles heel of election security" because voters are often not required to show identification at all.[35] Yet absentee ballots have been largely left out of the voter identification requirement debate. This apparent discrepancy has been used by opponents of voter identification laws as evidence that supporters of such legislation are not interested in real voter fraud reform.[36] Rather, critics argue that voter identification supporters are using such laws

29 Task Force on the Federal Election System, John Mark Hansen, "Chapter 6· Verification of Identity," July 2001, p. 4, at *www.tcf.org/Publications/ ElectionReform/NCFER/hansen_chap6_verification.pdf* (July 24, 2007)

30. Timothy Ryan, "Voter ID Laws Need Measured Implementation," AEI–Brookings *Election Reform Project Newsletter*, April 17, 2007, at *www.reformelections.org/commentary.asp?opedid=1555* (July 24, 2007)

31. Pawasarat, "The Driver License Status of the Voting Age Population in Wisconsin," p 3

32. Hood and Bullock, "Worth a Thousand Words?" p 14

33. Commission on Federal Election Reform, *Building Confidence in U.S. Elections*, p. 18.

34. Lott, "Evidence of Voter Fraud and the Impact that Regulations to Reduce Fraud Have on Voter Participation Rates," p 2.

35. Ryan, "Voter ID Laws Need Measured Implementation."

36 Editorial, "Voter Suppression in Missouri," *The New York Times*, August 10, 2006, p. 22, and Lott, "Evidence of Voter Fraud and the Impact that Regulations to Reduce Fraud Have on Voter Participation Rates," p 6

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as an attempt to suppress voter turnout by increasing the costs of voting (the "C" from the Calculus of Voting model).[37]

Another argument proffered by supporters of voter identification requirements is that such laws are necessary to maintain the public's faith in the integrity of elections. The Commission on Federal Election Reform (Carter–Baker Commission) at American University asserts that "the electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters."[38] This argument, "the ensuring integrity hypothesis," contends that public faith in the honesty of elections actually "encourages additional voter participation."[39] Proponents argue that voter identification laws will bolster the public's faith in the outcome of elections. This will increase, not decrease, turnout because voters will feel a greater pride in voting (increasing the "D" or duty component of voting).

Voter identification laws are exceptionally popular among the general public. In a survey of some 36,000 voters, Professors Stephen Ansolabehere and Elting R. Morison of the Massachusetts Institute of Technology found that 77 percent of respondents supported voter identification requirements.[40] For the most part, the majority of respondents supported such laws regardless of race, location (Northeast, Midwest, etc.), and political ideology. While those who identified themselves as conservatives had the highest percentage of agreement with identification requirements (at 95 percent), even those who identified themselves as "very liberal" had 50 percent agreement with voter identification laws.[41] Regarding race, more than 70 percent of whites, African-Americans, and Hispanics supported voter identification laws.[42] Additionally, Ansolabehere found only 23 instances out of 36,000 where an individual reported being unable to vote because he lacked the necessary identification.[43]

These survey data are supported by actual voter behavior. In 2004, when Arizonans voted on Proposition 200, which would require voter identification at the polls as evidence of citizenship, it passed with 56 percent of the vote.[44]

Ultimately, it is not the intent of this paper to debate the merits of either side's arguments. Rather, we want to present the major arguments on either side of this issue as background to our analysis. However, the paper does intend to examine more closely one of the claims of this debate: that stricter voter identification requirements depress voter turnout. In order to do that, it is necessary to discuss the different voter identification requirements across the 50 states and the District of Columbia.

Voter identification requirements, if any, differ by state, so there is great variability in the way voters from different parts of the country are required to verify their identity before casting a ballot. Some states rely on the honor system where voters merely have to give their names to the election official.[45] Other states only require a signature,[46] with some states going a step further and actually matching the signature to a previously signed document.[47] States with more stringent requirements ask that voters provide identification[48] or photo identification.[49]

The Eagleton Institute study identified two categories of identification requirements (maximum

37. Editorial, "Voter Suppression in Missouri."
38. Commission on Federal Election Reform, *Building Confidence in U.S. Elections*, p. 18.
39. Lott, "Evidence of Voter Fraud and the Impact that Regulations to Reduce Fraud Have on Voter Participation Rates," p. 4.
40. Stephen Ansolabehere and Elting R. Morison, "Access Versus Integrity in Voter Identification Requirements," Department of Political Science, Massachusetts Institute of Technology, February 2007, at *http://web.mit.edu/polisci/portl/cces/material/NYU_Identification1.pdf* (July 24, 2007).
41. *Ibid.*, p. 4.
42. *Ibid.*, p. 5.
43. *Ibid.*, p. 7.
44. Election returns obtained from Arizona Secretary of State's Web site at *www.azsos.gov/election/2004/General/Canvass2004General.pdf*.
45. As of 2004, such states included Maine, New Hampshire, and Rhode Island, among others.
46. For instance, California, the District of Columbia, and Michigan were all "sign name" states in 2004.
47. Nevada, Oregon, and Pennsylvania were all "signature match" states in 2004.

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requested and minimum required) and five types of identification requirements (stating name, signing name, signature match, present ID, and photo ID).[50] It is important to note that in 2004, there were no states that had photo ID as a minimum requirement. All states that had a photo ID requirement permitted voters who did not have such documentation to present alternative forms of ID or sign an affidavit attesting to their identity.[51]

By the maximum requested, the Eagleton Institute study refers to the most identification that an individual can be asked to present in order to vote using a regular ballot. Conversely, the minimum is the least identification that will be accepted to vote.[52] For example, when voting in Louisiana in 2004, a voter would be asked by poll workers to present photo identification. If the individual was unable to present an acceptable form of ID, he was allowed to vote after signing an affidavit stating he is the person he claims to be.[53] In that case, photo ID would be the maximum requested, and affidavit would be the minimum required.

Within the states that require some form of documentation as proof of identity, there are also significant differences. For instance, some states, like Massachusetts, "may" ask that a voter show identification, but identification is not automatically requested of all voters.[54] In Alabama and Alaska, two states that request identification, this requirement can be waived if a poll worker knows the voter and can attest to his identity.[55] This is an important issue to consider because it means that different voters within the same state may be affected by different identification requirements.

Furthermore, by the 2004 election, many states had become compliant with certain provisions in the Help America Vote Act (HAVA) which required identification at the polls from first-time voters who registered by mail and who did not show identification at the time of registration. One state, Pennsylvania, actually went above and beyond HAVA requirements and mandated that all first-time voters needed to show identification at the polls regardless of whether they showed identification when they registered to vote.[56] Because of HAVA, many first-time voters had to show identification at the polls even in states that did not otherwise require identification from all voters.

Even among states that require documentation, there is great variability in the types of documentation that is accepted. Some accept only a government-issued photo identification, while others accept almost any document that demonstrates a person's identity. For example, in 2004, acceptable documentation in Florida ranged from a driver's license and passport to credit card and buyer's club card to utility bill, bank statement, or paycheck (as long as they contained the name and address of the individual).[57] In contrast, some states that required identification to vote are much more restrictive with respect to acceptable forms of identification. One such state, Virginia, only allowed voters to present a voter registration card, Social Security card, employer-issued identification card (as long as it contained a photo), Virginia driver's license, or other Commonwealth or government-issued identification.[58] Furthermore, in many states, individuals who are unable to provide the appropriate documentation are given an alternative, such as signing

48. Alabama, Alaska, and Connecticut are just a few of the states that required voters to show some form of identification at the polls in 2004.
49. Florida, Hawaii, Louisiana, South Carolina, and South Dakota were all of the states requiring photo ID during the 2004 election
50. *Report to the U.S. Election Assistance Commission on Best Practices to Improve Voter Identification Requirements Pursuant to the Help America Vote Act of 2002*, p. 8
51. *Ibid*, p 9.
52. *Ibid.*
53. La. R.S. 18 562
54. 950 C.M.R. § 53 03(5B); 950 C.M R. § 54.04(6B).
55 Ala. Code § 17-9-30; Alaska Statute § 15.15 225.
56. Pa Stat Ann. Tit. 25 § 3050.
57. West's Fla Stat Ann § 101.043.
58. Va. Code Ann. § 24.2-643.

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an affidavit, in order to vote. Finally, Section 302 of HAVA requires that an individual who fails to meet the identification requirements of voting can still vote using a provisional ballot.[59]

The key aspects of this brief overview of identification requirements of voting is that there is a lot of variability by states as to what is required, and not all identification requirements are created equal. By that we mean that required identification documentation for one state may not meet the identity requirements in another state. This is just one of the reasons that it is particularly difficult to study the effect of such laws on voter turnout.

THE DATA

In order to analyze individual voter turnout, this study uses data from the U.S. Census Bureau's Current Population Survey, November 2004: Voting and Registration Supplement File.[60] The November 2004 CPS voting supplement contains interviews from about 57,000 households. Based on self-described registered voters, the data allow us to model the decision to vote based on individual and household characteristics.

Dependent Variable. The dependent variable is whether or not the respondent reported that he or she voted in the November 2004 election. Respondents who admitted to not being registered voters were omitted, along with those reporting that they were not United States citizens. We also omitted those reported to be voting through absentee ballots.[61]

According to the U.S. Census Bureau's analysis of the November 2004 CPS data, 89 percent of registered voters voted in the November 2004 election.[62] This estimate is drawn from a sample of respondents reporting to be registered voters and is much higher than estimates based on samples of the voting-age population However, the EAC estimates that 70.4 percent of registered voters turned out to vote.[63] The CPS estimate of 89 percent may be biased upward because it is based on the reported vote, which may be overstated because survey respondents may be disinclined to admit that they did not vote.[64] When turnout is based on the total population over 18 years old, 55.8 percent of persons over age 18 voted.[65]

Voter Identification Requirements. The voter identification requirements included in the analysis capture the degree to which a registered voter has to prove his or her identity at the polling station. Two sets of five dichotomous voter identification variables are used in the analysis. The first set is based on the maximum amount of identification that the voter is required to produce in order to prove his or her identity. The maximum state voter identification requirements are broken down into the following classification: state name, sign name, match signature, provide non-photo identification, and provide photo identification. Table 1 presents the voter identification classifications by state used by the Eagleton Institute and the Moritz College of Law at Ohio State University.

For all but two of the states, Illinois and Arizona, we used the classifications that were provided to us by the Eagleton Institute. We recoded these two states because upon researching state election laws, we discovered that the Eagleton Institute had erroneously reported the identification requirements for these two states. The Eagleton Institute study has Illinois listed as a "state name" state. In actuality, Illinois poll workers match a prospective voter's signature to a signature already on file, making Illinois a "match signature" state.[66]

The Eagleton Institute has Arizona listed as a "provide ID" state although Arizona was a "sign

59 Public Law 107-252.

60. Current Population Survey, November 2004: Voting and Registration Supplement.

61. To account for Oregon's elections that are conducted entirely through mail, Oregon voters are treated in this analysis as if they vote in person in the polling both. Oregon is classified as a signature match state for voter identification purposes

62. U.S. Census Bureau, "U.S. Voter Turnout Up in 2004, Census Bureau Reports," press release, May 26, 2004, at *www.census.gov/Press-Release/www/releases/archives/voting/004986 html* (July 2, 2007).

63. Kimball W Brace and Michael P McDonald, *Final Report of the 2004 Election Day Survey*, U S Election Assistance Commission, September 27, 2005, at *www.eac.gov/election_survey_2004/pdf/EDS-Full_Report_wTables.pdf* (July 5, 2007)

64. William H Flanigan and Nancy H. Zingale, *Political Behavior of the American Electorate*, 11th edition (Washington, D.C.. CQ Press, 2006).

65 Brace and McDonald, *Final Report of the 2004 Election Day Survey.*

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Table 1 CDA 07-04

Maximum and Minimum Voter Identification Requirements, November 2004 Election

State	Eagelton Institute Maximum Requirement	Corrected Maximum Requirement	Eagelton Institute Minimum Requirement
Alabama	Provide non-photo ID	Provide non-photo ID	Provide non-photo ID
Alaska	Provide non-photo ID	Provide non-photo ID	Provide non-photo ID
Arizona	Provide non-photo ID	Sign name	Provide non-photo ID
Arkansas	Provide non-photo ID	Provide non-photo ID	State name
California	Sign name	Sign name	Sign name
Colorado	Provide non-photo ID	Provide non-photo ID	Provide non-photo ID
Connecticut	Provide non-photo ID	Provide non-photo ID	Provide non-photo ID
Delaware	Provide non-photo ID	Provide non-photo ID	State name
District of Columbia	Sign name	Sign name	Sign name
Florida	Provide photo ID	Provide photo ID	Swear affidavit
Georgia	Provide non-photo ID	Provide non-photo ID	Provide non-photo ID
Hawaii	Provide photo ID	Provide photo ID	Provide non-photo ID
Idaho	Sign name	Sign name	Sign name
Illinois	State name	Match signature	State name
Indiana	Sign name	Sign name	Swear affidavit
Iowa	Sign name	Sign name	Sign name
Kansas	Sign name	Sign name	Sign name
Kentucky	Provide non-photo ID	Provide non-photo ID	Provide non-photo ID
Louisiana	Provide photo ID	Provide photo ID	Swear affidavit
Maine	State name	State name	State name
Maryland	Sign name	Sign name	Sign name
Massachusetts	State name	State name	State name
Michigan	Sign name	Sign name	Sign name
Minnesota	Sign name	Sign name	Sign name
Mississippi	Sign name	Sign name	Sign name
Missouri	Provide non-photo ID	Provide non-photo ID	Provide non-photo ID
Montana	Provide non-photo ID	Provide non-photo ID	Provide non-photo ID
Nebraska	Sign name	Sign name	Sign name
Nevada	Match signature	Match signature	Match signature
New Hampshire	State name	State name	State name
New Jersey	Match signature	Match signature	Match signature
New Mexico	Sign name	Sign name	Sign name
New York	Match signature	Match signature	Sign name
North Carolina	State name	State name	State name
North Dakota	Provide non-photo ID	Provide non-photo ID	Swear affidavit
Ohio	Match signature	Match signature	Match signature
Oklahoma	Sign name	Sign name	Sign name
Oregon	Match signature	Match signature	Match signature
Pennsylvania	Match signature	Match signature	Match signature
Rhode Island	State name	State name	State name
South Carolina	Provide photo ID	Provide photo ID	Provide non-photo ID
South Dakota	Provide photo ID	Provide photo ID	Provide non-photo ID
Tennessee	Provide non-photo ID	Provide non-photo ID	Match signature
Texas	Provide non-photo ID	Provide non-photo ID	Provide non-photo ID
Utah	State name	State name	State name
Vermont	State name	State name	State name
Virginia	Provide non-photo ID	Provide non-photo ID	Provide non-photo ID
Washington	Sign name	Sign name	Sign name
West Virginia	Match signature	Match signature	Sign name
Wisconsin	State name	State name	State name
Wyoming	State name	State name	State name

Sources: Eagleton Institute of Politics, Rutgers; State University of New Jersey; and Moritz College of Law, Ohio State University, *Report to the U.S. Election Assistance Commission on Best Practices to Improve Voter Identification Requirements Pursuant to the Help America Vote Act Of 2002*, June 28, 2006, at *www.eac.gov/docs/VoterIDReport%20062806.pdf* (July 30, 2007), and author's personal communication with Timothy Vercellotti (June 1, 2001)

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name" state at the time of the 2004 election.[67] Identification laws did not go into effect in Arizona until some time after the 2004 election. Arizona could not have been a "provide ID" state before the November 2004 election because Arizonans voted on and approved Proposition 200 on the November 2004 ballot. This initiative is the impetus for the requirement that voters show identification before voting as proof of citizenship.[68]

The second set of voter identification variables recognizes that some states allow voters without proper identification to vote after demonstrating their identity through other means. This minimum requirement set of variables includes state name, sign name, match signature, provide non-photo identification, and swear affidavit. For the probit regressions, the variable for voters stating their names for identification is omitted for reference purposes.

Individual Factors. The individual factors included in the analysis capture differences in the race and ethnicity, age, education, household income, marital status, gender, employment status, citizenship, residential mobility, and home ownership of the individual respondents. Controlling for such variables as education and age is important because research indicates that these variables are good predictors of voting turnout.[69] The analysis controls for the effect of the individual's race and ethnicity through a set of mutually exclusive dichotomous variables for the following categories: non-Hispanic white, non-Hispanic African–American, Hispanic, non-Hispanic American Indians, non-Hispanic Asians (including Hawaiians/Pacific Islanders), and other races, including those reporting multiple races and ethnicities. The specification of these variables allows us to compare the voting patterns of minorities to those of whites.

A set of dichotomous variables control for the age of the individual respondents that fall into the following categories: 18- to 24-year-olds, 25- to 44-year-olds, 45- to 64-year-olds, and 65 years and older. For education, the respondents were classified as either having less than a high school diploma, high school diploma or equivalent, some college, bachelor's degree, or a graduate school degree.

For family income, the Eagleton Institute study used an ordinal family income variable as an interval-ratio variable.[70] The family income variable is coded as 1 through 16 with units containing unequal income ranges. For the purposes of this analysis, the effect of family income is controlled for by the inclusion of a series of income range dichotomous variables: under $15,000, $15,000 to $29,999, $30,000 to $49,999, $50,000 to $74,999, $75,000 to $149,999, and $150,000 or more.

To control for the influence of marital status, five dichotomous variables signifying being single, married, separated, divorced, and widowed are included in the model. Single individuals are the default. A dichotomous variable identifying the gender of the individual as a female is also included in the models.

Two dichotomous variables are included to control for the effect of employment. The first is a dichotomous variable signifying whether or not the individual is employed; the second is a dichotomous variable for whether or not the person is in the labor force.

To control for whether native-born citizens are more likely to vote than naturalized citizens, a dichotomous variable identifying native-born citi-

66 Documentation supporting the signature match requirement can be found at the following. ILCS 5/6-66; electionline org, Election Reform Briefing, April, 2002, p. 12, at *www.electionline.org/Portals/1/Publications/ Voter%20Identification.pdf*, Punchcard Manual of Instructions for Illinois Election Judges, 2005, at *www elections.il.gov/Downloads/ ElectionInformation/ PDF/03selfsec pdf*, and Election Law @ Moritz, 50 Questions for 5 States, Illinois, last updated 1/19/07, at *moritzlaw.osu.edu/ electionlaw/election06/50-5_Illinois.php#14*.

67. Arizona Secretary of State, 2004 Ballot Propositions, "Instructions to Voters and Election Officers," September, 2004, at *www azsos.gov/election/2004/Info/PubPamphlet/Sun_Sounds/english/contents.htm*

68 The text of Proposition 200 is available at *www.pan2004.com/docs/initiative_petition.pdf*.

69 Flanigan and Zingale, *Political Behavior of the American Electorate*.

70. The variable "HUFAMINC" in the November 2005 CPS has the following coding: 1 for less than $5,000; 2 for $5,000 to $7,499; 3 for $7,500 to $9,999, 4 for $10,000 to $12,499; 5 for $12,500 to $14,999; 6 for $15,000 to $19,000; 7 for $20,000 to $24,999; 8 for $25,000 to $29,999; 9 for $30,000 to $34,999; 10 for $35,000 to $39,999; 11 for $40,000 to $49,999; 12 for $50,000 to $59,999; 13 for $60,000 to $74,999; 14 for $75,000 to $99,999; 15 for $100,000 to $149,999, and 16 for $150,000 or more.

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zens is included. Two dichotomous variables are included to control for community ties. The models control for whether or not the individual has moved within the last year and whether or not the individual owns or rents his or her home. These two variables are included to help control for social connectedness under the theory that those with stronger community ties will be more likely to vote.

State Political Factors. As with the Eagleton Institute study, two dichotomous variables indicate whether a state is considered a battleground state and a competitive state. A state is designated as a battleground state if the margin of victory for the winning 2004 presidential candidate was 5 percent or less. A state was designated as competitive if the margin of victory for governor and/or U.S. Senate races was 5 percent or less.

FINDINGS

The probit regression analyses that follow examine the effects of voter identification requirements on voter turnout. Table 2 presents the original findings of the Eagleton Institute's probit regression analysis. Table 3 presents the descriptive statistics of the data used in Table 4. Based on our analyses, six sets of probit regression models are presented in Tables 4 to 9.

The first set of probit regressions contains our replication of the Eagleton Institute study for their analysis of all voters (Table 4). The second set of probit regressions presents the findings for all voters under a different model specification and the corrected classification of state identification requirements for Arizona and Illinois (Table 5). The sixth through ninth sets of probit regressions present our findings for the different model specification and corrected coding for state identification requirements for whites, African–Americans, Hispanics, and Asians (Tables 6 through 9).

For all of the models, robust standard errors are estimated to correct for correlated error terms within each state. For tests of statistical significance, the standard two-tailed tests are used. See below for a discussion of one-tailed versus two-tailed tests of statistical significance. The calculations in Tables 3 through 9 use the CPS weight, PWSSWGT, as recommended by the Bureau of the Census.

ONE-TAILED VERSUS TWO-TAILED TESTS OF STATISTICAL SIGNIFICANCE

When doing tests of statistical significance for hypotheses, social scientists generally use two-tailed tests. Two-tailed tests are used to check for a difference while ignoring in which direction the difference lies.

For example, a social scientist would use a two-tailed test to determine whether voters in photo identification and give name states have different probabilities of reporting having voted in the 2004 election, regardless of the direction of the relationship. By using a two-tailed test, the 5 percent probability is split between both ends of the bell-shaped curve. (See Figure A in Chart 1.) That is, 2.5 percent of the probability that the difference is due to chance is placed in the side that represents respondents in photo identification states being less likely to vote, while 2.5 percent is placed in the side that represents respondents in photo identification states being more likely to vote. If the probit coefficient for photo identification states falls within either of the 2.5 percent shaded regions, this finding is determined to be statistically significant. If the coefficient falls within the left (right) tail, photo identification requirements have a negative (positive) relationship with reported voter turnout. If the coefficient falls between the 2.5 percent shaded regions, photo identification requirements are said have no relationship with voter turnout.

When one-tailed tests are used, social scientists are hypothesizing that the relationship between photo identification requirements and reported voting has a specific direction: for example, voter identification requirements decrease (increase) reported voting. As determined by the social scientist, all of the 5 percent of chance is placed in one end of the bell-shaped curve. If the direction of the relationship is as hypothesized, placing the entire 5 percent chance in one side makes it is *twice as easy* to achieve a statistically significant finding with a one-tailed test as with a two-tailed test. Figure B in Chart 1 is an example of a one-tailed test where the researcher believes a negative relationship exists. In the case of photo identification requirements and voter turnout, if the coefficient falls within the 5 percent shaded region of the left tail, photo identification requirements would then be said to have a negative relationship. If the coefficient does not fall within the 5 percent region, then photo identifica-

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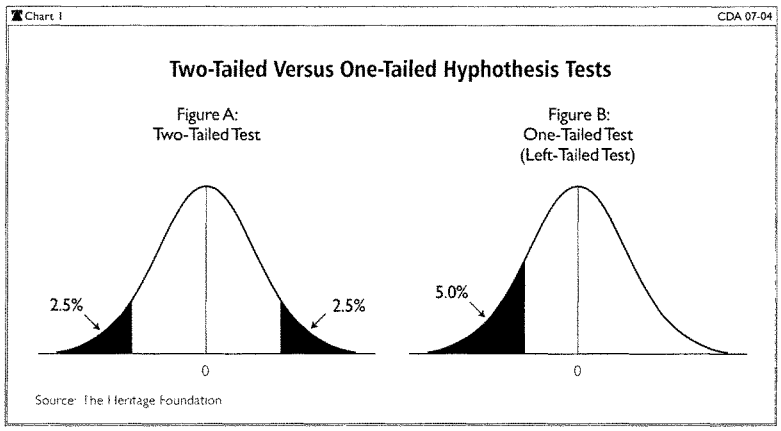

tion requirements are said to have no relationship with voter turnout.

According to norms of the social sciences, researchers generally use two-tailed tests. When they deviate from this norm, social scientists generally provide a justification for why they have done so. Consumers of statistical research should be skeptical of findings based on one-tailed tests, especially when such findings do not hold up under two-tailed testing.

Replicating the Eagleton Institute's Findings for All Voters

Table 2 contains the findings from the Eagleton Institute's probit regression for all registered voters as presented in their paper. Table 3 presents the findings from our attempt to replicate the Eagleton Institute study findings for all voters. In our attempt at replicating the Eagleton Institute's study, we could not entirely match the same number of respondents. The Eagleton Institute's probit regression of all voters is based on 54,973 respondents.[71] Our best attempt at replicating their analysis produced 54,829 respondents—144 fewer respondents. In addition, the results reported in Table 3 use the more commonly accepted two-tailed significance tests.

While the Eagleton Institute reported that states with sign name, non-photo identification, and photo identification requirements have lower voter turnout than states with only the state name requirement, only the photo identification coefficient in our attempt at replication (Model 1) is statistically significant at the 95 percent confidence level. Respondents from photo identification states are less likely to have reported voting compared to respondents in states that only required voters to say their names at the polling stations The magnitude of the negative relationship between photo identification requirements and voter turnout is difficult to interpret with probit coefficients, so the elasticity was calculated. The elasticity figures used in this analysis represent the percentage change in the probability of reporting to vote given a one-unit change in a particular dichotomous independent variable. The survey respondents in photo identification states are 0.002 percent less likely to report voting than respondents from states that only required voters to give their name for identification.

Model 2 corrects for the Eagleton Institute study's misclassification of the voter identification requirements in Arizona and Illinois. With the correction, all of the state voter identification variables are statistically insignificant—meaning that none of these requirements has a statistically measurable relationship with voting turnout.

71 Vercellotti and Anderson, "Protecting the Franchise, or Restricting It?" Table 3, p. 23.

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Model 3 attempts to replicate the findings of the Eagleton Institute's examination of the effect of minimum requirements. As seen in Table 2, the Eagleton Institute found that the coefficients for sign name, non-photo identification, and swear affidavit states had statistically significant, negative relationships with voter turnout using one-tailed significant tests. However, our analysis presented in Model 3 using two-tailed statistical significance tests finds only the swear affidavit coefficient to be statistically significant at the 95 percent confidence level. The survey respondents in swear affidavit states are 0.002 percent less likely to report voting than respondents from states that only required voters to state their name for identification.

Table 2 CDA 07-04

Copies of Eagleton Institute's Probit Models of Voter Turnout

	Maximum Requirement		Minimum Requirement	
Variable	Coefficient	Robust S.E.	Coefficient	Robust S.E.
Sign name	-0.11*	0.05	-0.08*	0.04
Match signature	-0.04	0.05	-0.03	0.05
Non-photo ID	-0.16**	0.06	-0.15**	0.05
Photo ID	-0.17**	0.07	--	--
Affidavit	--	--	-0.23**	0.06
Hispanic	-0.08	0.05	-0.08	0.05
African-American	0.24**	0.04	0.24**	0.04
Asian American	-0.37**	0.07	-0.38**	0.07
Age 25–44	0.004	0.02	0.003	0.02
Age 45–64	0.26**	0.03	0.26**	0.03
Age 65+	0.43**	0.03	0.43**	0.03
High school	0.31**	0.02	0.31**	0.02
Some college	0.57**	0.03	0.57**	0.03
College	0.88**	0.04	0.88**	0.04
Graduate school	0.98**	0.05	0.98**	0.05
Household income	0.03**	0.003	0.03**	0.003
Married	0.23**	0.02	0.23**	0.02
Female	0.10**	0.01	0.10**	0.01
Battleground state	0.17**	0.04	0.18**	0.04
Competitive race	0.05	0.06	0.05	0.05
Employed	0.05	0.05	0.05	0.05
Member of workforce	-0.05	0.05	-0.05	0.05
Native-born citizen	0.02	0.04	0.02	0.04
Moved within past 6 months	-0.29**	0.03	-0.29**	0.03
Constant	-0.09	0.10	-0.09	0.09
Pseudo R-squared	0.09		0.10	
N	54,973		54,973	

* $p < 0.05$ ** $p < 0.01$ *** $p < 0.001$

Note: One-tailed significance tests were used

Source: Timothy Vercellotti and David Anderson, "Protecting the Franchise, or Restricting It? The Effects of Voter Identification Requirements on Turnout," American Political Science Association conference paper, Philadelphia, Pa., August 31–September 3, 2006, p. 23, Table 3

It should be noted that although we ran the minimum identification requirement model using the classifications assigned to the states by the Eagleton Institute study, there are some issues with the states considered to have an affidavit as the minimum requirement. These issues should be addressed in follow-up studies. First, the Eagleton Institute study identified only four states as having a minimum requirement of sign affidavit. They are Florida, Indiana, Louisiana, and North Dakota. All but one of these states, Indiana, require some form of identification as the maximum requested. This puts Indiana in the precarious position of requiring, at a maximum, that a voter sign his name before receiving a ballot, if he is unable to do so, he can sign an affidavit and vote. This does not make sense, because Indiana in 2004 did not require identification before voting (other than for those affected by HAVA requirements).

We believe this to be another classification error on the part of the Eagleton Institute. According to the "2004 Indiana Election Day Handbook," the procedure for signing an affidavit only applies to challenged voters who are then given a provisional ballot if they sign the affidavit.[72] This voting method would not fall under the guidelines set forth by the Eagleton Institute because it applies to provisional, and not regular, ballots.[73] For these reasons, we believe Indiana should have a minimum identification requirement of sign name, the same as its maximum.

Additionally, there are five other states (Connecticut,[74] Delaware,[75] Georgia,[76] South Dakota,[77]

72. Indiana Election Division, "2004 Indiana Election Day Handbook: A Guide for Precinct Election Boards and Poll Workers," December 2003, pp. 13–17.

73. *Report to the U.S. Election Assistance Commission on Best Practices to Improve Voter Identification Requirements Pursuant to the Help America Vote Act of 2002*, p. 8

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Table 3 CDA 07-04

Replicating Vercellotti: Probit Models of Overall Voter Turnout Based on the Eagleton Institute's Specification

	Maximum Requirement				Minimum Requirement	
	Model 1 Replication		Model 2 Recoded States		Model 3 Replication	
Variable	Coefficient	Robust S.E.	Coefficient	Robust S.E.	Coefficient	Robust S.E.
Sign name	-0.08	0.04	-0.06	0.06	-0.03	0.05
Match signature	-0.01	0.05	0.01	0.06	-0.02	0.07
Non-photo ID	-0.10	0.06	-0.10	0.07	-0.08	0.06
Photo ID	-0.10*	0.05	-0.10	0.06	--	--
Affidavit	--	--	--	--	-0.10*	0.05
Hispanic	-0.08	0.05	-0.08	0.05	-0.08	0.05
African American	0.29***	0.04	0.29***	0.05	0.24**	0.05
Asian American	-0.45***	0.07	-0.45***	0.08	-0.46**	0.07
Age 25–44	-0.01	0.02	-0.01	0.03	-0.11	0.03
Age 45–64	0.27***	0.03	0.27***	0.03	0.27***	0.03
Age 65+	0.44***	0.03	0.44***	0.03	0.45***	0.03
High school	0.32***	0.03	0.32***	0.25	0.32***	0.03
Some college	0.611***	0.03	0.61***	0.03	0.61***	0.03
College	0.90***	0.04	0.90***	0.04	0.90***	0.04
Graduate school	1.04***	0.05	1.04***	0.05	1.05***	0.05
Household income	0.04***	0.003	0.041***	0.003	0.04***	0.003
Married	0.21***	0.03	0.21***	0.03	0.21***	0.03
Female	0.10***	0.02	0.10***	0.02	0.10***	0.02
Battleground state	0.20***	0.04	0.20***	0.04	0.21***	0.05
Competitive race	-0.03	0.06	-0.02	0.06	-0.02	0.06
Employed	0.03	0.05	0.03	0.05	0.03	0.05
Member of workforce	0.07	0.06	0.07	0.06	0.07	0.07
Native-born citizen	-0.02	0.05	-0.01	0.05	-0.02	0.05
Moved within past 6 months	-0.36***	0.04	-0.36***	0.04	-0.36***	0.04
Constant	-0.11	0.09	-0.12	0.10	-0.13	0.09
Pseudo R-squared	0.10		0.10		0.10	
N	54,829		54,829		54,829	

* $p < 0.05$ ** $p < 0.01$ *** $p < 0.001$

Note: Two-tailed significance tests were used. Robust standard errors adjusted for state clustering are reported. The CPS population weights were used.

Source: Heritage Foundation calculations.

and Virginia[78]) that require some form of identification but make exceptions and allow voters without the required documentation to sign an affidavit in order to vote. To be classified correctly, these states should also be considered to have a minimum requirement of sign affidavit as they too provide opt outs for voters unable to show appropriate forms of identification.

As for the socioeconomic variables in Models 1 through 3, African–Americans are more likely to have reported voting in the election than a grouping of non-Hispanic whites, American Indians, Hawaiians/Pacific Islanders, and others. In contrast, Asians are less likely to report voting. Respondents aged 45 and above are more likely to report voting than those 18 to 24 years old. Those with an

74. Conn. Gen. Stat. Ann. § 9-261.
75. 15 Del. Code. § 4937.
76. Ga. Code. Ann. § 21-2-417.
77. S.D. Codified Laws § 12-18-6.2.
78. Va. Code. Ann. § 24.2-643.

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education at or above a high school diploma are more likely to report voting than those without a high school degree. Family income has a positive relationship with the probability of reporting having voted. Married and female respondents are more likely to report voting than not married and male respondents, respectively. Respondents residing in battleground states are more likely to vote, while respondents who moved within the last six months are less likely to report voting.

Alternative Model Specifications

Concerns regarding some of the variables used in the Eagleton Institute study led us to estimate alternative specifications that use the November 2004 CPS data more appropriately.

First, the Eagleton Institute's race and ethnicity dichotomous variables compare African–Americans, Hispanics, and Asians to the default group of whites, American Indians, Alaskan Natives, Hawaiians/Pacific Islanders, and those reporting to be more than one race and/or ethnicity. For example, the Eagleton Institute found that African–Americans were more likely to report voting compared to whites, American Indians, Alaskan Natives, Hawaiians/Pacific Islanders, and those reporting to be more than one race and/or ethnicity.

The descriptive statistics of the data used for the alternative specifications are presented in Table 4. The analyses in Table 5 control for the effect of the individual's race and ethnicity through a set of mutually exclusive dichotomous variables for the following categories: non-Hispanic whites, non-Hispanic African–Americans, Hispanics, non-Hispanic American Indians and Alaskan Natives, non-Hispanic Asians (including Hawaiians/Pacific Islanders), and other races, including those reporting multiple races and ethnicities. For example, this division of race and ethnic groups allows us to present clearer estimates of how voter identification laws affect the voting probabilities of minorities compared to whites.

Second, the Eagleton Institute study used an ordinal family income variable as an interval-ratio variable. Using categorical variables as interval-ratio variables can lead to estimation problems, so for the purposes of this analysis, the effect of family income is controlled for by the inclusion of a series of income range dichotomous variables.

Table 4 CDA 07-04

Descriptive Statistics

Variable	Mean	Standard Deviation	Minimum	Maximum
Voted	0.87	0.33	0	1
Sign name	0.26	0.44	0	1
Match signature	0.17	0.38	0	1
Non-photo ID	0.26	0.44	0	1
Photo ID	0.09	0.28	0	1
Recoded sign name	0.27	0.44	0	1
Recoded match signature	0.21	0.41	0	1
Recoded non-photo ID	0.25	0.43	0	1
Recoded photo ID	0.09	0.28	0	1
Hispanic	0.05	0.21	0	1
African American	0.09	0.29	0	1
American Indian	0.01	0.09	0	1
Asian American	0.07	0.14	0	1
Other race	0.02	0.12	0	1
Age 25–44	0.37	0.48	0	1
Age 45–64	0.38	0.48	0	1
Age 65+	0.17	0.37	0	1
High school	0.30	0.46	0	1
Some college	0.31	0.46	0	1
College	0.20	0.40	0	1
Graduate school	0.10	0.31	0	1
Family income, $15,000- $29,999	0.15	0.36	0	1
Family income, $30,000 $49,999	0.22	0.42	0	1
Family income, $50,000 $74,999	0.22	0.42	0	1
Family income, $75,000 $149,999	0.24	0.42	0	1
Family income, $150,000 or more	0.06	0.24	0	1
Married	0.63	0.48	0	1
Widowed	0.06	0.24	0	1
Divorced	0.10	0.30	0	1
Seperated	0.02	0.13	0	1
Female	0.53	0.50	0	1
Battleground state	0.28	0.45	0	1
Competitive race	0.19	0.39	0	1
Employed	0.69	0.46	0	1
Member of workforce	0.72	0.45	0	1
Native-born citizen	0.96	0.20	0	1
Moved within last year	0.13	0.33	0	1
Home ownership	0.80	0.40	0	1
N = 54,695				

Source: Heritage Foundation calculations based on U.S. Census Bureau, Current Population Survey, November 2004, Voting and Registration Supplement, 2005.

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Table 5 CDA 07-04

Alternative Specifications of Probit Models of Overall Voter Turnout

	Maximum Requirement								Minimum Requirement	
	Model 4 Vercellotti Categories		Model 5 Vercellotti Categories		Model 6 Recoded States		Model 7 Recoded States		Model 8 Vercellotti Categories	
Variable	Coefficient	Robust S.E.	Coefficient	Robust S.E.	Coefficient	Robust S.E.	Coefficient	Robust S.E.	Coefficient	Robust S.E.
Sign name	-0.07	0.05	-0.07	0.05	-0.06	0.06	-0.06	0.06	-0.03	0.05
Match signature	-0.001	0.06	-0.00003	0.06	0.01	0.07	0.01	0.06	-0.01	0.07
Non-photo ID	-0.10	0.06	-0.10	0.06	-0.11	0.07	-0.11	0.07	-0.08	0.06
Photo ID	-0.10†	0.05	-0.10	0.05	-0.10	0.06	-0.095	0.06	--	--
Affidavit	--	--	--	--	--	--	--	--	-0.10*	0.05
Hispanic	-0.07	0.06	-0.07	0.06	-0.07	0.06	-0.07	0.06	-0.7	0.06
African American	0.30***	0.05	0.29***	0.05	0.30***	0.05	0.29***	0.05	0.29***	0.05
American Indian	-0.10	0.08	-0.10	0.08	-0.11	0.08	-0.11	0.07	-0.11	0.08
Asian American	-0.43***	0.07	-0.44***	0.07	-0.44***	0.07	-0.44***	0.07	-0.45***	0.07
Other race	-0.02	0.06	-0.02	0.06	-0.02	0.06	-0.02	0.06	-0.03	0.06
Age 25 44	-0.01	0.03	0.05	0.03	-0.01	0.03	0.05	0.03	0.06	0.03
Age 45 64	0.25***	0.03	0.33***	0.04	0.25***	0.04	0.33***	0.04	0.33***	0.04
Age 65+	0.40***	0.03	0.53***	0.04	0.40***	0.03	0.53***	0.04	0.53***	0.04
High school	0.33***	0.03	0.32***	0.03	0.33***	0.03	0.32***	0.03	0.32***	0.03
Some college	0.62***	0.03	0.61***	0.03	0.62***	0.03	0.61***	0.03	0.61***	0.03
College	0.91***	0.04	0.90***	0.04	0.91***	0.04	0.90***	0.04	0.90***	0.04
Graduate school	1.05***	0.05	1.04***	0.05	1.05***	0.05	1.04***	0.05	1.04***	0.05
Family income, $15,000 - $29,999	0.17***	0.02	0.16***	0.02	0.17***	0.02	0.16***	0.02	0.16***	0.02
Family income, $30,000 -$49,999	0.21***	0.03	0.19***	0.03	0.21***	0.03	0.19***	0.03	0.20***	0.03
Family income, $50,000- $74,999	0.24***	0.03	0.23***	0.03	0.24***	0.03	0.23***	0.03	0.23***	0.03
Family income, $75,000–$149,999	0.39***	0.04	0.38***	0.04	0.39***	0.04	0.38***	0.04	0.39***	0.04
Family income, $150,000 or more	0.37***	0.05	0.36***	0.05	0.37***	0.05	0.36***	0.05	0.36***	0.05
Married	0.20***	0.03	0.10**	0.04	0.20***	0.03	0.11**	0.04	0.10**	0.04
Widowed	--	--	-0.24***	0.04	--	--	-0.24***	0.04	-0.25***	0.04
Divorced	--	--	-0.10**	0.04	--	--	-0.10**	0.04	-0.11**	0.04
Seperated	--	--	-0.24***	0.04	--	--	-0.24***	0.04	-0.24***	0.04
Female	0.10***	0.02	0.11***	0.02	0.10***	0.02	0.11***	0.02	0.11***	0.02
Battleground state	0.20***	0.04	0.19***	0.04	0.19***	0.04	0.19***	0.04	0.20***	0.05
Competitive race	-0.03	0.06	-0.03	0.06	-0.02	0.06	-0.02	0.06	-0.02	0.06
Employed	0.03	0.05	0.04	0.05	0.03	0.05	0.04	0.05	0.04	0.05
Member of workforce	0.08	0.06	0.07	0.06	0.08	0.06	0.07	0.06	0.06	0.06
Native-born citizen	-0.02	0.05	-0.02	0.05	-0.02	0.05	-0.02	0.05	-0.03	0.05
Moved within last year	-0.27***	0.03	-0.27***	0.03	-0.27***	0.03	-0.27***	0.03	-0.27***	0.03
Home ownership	0.16***	0.03	0.17***	0.03	0.16***	0.03	0.17***	0.03	0.17***	0.03
Constant	-0.08	0.09	-0.05	0.09	-0.11	0.09	-0.06	0.11	-0.07	0.09
Pseudo R-squared	0.10		0.10				0.11		0.10	
N	54,695		54,695		54,695		54,695		54,695	

* $p < 0.05$ ** $p < 0.01$ *** $p < 0.001$

Note: Two-tailed significance tests were used. Robust standard errors adjusted for state clustering are reported. The CPS population weights were used.

Source: Heritage Foundation calculations

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Third, the effect of photo identification variables on voter turnout is very sensitive to how the models control for marriage. In addition to a dichotomous variable for whether or not the respondent reported being married, additional dichotomous variables were added for those reporting to be widowed, separated, and divorced. This minor change in marital control variables has a significant impact on the results for the relationship between voter turnout and some of the voter identification variables.

Fourth, the alternative models control for whether or not the individual has moved within the last year instead of the six-month time period used by the Eagleton Institute.

Fifth, a variable indicating whether or not the respondent owns or rents his or her home was added to the alternative models. The residential mobility and home ownership variables help to control for how connected the respondents are to their communities.

Table 5 presents the findings of the alternative model specification for all respondents. Model 4 contains the revised race/ethnicity and income variables along with the variables for residential mobility and home ownership. Of the four voter identification variables, only the photo identification variable is statistically significant. Photo identification states have respondents that are less likely to have reported voting compared to respondents in states that only required voters to say their names at the polling stations. However, the difference is very small. The survey respondents in photo identification states are 0.002 percent less likely to report voting than respondents from states that only required voters to state their name for identification.

A slight change in how marital status is controlled for in Model 5 makes the findings in Model 4 for photo identification requirements disappear. The inclusion of dichotomous variables to identify respondents if they are widowed, divorced, or separated, in addition to being married, significantly changes the results for the photo identification variable. A photo identification requirement no longer has a statistically significant relationship with voter turnout. Thus, the finding that photo identification requirements reduce voter turnout in Model 4 is not robust to an alternative model specification.

In Models 6 and 7, Arizona and Illinois are reclassified correctly as requiring voters at polling stations to sign their name and match signatures, respectively. As with Model 4, Model 6 uses only a married dichotomous variable to control for marital status. Model 7 includes additional marital status variables as used in Model 5. After correctly designating Arizona and Illinois, the different ways to control for marital status have no effect on the outcomes for the voter identification variables. All of the state voter identification variables are statistically insignificant—meaning that none of these requirements has a statistically measurable relationship with voter turnout.

Model 8 uses the minimum requirements for voter identification as used by the Eagleton Institute. The only voter identification coefficient to be statistically significant is the swear affidavit coefficient. The survey respondents in swear affidavit states are 0.002 percent less likely to report voting than respondents from states that only require voters to state their name for identification.

As for the socioeconomic variables in Models 4 through 8, the findings are similar to the previous findings. African–Americans are more likely to have reported voting in the election than non-Hispanic whites, while Asians are less likely to report voting. Older respondents and those with higher incomes and more education are more likely to report voting. Widowed, divorced, and separated respondents are less likely to report voting than singles, while married respondents are more likely to report voting. Female respondents are more likely to report voting than male respondents. Respondents residing in battleground states are more likely to vote, while respondents who moved within the last twelve months are less likely to have reported voting.

Findings by Race and Ethnicity

The impact of voter identification requirements on minority voters has received much media attention recently.[79] To analyze the relationship between race and ethnicity and voter identification requirements, Tables 6 through 9 present the findings of the probit analyses.

79. Tom Baxter and Jim Galloway, "Wonk Alert: Study Says the Heavier the Voter ID Requirements, the Lower Turnout", Wolf, "Study: Stricter Voting ID Rules Hurt '04 Turnout"; and Dave Zweifel, "Voter ID Reducing Minority Turnout," *The Capital Times* (Madison, Wisconsin), February 28, 2007, p. A6.

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Table 6 CDA 07-04

Alternative Specifications of Probit Models of Voter Turnout of Whites

	Maximum Requirement				Minimum Requirement	
	Model 9		Model 10		Model 11	
	Vercellotti Categorizations		Recoded States		Vercellotti Categorizations	
Variable	Coefficient	Robust S.E.	Coefficient	Robust S.E.	Coefficient	Robust S.E.
Sign name	-0.05	0.05	-0.06	0.07	-0.02	0.05
Match signature	0.01	0.06	-0.01	0.07	-0.01	0.08
Non-photo ID	-0.04	0.07	-0.06	0.08	-0.05	0.07
Photo ID	-0.12*	0.05	0.14*	0.06	--	--
Affidavit	--	--	--	--	-0.13**	0.04
Age 25–44	0.05	0.04	0.05	0.04	0.05	0.04
Age 45–64	0.34***	0.04	0.34***	0.04	0.34***	0.04
Age 65+	0.54***	0.05	0.54***	0.05	0.54***	0.05
High school	0.38***	0.03	0.38***	0.03	0.38***	0.03
Some college	0.70***	0.03	0.70***	0.03	0.70***	0.03
College	1.00***	0.04	1.00***	0.04	1.00***	0.04
Graduate school	1.13***	0.05	1.13***	0.05	1.13***	0.05
Family income, $15,000–$29,999	0.16***	0.04	0.16***	0.04	0.16***	0.03
Family income, $30,000–$49,999	0.22***	0.03	0.22***	0.03	0.22***	0.03
Family income, $50,000–$74,999	0.24***	0.03	0.24***	0.04	0.24***	0.03
Family income, $75,000–$149,999	0.36***	0.05	0.36***	0.05	0.36***	0.05
Family income, $150,000 or more	0.36***	0.05	0.36***	0.05	0.36***	0.05
Married	0.16**	0.04	0.17***	0.04	0.16**	0.04
Widowed	-0.20***	0.04	-0.20***	0.04	-0.20***	0.04
Divorced	-0.10**	0.04	-0.10**	0.04	-0.10**	0.04
Seperated	-0.33***	0.07	-0.33***	0.07	-0.33***	0.07
Female	0.09***	0.01	0.09***	0.01	0.09***	0.03
Battleground state	0.19***	0.05	0.19***	0.05	0.19***	0.05
Competitive race	-0.04	0.06	-0.04	0.06	-0.04	0.06
Employed	0.08	0.08	0.08	0.06	0.08	0.06
Member of workforce	-0.001	0.06	-0.001	0.06	0.002	0.06
Native-born citizen	0.09	0.09	0.09	0.09	-0.09	0.09
Moved within last year	-0.25***	0.03	-0.25***	0.03	-0.25***	0.03
Home ownership	0.15***	0.03	0.15***	0.03	0.15***	0.03
Constant	-0.05	0.12	-0.05	0.13	-0.26*	0.12
Pseudo R-squared	0.11		0.11		0.11	
N	44,762		44,762		44,762	

* $p < 0.05$ ** $p < 0.01$ *** $p < 0.001$

Note: Two-tailed significance tests were used. Robust standard errors adjusted for state clustering are reported. The CPS population weights were used

Source: Heritage Foundation calculations

Non-Hispanic Whites. The probit regression results presented in Table 6 contain data for respondents reporting to be non-Hispanic whites. Models 9 and 10 present the findings for the maximum requirements with Model 10 including the correct voter identification classifications for Arizona and Illinois. Except for the photo identification coefficient, none of the coefficients for the voter identification variables are statistically different from zero. In both Models 9 and 10, white respondents in photo identification states are less likely to have reported voting compared to white respondents in states that only required voters to say their names at the polling stations. Under both models, white survey respondents in photo identification states are 0.002 percent less likely to report voting than white respondents from states that only required voters to state their name.

The analysis of minimum voter identification requirements in Model 11 finds that white respondents are less likely to vote when the minimum requirement entails a sworn affidavit. White survey respondents in swear affidavit states are 0.002 percent less likely to report voting than white respondents from states that only required voters to give their name.

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Table 7 CDA 07-04

Alternative Specifications of Probit Models of Voter Turnout of African–Americans

	Maximum Requirement				Minimum Requirement	
	Model 12		Model 13		Model 14	
	Vercellotti Categories		Recoded States		Vercellotti Categories	
Variable	Coefficient	Robust S.E.	Coefficient	Robust S.E.	Coefficient	Robust S.E.
Sign name	-0.20	0.12	-0.09	0.11	-0.03	0.14
Match signature	-0.13	0.10	-0.06	0.11	-0.03	0.15
Non-photo ID	-0.30***	0.09	-0.19*	0.08	-0.12	0.12
Photo ID	-0.15	0.15	-0.03	0.14	--	--
Affidavit	--	--	--	--	0.0002	0.21
Age 25–44	0.03	0.10	0.03	0.10	0.03	0.10
Age 45–64	0.13	0.11	0.13	0.11	0.13	0.11
Age 65+	0.35*	0.14	0.35*	0.14	0.36*	0.14
High school	0.30***	0.05	0.30***	0.05	0.30***	0.05
Some college	0.44***	0.08	0.44***	0.08	0.44***	0.08
College	0.70***	0.10	0.70***	0.10	0.69***	0.10
Graduate school	0.88***	0.13	0.89***	0.13	0.86***	0.13
Family income, $15,000–$29,999	0.21**	0.08	0.21**	0.08	0.21**	0.08
Family income, $30,000–$49,999	0.27**	0.08	0.27**	0.08	0.28***	0.08
Family income, $50,000–$74,999	0.39**	0.13	0.38**	0.13	0.39***	0.12
Family income, $75,000–$149,999	0.68***	0.14	0.67***	0.14	0.68***	0.14
Family income, $150,000 or more	0.82*	0.32	0.82**	0.32	0.83*	0.32
Married	0.03	0.08	0.03	0.08	0.03	0.08
Widowed	-0.10***	0.11	-0.10***	0.11	-0.10***	0.11
Divorced	0.13	0.07	0.13	0.07	0.12	0.07
Seperated	-0.11	0.09	-0.11	0.09	-0.09	0.10
Female	0.16	0.07	0.16	0.07	0.16	0.07
Battleground state	0.15	0.11	0.11	0.11	0.16	0.13
Competitive race	-0.01	0.11	0.04	0.11	0.02	0.10
Employed	-0.10	0.13	-0.11	0.13	-0.10	0.13
Member of workforce	0.37**	0.13	0.38**	0.13	0.37**	0.13
Native-born citizen	0.22	0.13	0.25	0.13	0.21	0.14
Moved within last year	-0.31***	0.07	-0.31***	0.07	-0.33***	0.07
Home ownership	0.20***	0.07	0.20***	0.07	0.19**	0.07
Constant	0.07	0.17	0.08	0.17	0.06	0.18
Pseudo R-squared	0.11		0.11		0.10	
N	4,958		4,958		4,958	

* $p < 0.05$ ** $p < 0.01$ *** $p < 0.001$

Note: Two-tailed significance tests were used. Robust standard errors adjusted for state clustering are reported. The CPS population weights were used.

Source. Heritage Foundation calculations

Non-Hispanic African–Americans. The probit regression results presented in Table 7 contain data for respondents reporting to be non-Hispanic African–Americans. Models 12 and 13 present the findings for the maximum requirements with Model 13 including the correct voter identification classifications for Arizona and Illinois. Except for the non-photo identification coefficient, none of the coefficients for the voter identification variables are statistically different from zero. In both Models 12 and 13, African–American respondents in non-photo identification states are less likely to have reported voting compared to African–American respondents in states that only required voters to say their names at the polling stations. In Model 12, African–American respondents in non-photo identification states are 0.019 percent less likely to report voting than African–American respondents from states that only required voters to state their name. For Model 13, the elasticity for non-photo identification states is 0.012 percent.

The analysis of minimum voter identification requirements in Model 14 fails to find any statistically significant relationships between African–American voter turnout and the minimum voting requirements.

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Table 8 CDA 07-04

Alternative Specifications of Probit Models of Voter Turnout of Hispanics

	Maximum Requirement				Minimum Requirement	
	Model 15		Model 16		Model 17	
	Vercellotti Categories		Recoded States		Vercellotti Categories	
Variable	Coefficient	Robust S.E.	Coefficient	Robust S.E.	Coefficient	Robust S.E.
Sign name	-0.27	0.14	-0.11	0.18	-0.21	0.14
Match signature	-0.16	0.14	0.03	0.18	-0.16	0.14
Non-photo ID	-0.44**	0.15	-0.35*	0.18	-0.40*	0.15
Photo ID	-0.12	0.16	-0.02	0.18	--	--
Affidavit	--	--	--	--	-0.16	0.16
Age 25–44	0.08	0.08	0.09	0.08	0.08	0.08
Age 45–64	0.38***	0.07	0.39***	0.07	0.39***	0.07
Age 65+	0.40**	0.12	0.40***	0.12	0.41***	0.12
High school	0.11	0.07	0.10	0.07	0.11	0.07
Some college	0.44***	0.04	0.43***	0.04	0.44***	0.04
College	0.53***	0.10	0.52***	0.10	0.53***	0.10
Graduate school	0.78***	0.20	0.78***	0.20	0.78***	0.20
Family income, $15,000-$29,999	0.12	0.08	0.13	0.08	0.12	0.08
Family income, $30,000-$49,999	0.01	0.15	0.001	0.15	0.01	0.15
Family income, $50,000-$74,999	0.21**	0.08	0.20**	0.07	0.21**	0.08
Family income, $75,000-$149,999	0.40***	0.10	0.39***	0.09	0.40***	0.10
Family income, $150,000 or more	0.09	0.16	0.08	0.16	0.09	0.16
Married	-0.12	0.08	-0.11	0.08	-0.12	0.08
Widowed	-0.40***	0.13	-0.40***	0.13	-0.41***	0.13
Divorced	-0.14	0.11	-0.13	0.11	-0.14	0.11
Seperated	-0.001	0.10	-0.003	0.10	-0.01	0.10
Female	0.16***	0.04	0.16***	0.04	0.16***	0.04
Battleground state	0.41***	0.08	0.39***	0.08	0.42***	0.08
Competitive race	-0.29**	0.11	-0.23**	0.11	-0.25*	0.11
Employed	-0.17	0.09	-0.17	0.10	-0.18	0.09
Member of workforce	-0.11	0.09	-0.11	0.10	-0.12	0.09
Native-born citizen	-0.26***	0.08	-0.25***	0.08	-0.27***	0.08
Moved within last year	-0.26***	0.07	-0.26***	0.07	-0.27***	0.07
Home ownership	0.32***	0.04	0.34***	0.05	0.31***	0.04
Constant	0.53**	0.19	0.38	0.20	0.51**	0.19
Pseudo R-squared	0.11		0.11		0.11	
N	2,862		2,862		2,862	

* $p < 0.05$ ** $p < 0.01$ *** $p < 0.001$

Note: Two-tailed significance tests were used. Robust standard errors adjusted for state clustering are reported. The CPS population weights were used

Source: Heritage Foundation calculations

Hispanics. The probit regression results presented in Table 8 contain data for respondents reporting to be Hispanic. Models 15 and 16 present the findings for the maximum requirements with Model 16 including the correct voter identification classifications for Arizona and Illinois. Model 17 presents the findings for the minimum voter identification requirements. All three models find that Hispanics reported lower voter turnout rates in states with non-photo identification requirements compared to states that only require voters to state their names at the polling stations. All three of these findings are statistically significant at the 95 percent confidence level. Hispanic respondents in non-photo identification states are 0.035 percent to 0.049 percent less likely to report voting than Hispanic respondents from states that only required voters to state their name.

Asian Americans. The probit regression results presented in Table 9 contain data for respondents reporting to be non-Hispanic Asian American (including Hawaiians/Pacific Islanders). Models 18 and 19 present the findings for the maximum requirements with Model 19 including the correct voter identification classifications for Arizona and Illinois. Model 20 presents the findings for the

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Table 9 CDA 07-04

Alternative Specifications of Probit Models of Voter Turnout of Asians

	Maximum Requirement				Minimum Requirement	
	Model 18		Model 19		Model 20	
	Vercellotti Categories		Recoded States		Vercellotti Categories	
Variable	Coefficient	Robust S.E.	Coefficient	Robust S.E.	Coefficient	Robust S.E.
Sign name	-0.19	0.19	-0.22	0.28	-0.20	0.19
Match signature	0.14	0.19	0.06	0.29	0.10	0.19
Non-photo ID	-0.28	0.21	-0.33	0.29	-0.30	0.21
Photo ID	-0.09	0.21	-0.13	0.29	--	--
Affidavit	--	--	--	--	0.19	0.21
Age 25-44	-0.39**	0.15	-0.39**	0.15	-0.37*	0.15
Age 45-64	-0.04	0.19	0.03	0.19	-0.005	0.19
Age 65+	-0.001	0.32	-0.005	0.32	-0.04	0.32
High school	0.46	0.28	0.47	0.28	0.47	0.28
Some college	0.21	0.43	0.21	0.43	0.22	0.43
College	0.42	0.33	0.42	0.33	0.42	0.33
Graduate school	0.39	0.37	0.39	0.37	0.39	0.37
Family income, $15,000–$29,999	-0.06	0.24	-0.06	0.25	-0.05	0.24
Family income, $30,000–$49,999	-0.37	0.19	-0.36	0.19	-0.35	0.19
Family income, $50,000–$74,999	-0.30	0.23	-0.30	0.23	-0.29	0.23
Family income, $75,000–$149,999	0.26	0.23	0.27	0.24	0.25	0.23
Family income, $150,000 or more	0.09	0.26	0.09	0.27	0.10	0.26
Married	0.36*	0.18	0.36*	0.18	0.34	0.18
Widowed	-0.43	0.32	-0.43	0.32	-0.43	0.32
Divorced	0.13	0.23	0.12	0.23	0.08	0.23
Seperated	0.19	0.41	0.18	0.41	0.15	0.41
Female	0.13	0.07	0.14***	0.07	0.13	0.07
Battleground state	0.23	0.13	0.24	0.13	0.17	0.13
Competitive race	0.30	0.21	0.30	0.20	0.21	0.21
Employed	-0.28	0.37	-0.28	0.37	-0.28	0.37
Member of workforce	0.59	0.43	0.59	0.43	0.58	0.43
Native-born citizen	0.11	0.14	0.11	0.14	0.13	0.14
Moved within last year	-0.41**	0.13	-0.42***	0.13	-0.45***	0.13
Home ownership	-0.09	0.10	-0.09	0.10	-0.11	0.10
Constant	0.40	0.48	0.44	0.55	0.46	0.48
Pseudo R-squared	0.11		0.11		0.10	
N	1,029		1,029		1,029	

* $p < 0.05$ ** $p < 0.01$ *** $p < 0.001$

Note: Two tailed significance tests were used. Robust standard errors adjusted for state clustering are reported. The CPS population weights were used.

Source: Heritage Foundation calculations

minimum voter identification requirements. All three models find that the various state voter identification requirements do not have a statistically measurable relationship with voter turnout of Asian Americans.

DISCUSSION

The findings of this analysis suggest that voter identification requirements, such as requiring non-photo and photo identification, have virtually no suppressive effect on reported voter turnout.

Caution is needed in interpreting the Eagleton Institute's findings, for at least three reasons.

First, their study used one-tailed significance tests that can be used to double the chances of finding statistically significant findings.

Second, the voter identification laws for two states, Arizona and Illinois, were incorrectly classified. From our modeling, this misclassification leads to a negative and statistically significant relationship between photo identification requirements and voter turnout for all registered voters. When Arizona and Illinois are correctly classified, the relationship in our modeling is statistically indistinguishable from zero.

Third, the findings for photo identification requirements are sensitive to model specification. Us-

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ing the Eagleton Institute's state voter identification classifications and controlling for marriage with a married or not dichotomous variable, our analysis of overall voter turnout finds that photo identification requirements have a negative and statistically significant relationship with overall voter turnout. However, when additional marital status variables—widowed, divorced, separated—are included, the statistically significant relationship for photo identification requirements disappears.

Controlling for factors that influence voter turnout, states with stricter voter identification laws largely do not have the claimed negative impact on voter turnout when compared to states with more lenient voter identification laws. Based on the Eagleton Institute's findings, some members of the media have claimed that voter identification law suppress voter turnout, especially among minorities.[80] Their conclusion is unfounded. When statistically significant and negative relationships are found in our analysis, the effects are so small that the findings offer little policy significance.

More important, minority respondents in states that required photo identification are just as likely to report voting as are minority respondents from states that only required voters to say their name.

Nevertheless, using data from the November 2004 CPS to study the impact of voter identification requirements on voter turnout does have its limitations. The November 2004 CPS is a cross-sectional data set that does not allow social scientists to estimate the effect of changing voter identification requirements within states over time. Studies using the November CPS can only provide information on how voter patterns differed between states with different voter identification requirements. These studies cannot provide information on how enacting stiffer voter identification requirements will affect voter turnout within states over time. While it is reasonable to assume that voters will respond to stricter voter identification requirements by obtaining the necessary documentation, we would need to use panel data sets that consist of cross-sectional and time-series data in order to conduct such an analysis. Panel studies observe multiple units (e.g., individual voters, voting precincts, and counties) over several time periods.

To the best of our knowledge, there is only one voter identification study that utilizes the benefits of panel data. The study, by John R. Lott of the University of Maryland Foundation, analyzed the effect of stricter voter identification requirements on U.S. primary and general elections from 1996 to 2006.[81] Dr. Lott found little support for the notion that non-photo and photo identification requirements suppress voter turnout

As states adopt stricter voter identification requirements to deter voter fraud, future research needs to adopt panel data methods to determine how the laws affect voter turnout.

CONCLUSION

Controlling for factors that influence voter turnout, voter identification laws largely do not have the claimed negative impact on voter turnout based on state-to-state comparisons. When statistically significant and negative relationships are found, the effects are so small that the findings offer little policy significance. White survey respondents in photo identification states are 0.002 percent less likely to report voting than white respondents from states that only required voters to state their name. African–American respondents in non-photo identification states are 0.012 percent less likely to report voting than African–American respondents from states that only required voters to state their name.

In other cases, no effect was found. In general, respondents in photo identification and non-photo identification states are *just as likely* to report voting compared to respondents from states that only required voters to state their name. African–American respondents in photo identification states are *just as likely* to report voting compared to African–American respondents from states that only required voters to state their name. Hispanic respondents in photo identification states are *just as likely* to report voting compared to Hispanic respondents from states that only required voters to state their name.

—David B. Muhlhausen, Ph.D., is a Senior Policy Analyst and Keri Weber Sikich is a research assistant in the Center for Data Analysis at The Heritage Foundation.

80 Baxter and Galloway, "Wonk Alert. Study Says the Heavier the Voter ID Requirements, the Lower Turnout"; Wolf, "Study. Stricter Voting ID Rules Hurt '04 Turnout", and Zweifel, "Voter ID Reducing Minority Turnout "

81. Lott, "Evidence of Voter Fraud and the Impact that Regulations to Reduce Fraud Have on Voter Participation Rates "

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National Gay and Lesbian Task Force
National Center for Transgender Equality

Testimony to the Senate Committee on the Judiciary
Hearing On
"Protecting the Constitutional Right to Vote for All Americans"

The National Gay and Lesbian Task Force, founded in 1973, works to build the grassroots political power of the LGBT community to win complete equality. The Task Force was the first national lesbian, gay, bisexual and transgender (LGBT) rights organization and remains the community's uncompromising, progressive voice. We fight for LGBT equality and justice by working in the states, on Capitol Hill and in the courts. As part of its mission the National Gay and Lesbian Task Force is committed to ensuring that LGBT individuals are able to exercise their right to vote and to combating laws which unduly and needlessly burden many voters' ability to participate effectively in the political process.

Founded in 2003 by transgender activists who saw the urgent need for a consistent voice in Washington DC for transgender people, the National Center for Transgender Equality (NCTE) is a non-profit social justice organization dedicated to advancing the equality of transgender people through advocacy, collaboration and empowerment. NCTE monitors federal activity, provides education to Congress, and has established a center of expertise on policy issues that impact transgender people. We have consistently advocated for the rights of transgender voters and have worked to provide education about voting rights and effective ways to overcome obstacles to voting.

As LGBT organizations we are deeply concerned with voter identification provisions that will disproportionately disenfranchise transgender and gender non-conforming individuals. Members of our community frequently do not have accurate photo identification because acquiring it can sometimes be impossible, is sometimes very expensive or time-consuming, and sometimes requires disclosures of personal information. Transgender voters may stay home instead of facing the potential discrimination and violence stemming from using ID that doesn't reflect their gender identity and expression. Further, if individuals have overcome obstacles to obtain photo identification, they may still be prevented from exercising their fundamental rights to vote based on the arbitrary discretion of an untrained poll worker.

Background and Overview

Transgender is an umbrella term used to describe people whose gender identity (sense of themselves as male or female) or gender expression differs from that usually associated with their birth sex. Broadly speaking, anyone whose identity, appearance, or behavior falls outside of conventional gender norms can be described as transgender.

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Transgender individuals are U.S. Citizens, they are professionals and parents, contributing to our communities and our country. Unfortunately they are also frequently victims of discrimination. It is currently legal in 38 states to discriminate in employment based on an individual's real or perceived gender identity or expression. Statutes like the Indiana Voter ID statute would codify another form of discrimination against these individuals.

Photo ID requirements create serious burdens for transgender voters. First, acquiring photo identification that matches a transgender voter's gender identity or expression may be impossible, based on too-strict rules for updating these documents. Second, these statutes are problematic because also they allow election workers discretion in examining voter identification. Third, the statute raises serious concerns about privacy rights of voter's, putting a voter in the position of needing to share personal, sometimes medical, information about themselves to a poll worker to justify any perceived mis-match with their photo identification. These are undue burdens on any individual wishing to exercise the fundamental right to vote.

The Indiana photo identification law requires that in order to vote, one must provide government-issued photo ID[1] and sets forth the criteria. The statute requires either Indiana-issued or federally-issued photo identification such as an Indiana driver's license or a Passport to cast their vote. In addition, the statute sets vague standards as to when a voter may be successfully challenged based on perceived discrepancies between the voter's identification and the name on the voter rolls or the voter's appearance. That vagueness in turn increases the risk and opportunity for the disproportionate disenfranchisement of transgender individuals, as will be discussed below.

I. Obtaining identification imposes a severe burden for transgender individuals

Passports

The main form of federal identification is a passport. Currently only 25% of US Citizens hold a passport. [2] For those who do not already possess a passport, obtaining one requires both time and expense, sometimes taking up to three months. These problems are even more significant for transgender individuals.

Currently, the Department of State requires submission of medical information to the agency in order to change the gender listed on the passport. Not all transgender people are able to meet the medical requirements of the Department of State. If a transgender person is able to meet these requirements, and is granted a gender change on their passport, the front page of the passport remains the same, with the old gender and old photo, and in the back the State Department will type "The bearer of this passport is now [male/female]."

Thus, the resulting passport, when presented to an election worker, has the effect of disclosing personal and medical information to the election official, with all of the attendant dangers and risks to the transgender voter as discussed elsewhere. Furthermore, the process of acquiring a passport is time consuming and a financial burden on a transgender person in ways that non-transgender people do not experience.

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[1] Ind. Code § 3-11-8-25.1.

[2] Press Release, U.S. Dep't of State, New U.S. Passport Requirement for Air Travel to Take Effect January 2007(Nov. 22, 2006), http://nassau.usembassy.gov/pr_22112006.html.

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State-Issued Photo Identification

It can be difficult to acquire state-issued driver's licenses and identification that accurately reflect a person's gender identity and expression. Typically, states require primary documents such as birth certificates, citizenship papers, passports, and secondary documents to prove residency, etc. Not surprisingly, in the 50 states there are various rules and standards a transgender person has to meet in order to receive ID that accurately reflects their gender identity or expression.

One of the most difficult documents for a transgender person to update is their birth certificate, which many states require for the production of state-issued photo ID. To change a birth certificate, commonly states have medical standards that many transgender people are unable to meet. Several states require a court order to change one's birth certificate, which is a burdensome process. Even if an individual can prove the meet the medical requiremnt, going to court for this purpose is unduly burdensome, requiring the attainment of legal representation, paying court fees, taking time off from work and forcing the individual to present private documents regarding their medical history and discuss it in open court.

Secondary sources are equally problematic for transgender individuals to provide, such as certified academic transcripts from a U.S. school, a school report card dated within twelve months of the application or a yearbook photo within three years of application. Many of these documents will not match with the individual's current gender or name and therefore will not provide proof of identification. For many transgender people, getting these secondary sources of identification to reflect current name and gender markers is impossible because, for instance, some schools will refuse to change gender markers for students under any circumstances.

II. The Problem with Election Officials Discretion

Allowing voting administrators to have complete discretion has historically resulted in discrimination at the voting booth. [3] As the Court stated in *Louisiana v. United States* "the cherished right of people in a country like ours to vote cannot be obliterated by the use of laws like this, which leave the voting fate of a citizen to the passing whim or impulse of an individual registrar."[4] Voter identification statutes like the one in Indiana provide election workers with significant discretion to deny voters the right to vote based on perceived discrepancies concerning the voter's identification

Transgender individuals are likely to be disenfranchised as a result of this unfettered discretion because even if a transgender individual is able to obtain one form of acceptable identification, election-day workers could reject that form and demand additional documents, documents which may be impossible for a transgender voter to obtain due to the burdens associated with obtaining those documents.

The statute could further be discriminatorily applied to transgender voters because of vague and subjective standards. Under the statute, a voter must produce identification that "shows the name of the individual to whom the document was issued, and the name conforms to the name in the individual's voter registration record." [5] It must also contain a photograph of the

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[3] *South Carolina v. Katzenbach*, 383 U.S. 301, 333-34 (1966).
[4] *Louisiana v. U.S.*, 380 U.S. 145, 152 (1965).
[5] Ind. Code §3-5-2-40.5.

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voter. Accordingly, a poll worker may challenge the identification based on a discrepancy in name or appearance.

This would disproportionately impact transgender voters who may have changed their identification, but not their voter registration or vice versa. Because there is no definition of "conform" in the statute as it applies to the voter's name, the poll worker will have complete discretion to accept or reject a voter if there is any difference between the name as it appears on the identification and on the voter registry.

Poll workers may also refuse transgender voters the right to vote based on their appearance. Individuals in the process of or having completed gender reassignment without updating their identification photo will likely be denied the right to vote because their current gender presentation is inconsistent with the outdated photo identification. Allowing a poll worker to challenge a voter based on photo identification creates potential for abuse in application of the law, partly because it is impossible to create an objective standard by which to judge the similarities between a photograph and an individual.

III. A Threat to Privacy

The Indiana statute has a tremendous impact on the privacy rights of voters. In *Greidinger v. Davis*, the Fourth Circuit ruled against allowing statewide latitude in the use of personal information in elections. The Court held that the publication of Social Security numbers in the administration of elections created "an intolerable burden" on the right to vote. [6] An individual being forced to reveal a change in gender identity is an equal if not greater burden.

Photo identification often contains far more information than that necessary to comply with the voting requirements. Some licenses issued prior to December 17, 2005 even include the holder's Social Security number.[7] For transgender voters, this presents an additional privacy issue. For example, if a transgender individual presents an updated passport, the individual will be forced to reveal their gender reassignment, with the passport reading "the bearer of this passport is now male." This information is being provided to poll workers, many of whom may be volunteers, and who should not have access to such personal information. The requirement that a voter give such sensitive information to a stranger, places an undue hardship on the right to vote, especially for transgender voters.

IV. Conclusion

Voter identification laws like Indiana's effectively disenfranchise transgender voters by tying voting rights to burdens associated with getting one's gender marker changed on official documents like driver's licenses, birth certificates, and passports. Further, even if a transgender person is able to overcome the obstacles associated with official documents, these laws still allow them to be arbitrarily denied the right to vote by an untrained poll worker who may have no experience with transgender individuals or the legal, physical and social difficulties associated with transition in our society.

A transgender individual wishing to exercise the fundamental right to vote will be forced to ask oneself many questions. Does the transgender person go to the poll, present their ID,

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[6] *Greidinger v. Davis*, 988 F. 2d 1344, 1355 (4th Cir. 1993).

[7] Intelligence Reform and Terrorism Prevention Act of 2004, §7214, Pub. Law. No. 108-458; 118 Stat. 3638 (2004).

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knowing that the inspection of their ID may disclose, or force disclosure of, their transgender status to the worker, exposing them to harassment, discrimination and even violence at the poll. And, if the election worker is a member of the community and tells others what he or she has learned about the transgender voter, does the voter risk being outed more widely in the community, with the resulting consequences of losing one's job, being unwelcome, or the victim of a hate crime by other members of their community? Will the voter be rejected by the poll worker who decides their ID doesn't match? Or, does the voter sit at home and sit out the election and preserve their safety?

Voter ID requirements will not only result in the disenfranchisement of transgender individuals, but violates their constitutionally protected right to privacy in the process. Our nation was created as a symbol of democracy, freedom and liberty, we must not allow arbitrary discrimination, privacy violations, and overly-burdensome requirements to prevent our citizens from that most cherished right to vote.

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CBS Found Obama Rule: 'Whatever Michelle Says Is The Message'

Media Misreport Nun Voter ID Story

By Ken Shepherd | May 6, 2008 - 22 16 ET

If you have been watching the primary election coverage tonight you've probably seen at least one story about elderly nuns from South Bend, Indiana, who were "denied the right to vote" for lack of a photo ID.

It's a shame when the mainstream media, bear false witness. Even more so when they exploit the nun angle to carry water for left-wing groups that opposed the law all the way up to the U.S. Supreme Court.

Under Indiana's voter ID law, persons lacking proper ID can vote. The only difference is they cast a provisional ballot which is not counted until after their identity is verified within 10 days following the election.

In one of her earliest drafts, AP's Deborah Hastings did note the 10-day provisional ballot exception, but still crafted her coverage to paint the South Bend sisters as the victims of an unforgiving law:

About 12 Indiana nuns were turned away Tuesday from a polling place by a fellow bride of Christ because they didn't have state or federal identification bearing a photograph.

Sister Julie McGuire said she was forced to turn away her fellow sisters at Saint Mary's Convent in South Bend, across the street from the University of Notre Dame, because they had been told earlier that they would need such an ID to vote.

The nuns, all in their 80s or 90s, didn't get one but came to the precinct anyway.

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"One came down this morning, and she was 98, and she said, 'I don't want to go do that,'" Sister McGuire said. Some showed up with outdated passports. None of them drives.

They weren't given provisional ballots because it would be impossible to get them to a motor vehicle branch and back in the 10-day time frame allotted by the law, Sister McGuire said. "You have to remember that some of these ladies don't walk well. They're in wheelchairs or on walkers or electric carts."

Nonetheless, she said, the convent will make a "very concerted effort" to get proper identification for the nuns in time for the general election. "We're going to take from now until November to get them out and get this done. You can't do this like school kids on a bus," she said. "I wish we could."

A later draft by Hastings clipped the fourth paragraph altogether.

Barring the very rare razor-thin election scenario, it's highly unlikely that the votes of these 12 nuns would be the deciding factor in changing any election outcome.

Simply put, provisional voters in most cases have little incentive and are under no obligation to show up to verify their ID after the election.

—Ken Shepherd is Managing Editor of NewsBusters

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Testimony of John Payton

President and Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc.

Before the United States Senate Committee on the Judiciary

Hearing on
"Protecting the Constitutional Right to Vote for All Americans"

Dirksen Senate Office Building
Room 226

May 20, 2008

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My name is John Payton, President and Director-Counsel of the NAACP Legal Defense & Educational Fund, Inc. (LDF). As the nation's preeminent civil rights law firm, LDF has served as legal counsel for African Americans in numerous federal voting rights cases since the 1940's, including *Smith v. Allwright*, 321 U.S. 649 (1944), in which the Supreme Court invalidated the notorious white primary. More recently, LDF testified in support of the 2006 Congressional reauthorization of key provisions of the Voting Rights Act of 1965, and is now defending the Section 5 preclearance provision from the latest constitutional attack.

The right to vote without unnecessary and unjustifiable restrictions is both a core feature of our democratic structure and a principle that has long shaped LDF's litigation and advocacy efforts in the fight against barriers to political participation. LDF has been engaged in a decades-long fight that has now touched two centuries but the nation's struggle to ensure the centrality of the vote spans back even farther. In light of this long experience, we must view the Supreme Court's decision in *Crawford v. Marion County Election Board*,[1] and the restrictive state legislation that gave rise to it, in its proper perspective. Restrictive photo identification measures are unwarranted erosions of our democracy that, just as their predecessors, will not withstand the test of time. Like the infamous poll taxes and grandfather clauses before them, they are predicated on falsehoods and can be permitted to exist only if we are willing to embrace a cramped notion of democracy intended to introduce a structural caste into our notion of "We the People."

If we wish to be regarded as the world's leading democracy, the role of government must be to encourage greater political participation. In America in 2008, the vote must be treated as a right equally shared by all and not as a special privilege jealously guarded by a few. The Supreme Court's recent decision to uphold the State of Indiana's mandatory voter identification law in *Crawford v. Marion County Election Board* calls for the nation to reexamine the value that we place on the right to vote and to reflect upon the challenges that we still face in the struggle for equal political opportunity for all Americans.

I am pleased to offer testimony on the important issues facing the Senate Judiciary Committee as it considers ways to ensure that all Americans, regardless of race, age, or economic status, maintain the right to participate equally and fully in our political process.

A Snapshot of Political Participation in the United States

Among mature democracies, the United States has one of the lowest participation rates in the most important function of people in a democracy—the election of government officials.[2] The United States, and every individual state, should aspire to have the highest

[1] 128 S. Ct. 1610 (2008), decided with the companion case *Indiana Democratic Party, et al v. Todd Rokita, et al.*

[2] *See, e g.*, G. Bingham Powell, Jr., *American Voter Turnout in Comparative Perspective*, 80 AM. POL. SCI. REV. 17 (1986) (providing comparative discussion of the low level of voter turnout in the United States); *see*

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participation rates of any democracy by identifying effective measures that would help increase current levels of participation. Instead, we have seen a series of efforts that have the conceded effect of placing burdens on citizens' attempts to vote. No one can reasonably claim that increasing the burdens on the exercise of the right to vote does not have the effect of depressing participation rates among voters in the most central aspect of our democratic process.

In the last year, there has been a dramatic surge in registration rates among African-American voters in a number of states including Alabama, Louisiana, Tennessee and North Carolina, among others.[3] This presidential election cycle, more than any other in recent time, has energized many citizens who have long been disinterested in or disengaged from electoral politics. In a number of states, African-American and young voters, in particular, are turning out to the polls in significant numbers, exhibiting a tremendous desire to participate in contests now on the ballot. As some commentators have aptly observed, "Democracy has been the real winner of the process."[4]

The success story that has emerged during this election cycle, however, will prove to be a hollow victory if those newly registered voters are ultimately unable to cast their ballots on Election Day because of the onerous burdens imposed by mandatory voter identification requirements or other discriminatory voting tactics. This is an outcome that our democracy cannot tolerate.

The Limited Scope of the Court's Ruling in *Crawford v. Marion County Election Board*

Three weeks ago, the Supreme Court upheld Indiana's mandatory, government-issued voter identification requirement in the case of *Crawford v. Marion County Election Board.* Indiana's law, described as the strictest in the nation, requires voters to present valid, government-issued photo identification in order to cast a ballot on Election Day.[5] Despite the failure of the State to produce any evidence of voter impersonation at any time in Indiana's history—the claimed basis for the law—and its awareness of the disfranchising effects of this restrictive requirement on minority, elderly and poor voters,[6] the Court found that the record that had been developed was insufficient to establish that the law was facially unconstitutional. The Court's ruling, however, leaves open for another day the possibility of future challenges that more concretely demonstrate how identification laws burden the rights of voters. Those states without identification laws, or with less restrictive ones, would be wrong to interpret the Court's ruling as a blanket endorsement of mandatory, government-issued identification requirements.

World Policy Institute, Voter Turnout Comparisons, *available at* http://www.worldpolicy.org/globalrights/democracy/turnout.html.

[3] Mike Baker, *More than 3.4 million new voters, AP survey finds*, ASSOC. PRESS (May 6, 2008).

[4] *See* Alan Wolfe, *The Race's Real Winner*, WASH. POST. at B1 (May 11, 2008).

[5] Ind. Code. §§ 3-10-1-7.2, 3-11-8-25.1.

[6] *See* Brief of the NAACP Legal Defense and Educational Fund, Inc. as *Amicus Curiae* in Support of Petitioners at 4-10, *Crawford v. Marion County Elec. Bd.*, Nos. 07-21, 07-25 (U.S. Nov. 13, 2007).

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Six of the Court's nine Justices acknowledged that Indiana's law stands to burden the rights of voters.[7] Given existing patterns of racial isolation and concentrated poverty, it is not surprising that mandatory voter identification laws would have a particularly stark impact on persons living in poor and vulnerable communities in our country. These communities can least afford to be excluded from the ballot box.

The Threat to Greater Voter Participation

Interestingly, the lead opinion of the Court, delivered by Justice Stevens, notes that "public confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process."[8] While we generally agree with this observation, LDF's voting rights advocacy and litigation efforts over the last several decades confirm that removing barriers to the ballot box is a far more effective way to encourage political participation in our democracy. Indeed, in periods immediately following passage of the Voting Rights Act of 1965, and following court decisions that invalidated prior barriers to participation, including literacy tests and poll taxes, we witnessed a surge in registration and participation rates among African-American voters.[9] We have no doubt that the erection of new barriers would have the perverse effect of depressing and discouraging political participation. Plainly, this is a result that our democracy should not tolerate.

LDF's concerns regarding the burden imposed by these laws are supported by a 2007 study presented to the United States Election Assistance Commission, which found a correlation between identification requirements and reduced voter turnout in the 2004 presidential election. According to the study, prepared by scholars at Rutgers and Ohio State Universities, Latinos were 10 percent less likely to vote, Asian Americans 8.5 percent less likely to vote and African Americans 5.7 percent less likely to vote in states requiring documentation establishing their identity at the polls.[10]

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[7] 128 S. Ct. 1610, 1621 (2008) (lead opinion of Stevens, J.) (noting that "a somewhat heavier burden may be placed on a limited number of persons . . . includ[ing] elderly persons born out-of-state who may have difficulty obtaining a birth certificate; persons who because of economic or other personal limitations may find it difficult either to secure a copy of the birth certificate or to assemble the other required documentation to obtain a state-issued identification; homeless persons; and persons with a religious objection to being photographed"(internal citations omitted)); *id.* at 1643 (Souter, J., dissenting) (finding the Indiana Voter ID law unconstitutional and noting that "the law imposes an unreasonable and irrelevant burden on voters who are poor and old"), *id.* (opinion of Breyer, J., dissenting) (finding the law unconstitutional "because it imposes a disproportionate burden upon those eligible voters who lack a driver's license or other statutorily valid form of ID").

[8] *Id.* at 1612 (Stevens, J.).

[9] *See e.g.*, David C. Colby, THE VOTING RIGHTS ACT AND BLACK REGISTRATION IN MISSISSIPPI (1986) (noting that the impact of the Voting Rights Act on black registration in Mississippi was dramatic -- Black registration increased from 28,500 in 1965 to 406,000 in 1984).

[10] *See* Timothy Vercellotti & David Anderson, *Protecting the Franchise, or Restricting It? The Effects of Voter Identification Requirements on Turnout*, presented at the annual meeting of the American Political Science Association, Marriott, Loews Philadelphia, and the Pennsylvania Convention Center, Philadelphia, PA (Aug 31, 2006), *available at* http://www.eagleton.rutgers.edu/News-Research/VoterID_Turnout.pdf.

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In addition, the 2001 Commission on Federal Election Reform determined that six to ten percent of Americans of voting age do not have any state-issued identification, and that these Americans are disproportionately poor and urban.[11] Closer analysis of these numbers confirms that the burdens associated with identification requirements fall more heavily upon African Americans and other racial minorities.[12] A recent national survey sponsored by the Brennan Center for Justice at NYU School of Law found that 25 percent of African-American voting age citizens do not possess current government-issued photo identification, compared to 8 percent of white voting-age citizens.[13] This conclusion accords with the results of the U.S. Department of Transportation's 2001 National Household Travel Survey, which revealed that only 57 percent of African Americans are drivers, as compared to 73 percent of whites.[14]

If one focuses on young minority voters, the disparate burden imposed by photo identification requirements is further amplified. For instance, a June 2005 study from the University of Wisconsin-Milwaukee found that only "26 percent of African Americans and 34 percent of Hispanics in Milwaukee County had a valid license compared to 71 percent of young white adults in the [b]alance of State."[15]

Voter identification requirements do not pose a challenge for the vast majority of Americans who do possess some form of government-issued identification. But for people who do not possess the identification—those who are less mobile and not reliant upon such identification in the normal course of their daily lives—obtaining such identification may prove difficult. Applying for a driver's license or passport often requires the presentation of a birth certificate or other documents that may be difficult to obtain and costly for those of little economic means.

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[11] *See* John Mark Hansen, Coordinator, Task Force on the Federal Election System, *Report*, at VI-4 in *Task Force Reports to Accompany the Report of the National Commission on Election Reform* (Aug. 2001); National Commission on Election Reform, To Assure Pride and Confidence – Task Force Reports to Accompany the Report of the National Commission on Election Reform, Chapter I – Verification of Identity, at 4 (2001), *available at* http://millercenter.virigina.edu/programs/natl_commissions/commission_final_report/task_force_report/complete.pdf.

[12] According to a Census 2000 Special Report, of the almost 8 million people who lived in areas of concentrated poverty (more than 40% poor) in 1999, 24.1 % were non-Hispanic White, 39.9% were African-American, and 28.9% were Hispanic. This, despite the fact that non-Hispanic Whites make up over 75% of the general population, African Americans comprise just over 12%, and Hispanics are also just over 12% of the population. Alemayehu Bishaw, *Census 2000 Special Reports. Areas With Concentrated Poverty: 1999*, U.S. Census Bureau, U.S. Dep't of Commerce (July 2005), *available at* http://www.census.gov/prod/2005pubs/censr-16.pdf.

[13] BRENNAN CENTER FOR JUSTICE, CITIZENS WITHOUT PROOF: A SURVEY OF AMERICANS' POSSESSION OF DOCUMENTARY PROOF OF CITIZENSHIP AND PHOTO IDENTIFICATION (Nov. 2006), *available at* http://brennancenter.org/page/-/d/download_file_39242.pdf.

[14] *See* Federal Highway Administration, U.S. Dep't of Transportation, *National Household Travel Survey* (2001).

[15] *See* John Pawasarat, *The Drivers License Status of the Voting Age Population in Wisconsin*. EMPLOYMENT AND TRAINING INSTITUTE, University of Wisconsin-Milwaukee (June 2005).

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That the *Crawford* Court seemed to give short shrift to the reality of American poverty, even on the imperfect record before it, recalls Justice Thurgood Marshall's admonition to his Supreme Court colleagues in his dissent in *United States v. Kras,* 409 U.S. 434 (1973). Faced with the question of whether the imposition of a $50 filing fee for bankruptcy violated the Constitution, Justice Marshall dissented and, in so doing, sought to animate the reality of poverty which other Justices seemed not to fully appreciate. Justice Marshall observed:

> "It may be easy for some people to think that weekly savings of less than $2 are no burden. But no one who has had close contact with poor people can fail to understand how close to the margin of survival many of them are. A sudden illness, for example, may destroy whatever savings they may have accumulated, and by eliminating a sense of security may destroy the incentive to save in the future. A pack or two of cigarettes may be, for them, not a routine purchase but a luxury indulged in only rarely. The desperately poor almost never go to see a movie, which the majority seems to believe is an almost weekly activity. They have more important things to do with what little money they have -- like attempting to provide some comforts for a gravely ill child, as Kras must do.
>
> It is perfectly proper for judges to disagree about what the Constitution requires. But it is disgraceful for an interpretation of the Constitution to be premised upon the unfounded assumptions about how people live."[16]

In 2005, as the full horror of Hurricane Katrina unfolded before our eyes, and we saw tens of thousands of poor African Americans trapped in New Orleans' Lower Ninth Ward by the flood waters, some wondered why they had not simply gotten into their cars and driven to safety. The stark reality of grinding poverty is that they did not have cars, or ATM cards, and many did not have driver's licenses. All of them, however, were part of "We the People" and all of them should have the right to participate in our democracy. The *Crawford* decision all but ignores this critical point.

The *Crawford* ruling suffers from other deficiencies as well. For many voters, particularly elderly persons born outside of hospitals, there may be no formal record of their birth. This socio-economic reality is one that is difficult for more affluent and mobile persons to appreciate but it is painfully real for the underprivileged and poor.

Given the demonstrable and measurable burdens imposed by voter identification requirements, it is important that relevant states and the federal government begin to contemplate the steps that might be taken to reduce the burdens imposed by laws such as Indiana's.

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[16] *United States v. Kras,* 409 U.S. 434, 460 (1973) (Marshall, J., dissenting).

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Voter Identification Laws Stand to Impact Electoral Outcomes

There is no shortage of recent examples of electoral contests in our country that have been hotly contested and close in outcome. The most recent presidential primary election in Indiana was one such close contest, with a mere 14,419 (1.1%) votes separating the two candidates of 1,276,311 votes cast.[17] It is hard to imagine that Indiana's law did not impact the election given the number of voters who arrived at polling sites without the statutorily required form of identification and given the number of voters who were likely deterred from voting because of the onerous burdens established by the law.

During Indiana's May 6, 2008 presidential primary election, a team of LDF attorneys, in partnership with other civil rights groups, conducted an election monitoring program, and made some worrisome observations on this front. One of the central objectives of placing LDF attorneys on the ground to monitor the election was to determine the extent to which poor African Americans in Gary and surrounding communities in Lake County encountered difficulty casting ballots as result of Indiana's voter identification law. LDF attorneys learned that several voters were turned away after arriving at polling sites without qualifying identification. While LDF attorneys and volunteers were able to help some voters obtain identification from the local Bureau of Motor Vehicles so that they could cast a ballot prior to the closing of the polls, the actual number of voters who appeared at their polling places but were turned away for failing to present statutorily required identification remains unknown. Indiana does not require its poll workers to track how many voters appear at the polls without qualifying identification which would certainly provide the most accurate measure of the law's impact. Indeed, due to resources, we could only cover a very limited number of polling sites on Election Day, thus it stands to reason that other eligible voters in Indiana without this additional assistance and encouragement were thwarted in their efforts to vote. Moreover, we may never know, to any precise degree, how many people were apprised of the law, realized they did not possess valid government-issued identification, and decided to stay home on Election Day as a result.

Most disturbing, however, was that LDF attorneys were informed by poll workers that voters who did not possess qualifying identification were not always informed of their right to cast a provisional ballot. Instead, some of these voters were simply turned away from the polls. The presumed availability of provisional ballots as a fail-safe option was critical to the Court's determination that Indiana's law does not impose excessive burdens on voters.[18] That presumption was incorrect.

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[17] Indiana Primary Election May 6, 2008, Turnout by County and Statewide, *available at* http://www.in.gov/apps/sos/primary/sos_primary08?page=office&countyID=-1&partyID=-1&officeID=36&districtID=-1&districtshortviewID=-1&candidate=

[18] Ind. Stat. § 3-11-8-25.2.

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Even if poll workers uniformly offered provisional ballots to voters who lacked valid government-issued identification, the extra step required for the ballots to count—a trip to the county seat within 10 days of the election—is excessively burdensome for poor voters. For example, if a voter without photo identification casts a provisional ballot in Gary, a trip to Crown Point (the county seat) requires traveling over thirty miles round trip. In this sense, the provisional ballot option does not stand as an adequate fail-safe measure that would protect the rights of otherwise eligible voters who are simply unable to satisfy the identification requirement at the outset. Thus, individuals who may have long been active participants in Indiana's elections stand to be disenfranchised by the law. Indiana's law has no exemption for those voters who may long have been reliable and consistent participants in Indiana's political process prior to the adoption of the law.

Protecting the Recent and Fragile Gains in Voter Registration and Participation

Affirmative efforts must be made to ensure that more citizens register and vote in our elections. According to U.S. Census Bureau estimates, only 64 percent of voting age citizens cast ballots in the 2004 presidential election, down from 68 percent during the 1992 election.[19] During that same time period, 72 percent of all voting-age citizens were registered to vote, down from 75 percent in 1992.[20] This decline is particularly troubling given recent laws that have been passed by Congress, such as the National Voter Registration Act, which aims to make registration opportunities more widely available. In this context, voter identification requirements that would make it more difficult to register and to vote can only be expected to further hasten this decline.

Although recent numbers yielded during this high-interest election cycle suggest that registration rates may now very well be on the rise, these gains remain fragile given the threats imposed by restrictive barriers such as identification requirements. Given this political reality, states should consider ways to achieve full and equal political participation by making it easier for citizens to register and to cast ballots on Election Day, and by tearing down existing barriers that make political participation difficult.

States have the ability to increase turnout and participation rates. For example, voter education programs can help ensure that citizens are aware of the relevant rules and laws concerning voting in their particular state.[21] Voter outreach programs can help ensure that citizens address any problems that may have arisen concerning their registration status. More effective publicity can help entrench the importance of civic participation. Improving the quality of poll worker training and recruiting sufficient numbers of poll

[19] *Voting and Registration in the Election of November 2004*, US Census Bureau 1 (March 2006), *available at* http://www.census.gov/prod/2006pubs/p20-556.pdf.
[20] *Id*
[21] One such program which might serve as a model for any state voter education effort, LDF's Prepared to Vote Campaign, aims to prevent voter disfranchisement in communities of color on Election Day by equipping voters with an awareness of requirements and deadlines about potential Election Day voting impediments, such as photo identification requirements, provisional balloting requirements, and new voting technology. More information about the Campaign can be found online at www.naaacpldf.org.

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workers can help improve the experience of voters at the polls. By removing barriers to the ballot box, we increase the likelihood that newly registered voters will choose to remain engaged and be active participants in our civic life. However, states—without any credible justification—are moving in the opposite direction by considering restrictive laws, such as voter identification requirements, which unnecessarily restrict access and impose barriers and hurdles for citizens now entering the political process.

Conclusion

Democracy thrives when it is practiced not prevented. The challenge we now face is determining how to structure the political process in a way that is more inclusive and provides affirmative opportunities for broad and meaningful participation. To do so effectively, we must remain mindful of those who are marginalized in our society—the poor, the elderly and our nation's racial and ethnic minorities. Voting is a core constitutional right[22] and not a privilege to be conferred as a prize after one navigates senseless hurdles. The Congress and the courts must act accordingly.

[22] *See, e.g.*, *Reynolds v. Sims*, 377 U.S. 533, 562 (1964) (stating that "the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights"); *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) ("Other rights, even the most basic, are illusory if the right to vote is undermined."); *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) (hailing voting as "a fundamental political right, because preservative of all rights").

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May 20, 2008

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510-6275

The Honorable Arlen Specter, Ranking Member
Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, DC 20510

Re: Statement of People For the American Way,
Senate Judiciary Committee Hearing:
"Protecting the Constitutional Right to Vote for All Americans"

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the hundreds of thousands of members of People For the American Way, I thank you for the opportunity to submit this statement for the record of the Senate Judiciary Committee hearing entitled "Protecting the Constitutional Right to Vote for All Americans." The right to vote is fundamental, and since our founding by Norman Lear, Barbara Jordan, and other civic, religious, business and civil rights leaders, People For the American Way has sought to empower those who have been traditionally underrepresented at the polls, particularly young voters and people of color.

The 6-3 judgment, by the Supreme Court issued on April 28, 2008, rejected a facial challenge to Indiana's voter identification law, the most restrictive in the nation. *Crawford v. Marion County Election Board*, 2008 LEXIS 3846 (2008). The majority, however, was divided as to its reasoning, and the Court's ruling did not foreclose a future as-applied challenge to this or any other voter ID law. Our sister organization People For the American Way Foundation filed an amicus brief with the Court. As explained in our brief and not disputed by the ruling, there is no evidence that in-person voter fraud exists in this country in any significant way.[1] Hence, People For the American Way and our sister Foundation will continue to work on multiple levels to address the real challenges in our election system.

In addition to People For the American Way's legislative advocacy in the states and on the federal level, our sister organization People For the American Way Foundation has worked tirelessly in the community to ensure access to the ballot. Programs such as Election Protection,

[1] Brief of Amici Curiae the Brennan Center for Justice; Demos: A Network for Ideas & Action; Lorraine C Minnite; Project Vote; and People For the American Way Foundation in Support of Petitioners, *Crawford v. Marion County Election Board; Indiana Democratic Party v. Rokita, available at* http://moritzlaw.osu.edu/electionlaw/litigation/documents/Rokita-BriefamicuscuriaeofBrennan pdf

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created after the 2000 Presidential Election, and Arrive with Five have served to protect voters at the polls and address the real problems in our electoral system. With our allied organizations, such as the Lawyers' Committee for Civil Rights Under Law, the National Bar Association, Common Cause and other major national, state and local organizations, the Election Protection coalition has been able to identify and document actual problems at the polls and provide recommendations for positive reforms. This has been accomplished through the coordination and deployment of thousands of volunteers across the country to serve as poll monitors to assist voters as they attempted to exercise their right to vote. The data collected from volunteers and voters through reports from the field and through the Election Protection Hotline clearly evidence a need for election officials to address the issues such as voter harassment and intimidation, deceptive practices, voter caging, non-compliance with minority language and accessibility laws to name a few. For example, in 2004, People For the American Way Foundation and our allies released a preliminary report entitled, "Shattering the Myth, An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," that exposed some of the real stories that voters faced as a result of partisan election observers. Some examples of problems identified in the recent elections include:

- "One Republican poll challenger was reported by several voters to be intimidating poll workers and voters by standing too close to poll workers, writing down things and calling out on his phone. He was described as very aggressive in his actions. Voters called police who threatened to arrest challenger, but he chose to leave at that point." [Wayne County, Michigan]

- "A report came in of black voters in a predominantly white neighborhood being challenged by Republican challengers who requested proof of ID, residence, and signature. The challengers reportedly did not make similar demands on white voters. At the same polling place, when black voters asked questions of election officials, the officials reportedly refused to answer, telling them "it's very simple," while providing white voters with any requested information or assistance." [St. Louis, Missouri]

Additionally, The Election Protection coalition received and responded to numerous complaints throughout the country in the recent 2006 election. What we found was that dirty tricks and deceptive practices were as pervasive and brazen as ever. In Orange County, California, a Congressional candidate sent out letters in Spanish to approximately 14,000 Hispanic registered voters warning it was a crime for immigrants to vote in federal elections, and threatening voters that there citizenship status would be checked against a federal database. Since immigrants who are naturalized citizens have as much right to vote as any other citizen, and since no such database is used in elections, these statements were outright lies. In Maryland, fliers were handed out in Prince Georges County and predominantly African American neighborhoods with the heading "Democratic Sample Ballot" and photos of Democrat Kweisi Mfume, along with the names of the Republican candidates for Senator and Governor, implying an endorsement. Voters in Virginia received recorded "robocalls," sometimes late at night that falsely stated that the recipient of the call was registered in another State and would face criminal charges if they came to the polls.

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Other examples include several reports from voters in Pima County, Arizona that a group of people, likely associated with "United States Constitution Enforcement (USCE)," were appearing at various polling locations under the pretext of preventing illegal immigrants from voting fraudulently. In Dona Ana County, New Mexico, a voter received several campaign phone calls telling her to vote, but at a polling place that didn't exist. Furthermore, in Accomack and Northampton Counties, Virginia, the Election Protection coalition documented complaints from democratic voters who reported receiving phone calls from purported election officials advising that they don't need to vote on Election Day and would be prosecuted if they showed up at the polls.

Instead of focusing on misguided voter ID legislation that fails to address actual, documented voting rights abuses, we encourage lawmakers to support positive election reform initiatives. There is no question that protecting the integrity of the ballot box should be priority, but voter disenfranchisement is not an acceptable consequence. Unlike voter ID legislation, the implementation of a statewide voter registration database as mandated by the Help America Vote Act (HAVA) will help eliminate many of the challenges faced at the polling place. Additional "fraud-protection" measures could include *accurate* cleansing of voter registration rolls, the continued vigorous prosecution of intimidation and harassment claims that have become increasingly rampant in the most recent federal elections, and the passage of S. 453, the Deceptive Practices and Voter Intimidation Prevention Act of 2007, and S. 2305, the Caging Prohibition Act of 2007, which address documented instances of deceptive practices and tactics in the recent elections. These are real solutions to actual problems.

The reality of implementing an additional photo ID requirement also must not be overlooked. Voter identification laws have posed a significant burden to approximately 12 percent of voting-age Americans—primarily voters in typically disenfranchised communities: the poor, racial minorities, senior citizens, and students—who do not have driver's licenses.[2] During the early 2008 primaries, several types of ID related problems have been reported that evidence our concern regarding the implementation of such requirements. For example:

- Voters in DeKalb and Fulton Counties in Georgia experienced long delays at polling places as the poll workers implemented new voter ID laws that required each voter to be confirmed as eligible to vote by looking them up in an electronic voter registration machine.

- Poll workers at Westfield Elementary School in Glen Ellyn, Illinois required all voters to show identification. They turned away voters without ID despite information provided by poll watchers indicating that voters do not need to show ID in most cases.

- Long-time voters at Gospel Temple Baptist Church in Chicago, Illinois were surprised when poll workers required voters to produce ID at the polls. Voters were

[2] Spencer Overton, "The Carter-Baker ID Card Proposal: Worse Than Georgia," Roll Call. 2005, *available at* http://www carterbakerdissent com/rollcall php (visited Dec. 15, 2006).

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turned away and not allowed to vote, even though Illinois law does not require anyone other than first time voters to show photo identification.

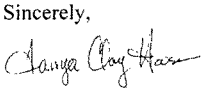
Additionally, such requirements place an inordinate amount of discretion in the hands of overworked (and usually unpaid and sometimes poorly trained) poll workers. Deciding whether a voter matches or does not match the photo in an ID card – which can often be many years old – is a very subjective process and easily prone to mistakes or worse. Because many voter ID laws do not explain how disputes over the validity of an ID card should be handled, and because they often keep voters who do not have "valid" ID from obtaining provisional ballots, they can easily open the door to widespread racial and ethnic discrimination at polling places. Even under HAVA's more lenient requirements, 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.*

These experiences have informed our policy recommendation that voter ID legislation will not address these real problems in our electoral system. While a proliferation of in-person "voter fraud" across the country has yet to be proven, real problems are alive and well and deserve the priority of election officials. Congress should be focused on ways to open the franchise to all eligible citizens, not restrict it to selected communities.

People For the American Way agrees that the integrity of the electoral process must be protected, but this can only be done by addressing actual problems that truly serve to undermine voter participation and confidence. Such problems include procedures and actions by individuals and election administrators that will prevent eligible voters from participating in the electoral process. Voter intimidation and harassment of voters at the polls are some of the more obvious forms of activities that disenfranchise voters and contribute to a lack of integrity in our election process. Other actions, such as election officials removing eligible voters from the registration rolls, the destruction of voter registration cards because of registrants' political affiliation, or the mass challenging of minority voters at the polling places, are other fraudulent activities that must be addressed. Any definition of fraud that is not sufficiently broad to include such activities prevents decision makers from devising appropriate solutions.

People For the American Way looks forward to working with Congress to protect the fundamental right to vote for all Americans. In order to do that we must focus on enacting positive reforms and removing barriers to the ballot such as voter ID. Our goal is simple and should be unquestioned in the United States of America: an electoral system that guarantees every citizen the right to vote and that facilitates rather than frustrates every citizen's ability to cast a vote that is fairly and accurately counted.

Sincerely,



Tanya Clay House
Directory, Public Policy

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Black Group Welcomes Supreme Court Decision to Hear Voter ID Case

"We Have a Right to a Process that is Free of Fraud and Corruption"

For Release: September 28, 2007
Contact: *David Almasi at 202/543-4110 x11*
or Project21@nationalcenter.org

Calling voting "one of the most fundamental rights we have," members of the Project 21 black leadership network are calling on the U.S. Supreme Court to provide a clear and unmistakable ruling on the constitutionality of states requiring voters to show photo identification at polls before the 2008 general elections.

Proponents of voter ID requirements say they want to lessen the likelihood of voter fraud. Opponents, such as Democratic strategist Donna Brazile, say that asking for a driver's license or passport at a polling station is the equivalent of a "modern-day poll tax."

"While I am appalled that the Supreme Court feels compelled to have to take up such a case in the first place, it is important we get this issue behind us before the next election," said Project 21's Kevin Martin. "Voting is one of the most fundamental rights we have as Americans, and we have a right to a process that is free of fraud and corruption."

Six states currently require some sort of photo ID be presented before ballots are issued to voters. Photo ID laws were challenged and upheld by the courts in Indiana, Georgia and Arizona. In Missouri, a photo ID law was struck down last year.

In his majority opinion for a three-judge panel of the Seventh Circuit Court of Appeals, Judge Richard A. Posner pointed out that the Indiana law is meant to counteract voter fraud, "and voter fraud impairs the right of legitimate voters to vote by diluting their votes." Before the enactment of the Indiana law in 2005, voters were only required to sign a book at the polling place and their signature could be compared with a copy on file.

Project 21 members do not believe strengthening the voter verification process is an impediment to voting.

A September 2007 report by The Heritage Foundation's Center for Data Analysis backs this assertion, stating that voter identification laws in general "largely do not have the claimed negative impact on voter turnout based on state-to-state comparisons. African-American respondents in photo identification states are just as likely to report voting compared to African-American respondents from states that only required voters to state their name."

"Likening the requirement of a credible ID to a poll tax or other Jim Crow-era roadblocks is nothing more than empty rhetoric parroted by partisan operatives," added Project 21's Martin. "Photo IDs of the sort necessary to vote in states such as Indiana are a growing everyday requirement in the post-9/11 world for security

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reasons as well as for business transactions. Where government isn't already helping and making it easier for those without such identification to obtain it, steps can and should be taken. This should silence all critics, except for those who seek to exploit existing rules to defraud people of the honor and duty of participating in the election process."

Project 21, a nonprofit and nonpartisan organization sponsored by the National Center for Public Policy Research, has been a leading voice of the African-American community since 1992. For more information, contact David Almasi at (202) 543-4110 x11 or Project21@nationalcenter.org, or visit Project 21's website at http://www.project21.org/P21Index.html.

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From: Mitchell, Cleta [CMitchell@foley.com]
Sent: Wednesday, May 21, 2008 6:47 PM
To: Brucchieri, Danielle (Judiciary-Rep)
Subject: FW: John Samples testimony

STATEMENT of

John Samples, PhD
Director, Center for Representative Government
The Cato Institute

On the Motor Voter Act and Voter Fraud

before the

Committee on Rules and Administration
United States Senate

The Motor Voter Act and Voter Fraud

March 14, 2001

Mr. Chairman, distinguished members of the committee:

My name is John Samples. I am Director of the Center for Representative Government at The Cato Institute.

I want to thank you Mr. Chairman for inviting me to testify before the committee about election reform.

Mr. Chairman, the United States of America is the greatest example of what James Madison called "popular rule." We enjoy a legacy of democratic rights and obligations that remains the envy of the world. Differences notwithstanding, we all agree that the franchise is sacred and should be above mere partisan or individual advantage. At the same time, in the spirit of the Founding Fathers, we seek to improve our political system when necessary and possible. I appreciate the opportunity to testify today about some shortcomings of our current electoral system.

In 1994, Congress passed the National Voter Registration Act (popularly known as the "Motor Voter Act"). Congress succinctly stated the aims of the law:

- to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;
- to make it possible for Federal, State, and local governments to implement this Act in a manner that enhances the participation of eligible citizens as voters in elections for Federal office;
- to protect the integrity of the electoral process;
- to ensure that accurate and current voter registration rolls are maintained.

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The National Voter Registration Act has clearly fulfilled one of those purposes. Registration rolls grew by 20 percent from 1994 to 1998. Yet enhanced voter registration was never an end in itself. Many activists and experts believed the United States suffered from declining voter participation and that increasing registration would lead to higher voter turnout. Both of these beliefs have turned out to be wrong.

For many years political scientists saw a steady decline in the electoral turnout of the voting age population and as a percentage of registered voters. Leaders in the discipline also thought that reducing the costs of voting - primarily through easier registration - would arrest this steady decline and fortify American democracy. The National Voter Registration Act thus grew out of the findings of political science.

Political scientists have traditionally measured voting turnout as a percentage of the voting age population. Recently political scientists Samuel Popkin and Michael McDonald have shown that "voting age population" is an inaccurate gauge for measuring turnout. The Census Bureau's estimate of the voting age population includes several categories of persons ineligible to vote: non-citizens, disenfranchised felons, persons who have moved to a new residence after registration closed, and the mentally incompetent. Popkin and McDonald have produced a new and more accurate measure of the American population eligible to vote. Figure 1 shows Popkin and McDonald's revised turnout during Presidential elections as percentage of those eligible to vote. Figure 2 indicates revised turnout during off-year elections as proportion of those eligible to vote.

View Images

The United States did see a decline in voting turnout among eligible voters around 1972. Since 1974, the trend in voting turnout in national elections has been basically flat during presidential years and slightly upward during non-presidential election years. Conventional wisdom to the contrary, the United States had experienced steady turnout at the polls for about three decades. There has been no steady decline, nor a crisis of legitimacy for the American republic. The National Voter Registration Act aimed to solve a problem that did not exist.

"Motor Voter" has also failed to increase voting turnout. Looking at Popkin and McDonald's revised numbers in Figures 1 and 2, we see that turnout after 1994 is similar to turnout prior to the law. Participation in the Presidential election of 1996 was the lowest since 1948 while estimates of turnout in 2000 suggest an average performance. The same can be said of the off year elections in 1994 and 1998. The world of voting turnout before and after "Motor Voter" looks much the same. This is not really surprising. As the political scientist Martin Wattenberg has pointed out, states like North Dakota, Minnesota and Wisconsin have no or very lenient registration requirements, and yet all have seen declines in voting turnout.

In summary, we have received few of the benefits promised by the National Voter Registration Act. While registration has increased, the law has not enhanced "the participation of eligible citizens as voters in elections for Federal office." Moreover, the basic premise of "Motor Voter" - reducing the costs of registration would increase voter turnout - now seems disproved by experience. The plus side of the ledger for "Motor Voter" seems empty.

Unfortunately, the same cannot be said of the negative side of the ledger. The costs of "Motor Voter" should be measured by the other goals of the law. Congress intended for "Motor Voter" to both protect the integrity of the electoral process and to ensure officials could maintain "accurate and clean" registration rolls. Neither goal has been met.

The Motor Voter Act allowed citizens to register to vote simultaneously with an application for a driver's license, by mail, or in person. The Act made it harder to verify the identity of voters seeking to register. It also considerably complicated the states' task of keeping the registration rolls clean. For example, to remove a voter who has moved from the rolls of a voting district, the local jurisdiction has two choices. First, they could get written confirmation of the move from the citizen. Lacking that, the jurisdiction had to send a notice to the voter. If the notice card was not returned and the person did not vote in two general elections for Federal office after the notice was sent, then the jurisdiction could remove their name from the rolls.

The cost of these mailings is significant. In Indiana, for example, such a mailing would have a price tag of about $2 million or about twice the Election Division's entire annual budget. Given this price tag and the limited resources of most local election boards, we should not be surprised that the registration rolls throughout the nation are enormously inaccurate. In some counties, election administrators report, the voting roll numbers are bigger than the voting-age population.

In the short time since Election 2000, we have seen startling new evidence of the disorder of registration rolls in several states. In Indiana, for example, the Indianapolis Star looked closely at the rolls. They concluded that tens of thousands of people appear on the voter rolls more than once, that more than 300 dead people were registered, and that three convicted killers and two convicted child molesters were on the rolls. In general, experts believe one in five names on the rolls in Indiana do not belong there. A recent study in Georgia found more than 15,000 dead people on active voting rolls statewide. Alaska, according to Federal Election Commission, had 502,968 names on its voter rolls in 1998. The census estimates only 437,000 people of voting age were living in the state that year. Similar studies in other states would no doubt return similar data.

In the balance of my testimony, I would like to focus on the events in St. Louis, Missouri, both during the election of 2000 and thereafter. I believe these events point out the real costs "Motor Voter" has imposed on the United States.

Since last fall, "Operation Big Vote" has been active in the St. Louis area as part of a national campaign -- promoted by Democrats -- to register more African-American voters and get them to the polling booth. This effort delivered 3,800 voter registration cards to the St. Louis Elections Board on the February 7, 2001, the deadline for the March mayoral primary in that city.

A cursory check of the registration cards turned up questionable names. Shortly thereafter, election board workers spent an entire day calling the names listed on the cards and found that nearly all of them were fraudulent. Many of them sought to register prominent people, dead or alive - as well as at least three deceased aldermen and a dog. The media have reported that close examinations have turned up cards that attempted to register prominent businessmen using their childhood addresses, a former deputy mayor using an old address for an alderman, and a former alderman who has been dead for years. They also found cards for convicted felons and for residents who did not seek to register themselves in the primary. The woman at the center of this vote fraud investigation "doesn't deny" that some of her canvassers may have turned in bogus voter registration cards. A grand jury convened by St. Louis Circuit Attorney Jennifer Joyce has begun interviewing witnesses regarding the 3,800 bogus registration cards. St. Louis police have obtained a warrant and searched the house of the Operation Big Vote director for evidence.

Not surprisingly, many St. Louis residents are angry that someone had registered them and knew information such as their Social Security numbers. Some of the people registered by the bogus cards told Election Board workers that someone calling himself "Big Mike" came to their homes and said he was

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with the Election Board and wanted to register them.

This is not the first time Operation Big Vote has been at the center of a voter registration controversy. In 1994, the director of Operation Big Vote was the subject of a similar investigation into fraudulent voter registration cards found among the14,000 that the group had collected to aid a statewide campaign to allow riverboat casinos. No one was indicted.

The implications of the registration fraud scandal in St. Louis are not limited to current events. St. Louis Election Board officials now want to examine 29,500 voter registration cards that came in shortly before the deadline for the November 7 election, in light of discovering that that most of 3,800 cards submitted in February were bogus. John Hancock, executive director of the Missouri Republican Party, called for another look at the last-minute registrations made for November's election. He also said he preferred that U.S. Attorney Audrey Fleissig take charge "because I think the federal government can bring more force to bear on an investigation of vote fraud." The last-minute registrations last fall could throw into question the close November election in Missouri if a sizable number were fraudulent. Democrat Bob Holden won the Missouri contest for governor by about 21,000 votes statewide. In this way, the loose registration process set up by "Motor Voter" has cast doubt on the integrity and outcome of elections in Missouri last year.

Many will recall the election night controversy in St. Louis. A judge ordered that voting places be kept open late only to be overruled shortly thereafter by a Federal appeals court. The initial ruling accepted the claims of local activists who maintained that thousands of voters had been wrongly placed on an inactive list. As it turned out, local officials had acted properly in composing the inactive list. Missed in the controversy was the fact that up to 400 unqualified voters cast ballots in St. Louis in the 2000 election.

I turn now to the costs paid by the nation as a result of the National Voter Registration Act. I begin with concrete dollars estimates, but I would add that I think perhaps the more important costs have been imposed on the civic culture of the United States.

The clogged rolls have cost taxpayers thousands of dollars in cleanup costs and additional election expenses. For example, the Indiana Election Division has conducted its statewide duplicate program four times at a total cost of about $900,000. Moreover, several county officials in Indiana have increased the number of voting sites unnecessarily because the lists are so inaccurate. The county that includes the transient student population of Indiana University at Bloomington has added about a half dozen precincts since "Motor Voter" became law. Each new precinct costs county taxpayers $10,000 for two voting machines and about $500 per election for additional poll workers and supplies. Statewide in Indiana, more than 200 precincts have been added since the law went into effect, according to state election officials. Such costs are not trivial, especially since the state gets nothing in return for such spending. Such costs for the nation as a whole must be large.

We have also learned about the threat of vote fraud posed by such wildly inaccurate voting rolls. Susan Morandi, Nevada's deputy secretary of state for elections, noted that the Motor Voter Act made registration easier but also made the process "much more open to voter fraud." Experts like Deborah Phillips of the Voter Integrity Project add that the trend toward mail-in and absentee voting exacerbates this problem, since those seeking to manipulate the system can pretend to be a dead person or someone who has moved, and then cast a ballot.

The evidence from St. Louis and elsewhere strongly suggests the reality of registration fraud. Looked at technically, registration fraud is not the same as vote fraud. However, as a practical matter, we should

ask why anyone would go to the trouble of committing registration fraud if they did not intend to follow through and commit vote fraud. Otherwise, committing registration fraud becomes a senseless act. Are we to believe that individuals commit registration fraud for thrills or simply as a practical joke? The existence of fraudulent registrations suggests the greater threat of a corrupt election, a danger that we dismiss at our peril. Given the state of the registration rolls, a major vote fraud disaster remains a distinct possibility.

We should not presume that vote fraud is an inconsequential danger. On January 22, 2001, the Miami Herald reported that at least 2,000 illegal votes had been cast in about a third of Florida's counties -- very roughly 6,000 for the state as a whole. On January 9, 2001, it revealed that 452 felons had voted unlawfully in Broward County alone. In Georgia, analysts found that over 5,400 dead people had voted over the past 20 years. As I mentioned, at least 400 unqualified voters cast a ballot in St. Louis last November.

The damage done by vote fraud, of course, is clear. Breaking any law, but especially laws meant to protect the integrity of the electoral process, damages our nation. Vote fraud also devalues the votes of those who register and vote properly. It also strikes many people as unfair: most citizens bear the burdens of exercising the right to vote, those who vote illegally claim the right and wish to escape the minimal burdens associated with that right.

The possibility of vote fraud also harms the nation by calling into question the integrity of our electoral system. The Supreme Court has said that the federal government may regulate campaign finance to prevent corruption or the appearance of corruption. Allow me to suggest that we should similarly be concerned about the appearance of our electoral process. The lax standards for registration encouraged by "Motor Voter" have left the voter rolls in a shambles in many states. As St. Louis shows, the uncertainty surrounding the rolls breeds mistrust and can call the integrity of the system into question. "Motor Voter" has fomented "the appearance of corruption" that has, fairly or not, done real damage to American government. Political scientists have charted the decline in trust in government over the past four decades. I believe "Motor Voter" has been part of that problem, not part of its solution.

The inflation of the registration rolls has also clearly misled Americans about the state of their democracy. Inflated and inaccurate rolls give a false measure of voting turnout as a proportion of registered voters. In fact, we now know that voting turnout as a percentage of registered voters is much higher than we believed because registration rolls are so inflated. In that sense, the news about voting is much better than we thought, and I suspect that we have seen no decline in voting as a percentage of registered voters. We may even have seen a rise in that measure of voter participation.

Finally, politics is about cooperation as well as conflict. The American people expect their representatives to fight hard for a cause but also to make compromises that serve the public good. The general uncertainty surrounding registration procedures - an uncertainty exacerbated by "Motor Voter" - has increased mistrust between the two political parties in Missouri and perhaps elsewhere. Missouri Republicans now believe with plausible reason that some Democrats tried to commit vote fraud last election day. Democrats, on the other hand, suggest Republicans wish to disenfranchise their constituents. Such conflict inevitably weakens our political system and actuates unnecessary partisan rancor that precludes potential bipartisan agreement on some issues.

Mr. Chairman, judged by its purposes, the National Voter Registration Act should be judged a failure. The Act has brought about a substantial increase in the number of registered voters. However, that increase has been bought at a high price. Specifically, the Act has made it difficult if not impossible to maintain clean registration rolls, a major purpose of the law. Moreover, the inaccuracy in the rolls

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caused by the Act has thrown into doubt the integrity of our electoral system. Finally, the Act has also failed to achieve its other purpose of increasing voter turnout. In sum, the National Voter Registration Act has provided few of its promised benefits and imposed significant costs on the nation. For that reason, "Motor Voter" seems ripe for reform.

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Written Testimony of
Robert A. Simms, Georgia Deputy Secretary of State
Before the United States Senate
Committee on Rules & Administration

Executive Summary

To date, much of the opposition to photo identification requirements in connection with voting has been driven by rhetoric and hyperbole but completely lacking in facts and data.

The fact is that the activity the photo identification requirement was designed to prevent -- in-person voter fraud -- does occur and has occurred in the state of Georgia. One analysis conducted by the Atlanta Journal-Constitution and WSB-TV found that over 5,000 votes had been cast in the names of deceased voters over the prior 20 years. A 1997 investigation in Dodge County, Georgia uncovered one of the nation's largest voting fraud cases.

Opponents of photo identification requirements are quick to point out that only a nominal number of prosecutions for in-person voter fraud have been brought nationally. However, there is no acceptable level of voter fraud. Photo identification requirements ensure the integrity of elections by preventing illegally cast votes from cancelling votes cast legally.

The opponents of photo identification frequently assert that large numbers of elderly, poor and minority voters will be disenfranchised by the requirement. However, in his September 2007 ruling for the State of Georgia in the federal court challenge to the state's photo identification law, United States District Court Judge Harold T. Murphy found that "Plaintiffs have not demonstrated that the Photo ID requirement places an undue or significant burden on the right to vote." Judge Murphy added, "Plaintiffs have failed to produce any evidence of any individual...who would undergo any appreciable hardship to obtain photo identification in order to be qualified to vote."

In the three months after Judge Murphy's decision, more than 100 Georgia counties and municipalities held elections with the photo identification law in place. All occurred without incident or legal challenge. The first statewide test of the law occurred on February 5, 2008 with the administration of Georgia's Presidential Preference Primaries. Voter turnout for the primaries surpassed expectations and set state records. In fact, more than 2,000,000 votes were cast in the primaries for president with only 409 voters lacking identification for voting purposes. This represented 0.02% of all of the votes cast, and, after voters returned with photo ID, less than 0.01%.

Georgia also saw a substantial increase in voter registration in the six months prior to the primaries, particularly among minority voters. Registration among African American females increased by more than 20%, while registration among African American males increased by more than 14%. In short, the predictions of mass disenfranchisement simply did not come to fruition.

Our experiences in Georgia show that states can take real and meaningful steps to combat voter fraud by passing photo identification laws without disenfranchising voters.

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Written Testimony of
Robert A. Simms, Georgia Deputy Secretary of State
Before the United States Senate
Committee on Rules & Administration

Chairwoman Feinstein, Senator Bennett and members of the Committee: I would like to thank you for the opportunity to testify before you today about voter fraud, voter identification laws and ways in which states are addressing these issues.

Today's hearing is very important, and it is my hope that this occasion will be the beginning of a substantive discussion on the important issue of voter fraud and steps elections officials are taking to combat it. Unfortunately, much of the debate on the issue of photo identification requirements in connection with voting is driven by rhetoric, hyperbole, and lacking in facts and data. In this regard, I view my testimony today as an opportunity to be a "Myth-buster" of sorts, because in-person voter fraud has in fact occurred in Georgia, and our state's photo identification law has been successfully implemented and enforced without incident, controversy and, most importantly, without a negative impact on Georgia's voters.

I think all of us can – and should – agree that everyone involved in this dialogue is motivated by the best of intentions. It has been too easy for individuals on both sides of the debate to resort to the basest forms of criticisms of those on the other side. Supporters of photo identification requirements are too often derided as 'insensitive'; 'racist'; or part of some conscious conspiracy to suppress voters who may not support a particular party's candidates. On the other hand, those who oppose voter identification laws are often accused of supporting cheating and fraud; lacking common sense or judgment; or being motivated by purely partisan political motives. For the elected state officials charged by their citizens with making these policy decisions, the considerations are very real. Ultimately, it is the best interests of the state – and the people – that truly motivate our elected officials.

I'd like to address one of the myths being discussed by the Committee today which has been hotly debated: does in-person voter fraud ever occur? Opponents of photo identification laws say that it does not; proponents say that it can and does occur.

In-person voter fraud does in fact occur and has occurred in the state of Georgia. Deceased voters have cast votes in Georgia elections. This is a fact. Analysis conducted by the Atlanta Journal-Constitution and WSB-TV found that more than 5,000 votes had been cast in the names of deceased voters over the past 20 years. (Davis, Jingle. "Even death can't stop some voters. The Atlanta Journal-Constitution 6 November 2000: p. A1.)

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Georgia has also been the site of one of the largest voting fraud cases prosecuted in the country. A 1997 federal and state investigation in Dodge County led to the indictments of more than 20 local residents who were engaging in a vote-buying scheme for 2 local candidates. *Id.* at A1.

Opponents of photo identification requirements are quick to point out that only a nominal number of prosecutions for in-person voter fraud have been brought nationally. These individuals argue that the lack of prosecutions is the best evidence that no fraud is really occurring. Therefore, photo identification laws can not really be about fraud; they have to be about something else. This is a fundamentally flawed argument.

It is important to recognize that in-person voter fraud may not even be evident until AFTER the election has occurred or is even certified. In-person voter fraud is a crime for which there are often no witnesses, and the victims may even be unaware that a crime has occurred. Moreover, because elections are typically certified within a week after they are held and statutes typically provide only a very narrow timeframe in which the results of an election can be challenged, states – and their citizens – are left with little recourse to address fraud that may have already occurred. Accordingly, cases of in-person voter fraud are very difficult to pursue and even more difficult to prosecute.

The Commission on Federal Election Reform made these points in its 2005 report:

> There is no evidence of extensive fraud in U.S. elections or of multiple voting, but both occur, and it could affect the outcome of a close election. The electoral system cannot inspire public confidence if no safeguards exits to deter or detect fraud or to confirm the identity of voters. Photo IDs currently are needed to board a plane, enter federal buildings, and cash a check. Voting is equally important.
>
> . . . .
>
> In addition to federal investigations, state attorneys general and local prosecutors handle cases of election fraud. Other cases are never pursued because of the difficulty in obtaining evidence for prosecution or because of the low priority given to election fraud cases. One district attorney, for example, explained that he did not pursue allegations of fraudulent voter registration because it is a victimless and nonviolent crime.

Commission on Federal Election Reform, *Building Confidence in U.S. Elections - Report of the Commission on Federal Election Reform*, September 2005, at 18, 45.

For the reasons stated in the Report, states must pass laws and develop processes and procedures that ensure the voting rights of all voters. This has to include laws that proactively address the potential for voter fraud. States should take steps to ensure that

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votes cast legally are not cancelled out by those who may wish to engage in fraud. This is why photo identification requirements are a necessary and important tool to ensure the integrity of elections.

In his ruling for the State of Georgia in the federal court challenge to the state's photo identification law, United States District Court Judge Harold T. Murphy, a President Jimmy Carter appointee to the bench, recognized the state's interest in passing a photo identification law to prevent fraud:

> For the reasons discussed above, the Court finds that Plaintiffs have not demonstrated that the Photo ID requirement places an undue or significant burden on the right to vote. *Additionally, Plaintiffs have failed to demonstrate that the Photo ID requirement is not reasonably related to the State's interest in preventing fraud in voting.* For those reasons, the Court finds that Plaintiffs have failed to succeed on the merits of their claim that the 2006 Photo ID Act violates the Equal Protection Clause because it imposes an undue burden on the right to vote.

Common Cause of Ga. v. Billups, 504 F.Supp.2d 1333, 1382 (N.D. Ga. 2007) (emphasis added).

While opponents of photo identification laws typically dismiss the state's interest in passing these laws by citing prosecution data, they abandon the use of data when their arguments turn to the number of *potential* voters who will be disenfranchised by a photo identification law. Numbers are replaced by rhetoric, typically the kind that gains headline attention but is virtually never supported by real experiences, facts or evidence.

In no state has this been clearer than in Georgia. Lawyers brought separate lawsuits in both state and federal court attempting to challenge the state's photo identification law. The legal challenges and public relations fights lasted more than two years. Opponents of the law were quick to state – emphatically – that passage and implementation of the law would disenfranchise hundreds-of-thousands of Georgia's voters. Not for a lack of trying, the lawyers in both the state and federal court cases simply were unable to find a single individual who would be adversely impacted by Georgia's photo identification requirements.

When the State of Georgia finally had its day in court and evidence was proffered and considered, it became clear that the emotional and hyperbolic rhetoric used to argue against the state's photo identification law was simply empty oratory. Again, Judge Murphy made this abundantly clear in his decision for the state:

> As the *Rokita* court noted, voters who lack Photo ID undoubtedly exist somewhere, but the fact that Plaintiffs, in spite of their efforts, have failed to uncover anyone "who can attest to the fact that he/she will be prevented from voting" provides significant

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> support for a conclusion that the Photo ID requirement does not unduly burden the right to vote.
>
> Plaintiffs simply have not presented sufficient admissible evidence to show that the Photo ID requirement severely burdens the right to vote. Indeed, as the court noted in *Rokita*: "Despite apocalyptic assertions of wholesale voter disenfranchisement, Plaintiffs have produced not a single piece of evidence of any identifiable registered voter who would be prevented from voting pursuant to [the 2006 Photo ID Act] because of his or her inability to obtain the necessary photo identification. Similarly, Plaintiffs have failed to produce any evidence of any individual ... who would undergo any appreciable hardship to obtain photo identification in order to be qualified to vote."

Common Cause of Ga. v. Billups,, 504 F.Supp.2d at 1380 (emphasis added, citations omitted).

The plaintiffs' inability to produce a single voter who would be adversely impacted by the law should be a very important consideration for this Committee. The two individual plaintiffs who the lawyers identified less than a month before trial, but almost two years after bringing suit against the state in the Georgia *Common Cause* case, testified in court that they both could obtain an ID if they had to get one. Of the two individual plaintiffs named in the case, one individual testified that she did not mind getting a photo identification and did not think it would be hard to get one, while the other's lawyers drove him nearly 200 miles to testify at trial while at the same time arguing that traveling seven miles to his county registrar's office, or voting by absentee ballot, was too great a burden.

As Judge Murphy recognized in referring to the *Rokita* case in Indiana, the inability to produce evidence against a photo identification requirement or an adversely-affected voter isn't unique to the State of Georgia. Opponents to photo identification requirements in Indiana also failed to produce voters who would be disenfranchised by that state's law. In fact, the case and the appeal now being considered by the United States Supreme Court is being led by the Indiana Democratic Party. Not a single individual plaintiff is named in that case.

In the three months after the September 2007 federal court challenge to the Georgia law was decided for the state, more than 100 Georgia counties and municipalities held elections with the photo identification law in place. All occurred without incident or legal challenge. The first statewide test of the law occurred on February 5, 2008 with the administration of the Presidential Preference Primaries. Once again, photo identification opponents' inflammatory rhetoric was shown to be hollow and empty.

Turnout for the Presidential Preference Primaries surpassed expectations and set state records. Over 2,000,000 Georgians cast votes for their preferred nominee, while having to show a photo identification at the polls. For comparison purposes, this turnout

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represented a nearly 1,000,000 vote increase from 2004 and accounted for nearly 45% of the state's registered voters. There were nearly 100,000 more votes cast in the Democratic primary than the Republican primary, and turnout in the state's urban areas was also very high.

However, the most important statistic from the primaries is that of the more than 2,000,000 votes cast, only 409 voters did not possess photo identification at the time they came to vote in person. This represents a microscopic percentage of the votes cast, 0.02%.

That figure, however, was even further reduced. Under Georgia's photo identification law, voters who lack photo identification at the time of voting in-person are allowed to cast a provisional ballot. Voters then have two days to return to their local registrar's office to verify their identities and have their votes counted. Of the 409 voters who cast a provisional ballot in Georgia's Presidential Preference Primaries, 155 returned with photo identification to verify their identity. When the results of the election were certified, 0.01% of the voters were not able to have their ballots counted because they did not return to the registrar's office with one of the acceptable forms of identification.

Opponents of the law are eager to argue that even one vote lost because of the law is one too many, but they never have any proof of why the voter failed to return with an acceptable ID. It is important to consider that there are potentially many reasons why a voter may not return to verify his or her identity, not the least of which is the voter may not have been who he or she claimed to be. Furthermore, as neither of the outcomes of the primaries was in dispute, these voters may have decided to not return because their votes were not going to change the outcome of the election.

In short, the predictions of mass disenfranchisement simply did not come to fruition. A very small number of voters showed up at the polls without a Photo ID and an even fewer number chose not to return with one in order to have their provisional votes cast, a decision for which no one knows the reason.

Opponents of the law argue that it is not simply the number of people who show up without an ID or fail to return to validate their ballots that count, but that the law discourages people from bothering to vote at all. The sheer turnout in Georgia on February 5 (and before, due to advance voting) itself casts doubt on that argument. However, there is another statistic that clearly shows that Georgia's voter ID law is not discouraging people from voting. In addition to the huge turnout, Georgia also saw a substantial increase in voter registration in the six months prior to the primaries, particularly among minority voters. Registration among African American females increased by more than 20%, while registration among African American males increased by more than 14%. Thus, while opponents have long contended that the laws would suppress turnout and participation, once again, the experiences in Georgia have proven those arguments to be untrue as well.

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It is also important to note that these changes did not occur in a vacuum or that the state changed the law and simply hoped for the best. The Office of Georgia Secretary of State Karen C. Handel developed and implemented a voter education and outreach program to inform Georgia voters of the photo identification requirement. This effort fulfilled a commitment that Secretary Handel made to Georgia voters when she took office in January 2007. As a strong and vocal supporter of photo identification laws, she also understands that the state has a responsibility to the voters to inform them about the law and to help them comply with it.

The education and outreach program included direct voter contacts by mail, public service announcements, and commercial radio advertising. In the six months before the primaries, Secretary Handel mailed and distributed more than 2 million brochures to voters and through churches, community groups, and non-governmental organizations. In addition, Georgia utilities and cable service providers provided invaluable help by including messages on customer bills and through newsletters and updates. Consistent with the lack of negative impact that the photo identification law has had on Georgia voters, in the days leading to the primaries, the 1-800 phone number established by Secretary Handel to address potential questions by voters received more complaints about utility bills than questions about the photo identification requirements.

The program designed by our office was another important consideration for Judge Murphy in the *Common Cause* case.

> . . . [T]he evidence revealed that the State made exceptional efforts to contact voters who potentially lacked a valid form of Photo ID issued by the DDS and who resided in the twenty-three counties that planned to hold September 18, 2007, elections, and to inform those voters of the availability of a Voter ID card, where to obtain additional information, and the possibility of voting absentee without a Photo ID. The evidence in the record indicates that the State also provided information to voters in general by advertising on the Clear Channel radio network, and by partnering with libraries and nongovernmental organizations. Additionally, the Photo ID requirement has been the subject of many news reports, editorials, and news articles. Under those circumstances, Plaintiffs are hard-pressed to show that voters in Georgia, in general, are not aware of the Photo ID requirement.

Common Cause of Ga. v. Billups, 504 F. Supp. 2d 1378-1379.

It is incumbent upon the Committee to consider that yes, there are myths concerning in-person voter fraud and photo identification laws. And then, there are facts. Contrary to what has been widely reported and what is likely to be heard in testimony

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today, the myths are from those who oppose photo identification laws and the facts are with those who have implemented them.

Our experiences in Georgia – much like those in Indiana – show that states can take real and meaningful steps to combat voter fraud by passing photo identification laws without disenfranchising our voters.

I would like to thank the Committee for giving me the opportunity today to testify and for taking the time to conduct a hearing on these very important issues.

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IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	No. _____
	)	
v.	)	COUNT ONE:
	)	42 U.S.C. § 1973i(c) and
STEPHANIE L. DAVIS,	)	18 U.S.C. § 2
a/k/a LATISHA REED,	)	NMT: 5 years and $250,000
[DOB: XX/XX/1967]	)	Class D Felony
	)	NMT: 3 years Supervised Release
Defendant.	)	
	)	COUNT TWO:
	)	42 U.S.C. § 1973gg-10 and
	)	18 U.S.C. § 2
	)	NMT: 5 years and $250,000
	)	Class D Felony
	)	NMT: 3 years Supervised Release
	)	
	)	$100 Special Assessment on each
	)	count.

I N D I C T M E N T

THE GRAND JURY CHARGES THAT:

COUNT ONE

1. At all times material herein:

a. The Board of Election Commissioners for Kansas City, Missouri, receives and processes voter registration applications submitted for the purpose of registering new voters or, if the voter is already registered, for updating the registration information maintained by the Board.

b. Election registration in the State of Missouri is unitary, that is, a registrant registers once to become simultaneously eligible to vote for federal as well as non-federal candidates.

c. On November 7, 2006, an election will be held in Missouri, including in Kansas City and Jackson County, for the

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purpose of selecting and electing candidates for federal, state, and local offices. Qualified voters eligible to vote under the laws of the State of Missouri cast ballots for candidates of their preference at these elections.

d. In the general election on November 7, 2006, candidates for members of the United States Senate and House of Representatives will be on the ballot in the State of Missouri.

e. ACORN is a not-for-profit organization, the mission of which is to improve minority and low-income communities.

f. Project Vote is a not-for-profit organization that works with ACORN to register voters for federal and local elections.

g. ACORN and Project Vote recruit and assign workers to visit low-income and minority neighborhoods in Kansas City, Jackson County, Missouri, and elsewhere, to obtain voter registrations. The workers are trained and instructed regarding how to obtain voter registrations and the preparation of voter registration applications, including that the actual voter must sign the voter application and that a forged signature is a violation of the law.

2. In or about August and September 2006, at Kansas City, in the Western District of Missouri, the defendant STEPHANIE L. DAVIS, a/k/a Latisha Reed, worked as a voter registration recruiter for ACORN, obtaining voter registrations.

3. On or about September 18, 2006, at Kansas City, in the Western District of Missouri, the defendant STEPHANIE L. DAVIS,

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a/k/a Latisha Reed, knowingly and willfully caused to be submitted to the Kansas City Board of Election Commissioners voter registration applications in the name of XXXX which forms falsely stated the address of the voter being registered, to wit, the said defendant caused to be submitted Missouri Voter Registration Application No. 3187197 in the name of XXXX, showing an address of XXXX, Kansas City, Missouri; Missouri Voter Registration Application No. 3162014 in the name of XXXX, showing an address of XXXX, Kansas City, Missouri; and an unnumbered application in the name of XXXX, showing a false address of XXXX, Kansas City, Missouri.

All in violation of Title 42, United States Code, Section 1973i(c), and Title 18 United States Code, Section 2.

COUNT TWO

1. The Grand Jury incorporates paragraphs 1 and 2 of Count One as if fully set forth herein.

2. The qualified voters in the November 7, 2006, election have a right guaranteed by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution to have the aforesaid election officials count their votes and certify elections based on the number of valid ballots cast in the said election by qualified voters.

3. On or about September 18, 2006, at Kansas City, in the Western District of Missouri, the defendant the defendant STEPHANIE L. DAVIS, a/k/a Latisha Reed, knowingly and willfully caused to be submitted to the Kansas City Board of Election

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Commissioners materially false voter registration applications, and thereby attempted to deprive or defraud the residents of the State of Missouri of a fair and impartially conducted election process, to wit, the said defendant caused to be submitted voter registration applications in the name of XXXX which falsely stated the address of the voter being registered, to wit, the said defendant caused to be submitted Missouri Voter Registration Application No. 3187197 in the name of XXXX, showing an address of XXXX, Kansas City, Missouri; Missouri Voter Registration Application No. 3162014 in the name of XXXX, showing an address of XXXX, Kansas City, Missouri; and an unnumbered application in the name of XXXX, showing an address of XXXX, Kansas City, Missouri, an address which does not exist.

All in violation of Title 42, United States Code, Section 1973gg-10, and Title 18, United States Code, Section 2.

A TRUE BILL

_____
FOREPERSON OF THE GRAND JURY

_____
Linda Parker Marshall #24954
Assistant United States Attorney

Dated:_____

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IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	No. _____
	)	
v.	)	COUNT ONE:
	)	42 U.S.C. § 1973i(c) and
DALE D. FRANKLIN,	)	18 U.S.C. § 2
[DOB: XX/XX/1962]	)	NMT: 5 years and $250,000
	)	Class D Felony
Defendant.	)	NMT: 3 years Supervised Release
	)	
	)	COUNT TWO:
	)	42 U.S.C. § 1973gg-10 and
	)	18 U.S.C. § 2
	)	NMT: 5 years and $250,000
	)	Class D Felony
	)	NMT: 3 years Supervised Release
	)	
	)	
	)	$100 Special Assessment on each count.

I N D I C T M E N T

THE GRAND JURY CHARGES THAT:

COUNT ONE

1. At all times material herein:

a. The Board of Election Commissioners for Kansas City, Missouri, receives and processes voter registration applications submitted for the purpose of registering new voters or, if the voter is already registered, for updating the registration information maintained by the Board.

b. Election registration in the State of Missouri is unitary, that is, a registrant registers once to become simultaneously eligible to vote for federal as well as non-federal candidates.

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c. On November 7, 2006, an election will be held in Missouri, including in Kansas City and Jackson County, for the purpose of selecting and electing candidates for federal, state, and local offices. Qualified voters eligible to vote under the laws of the State of Missouri cast ballots for candidates of their preference at these elections.

d. In the general election on November 7, 2006, candidates for members of the United States Senate and House of Representatives will be on the ballot in the State of Missouri.

e. ACORN is a not-for-profit organization, the mission of which is to improve minority and low-income communities.

f. Project Vote is a not-for-profit organization that works with ACORN to register voters for federal and local elections.

g. ACORN and Project Vote recruit and assign workers to visit low-income and minority neighborhoods in Kansas City, Jackson County, Missouri, and elsewhere, to obtain voter registrations. The workers are trained and instructed regarding how to obtain voter registrations and the preparation of voter registration applications, including that the actual voter must sign the voter application and that a forged signature is a violation of the law.

2. In or about late September and early October 2006, at Kansas City, in the Western District of Missouri, the defendant DALE D. FRANKLIN worked as a voter registration recruiter for ACORN, obtaining voter registrations.

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3. In or about late September and early October 2006, at Kansas City, in the Western District of Missouri, the defendant DALE D. FRANKLIN knowingly and willfully caused to be submitted to the Kansas City Board of Election Commissioners a voter registration application which falsely stated the address and telephone number of the voter being registered, and which was not signed by the applicant, to wit, the said defendant submitted Missouri Voter Registration Application No. 3282610 in the name of XXXX on which the address and telephone number listed were false and the signature thereon was not that of the applicant.

All in violation of Title 42, United States Code, Section 1973i(c), and Title 18 United States Code, Section 2.

COUNT TWO

1. The Grand Jury incorporates paragraphs 1 and 2 of Count One as if fully set forth herein.

2. The qualified voters in the November 7, 2006, election have a right guaranteed by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution to have the aforesaid election officials count their votes and certify elections based on the number of valid ballots cast in the said election by qualified voters.

3. In or about late September and early October 2006, at Kansas City, in the Western District of Missouri, the defendant DALE D. FRANKLIN knowingly and willfully caused to be submitted to the Kansas City Board of Election Commissioners a materially false voter registration application, and thereby attempted to

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deprive or defraud the residents of the State of Missouri of a fair and impartially conducted election process, to wit, the said defendant submitted Missouri Voter Registration Application No. 3282610 in the name of XXXX on which the address and telephone number listed were false and the signature thereon was not that of the applicant.

All in violation of Title 42, United States Code, Section 1973gg-10, and Title 18, United States Code, Section 2.

A TRUE BILL

_____
FOREPERSON OF THE GRAND JURY

_____
Linda Parker Marshall #24954
Assistant United States Attorney

Dated:_____

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IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	No. _____
	)	
v.	)	COUNT ONE:
	)	42 U.S.C. § 1973i(c) and
BRIAN GARDNER,	)	18 U.S.C. § 2
[DOB: XX/XX/1966]	)	NMT: 5 years and $250,000
	)	Class D Felony
Defendant.	)	NMT: 3 years Supervised Release
	)	
	)	COUNT TWO:
	)	42 U.S.C. § 1973gg-10 and
	)	18 U.S.C. § 2
	)	NMT: 5 years and $250,000
	)	Class D Felony
	)	NMT: 3 years Supervised Release
	)	
	)	$100 Special Assessment on each count.

I N D I C T M E N T

THE GRAND JURY CHARGES THAT:

COUNT ONE

1. At all times material herein:

a. The Board of Election Commissioners for Kansas City, Missouri, receives and processes voter registration applications submitted for the purpose of registering new voters or, if the voter is already registered, for updating the registration information maintained by the Board.

b. Election registration in the State of Missouri is unitary, that is, a registrant registers once to become simultaneously eligible to vote for federal as well as non-federal candidates.

c. On November 7, 2006, an election will be held in Missouri, including in Kansas City and Jackson County, for the

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purpose of selecting and electing candidates for federal, state, and local offices. Qualified voters eligible to vote under the laws of the State of Missouri cast ballots for candidates of their preference at these elections.

d. In the general election on November 7, 2006, candidates for members of the United States Senate and House of Representatives will be on the ballot in the State of Missouri.

e. ACORN is a not-for-profit organization, the mission of which is to improve minority and low-income communities.

f. Project Vote is a not-for-profit organization that works with ACORN to register voters for federal and local elections.

g. ACORN and Project Vote recruit and assign workers to visit low-income and minority neighborhoods in Kansas City, Jackson County, Missouri, and elsewhere, to obtain voter registrations. The workers are trained and instructed regarding how to obtain voter registrations and the preparation of voter registration applications, including that the actual voter must sign the voter application and that a forged signature is a violation of the law.

2. In or about late September 2006, at Kansas City, in the Western District of Missouri, the defendant BRIAN GARDNER worked as a voter registration recruiter for ACORN, obtaining voter registrations.

3. On or about September 25, 2006, at Kansas City, in the Western District of Missouri, the defendant BRIAN GARDNER

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knowingly and willfully caused to be submitted to the Kansas City Board of Election Commissioners a voter registration application which form falsely stated the name of the voter being registered, to wit, the said defendant caused to be submitted Missouri Voter Registration Application No. 3282572 for XXXX, which was false in that XXXX did not register to vote on or about September 25, 2006; she did not reside at the address shown on the voter registration application; her date of birth is not that shown on the voter registrations; and the signature on the voter registration was not signed by XXXX.

All in violation of Title 42, United States Code, Section 1973i(c), and Title 18 United States Code, Section 2.

COUNT TWO

1. The Grand Jury incorporates paragraphs 1 and 2 of Count One as if fully set forth herein.

2. The qualified voters in the November 7, 2006, election have a right guaranteed by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution to have the aforesaid election officials count their votes and certify elections based on the number of valid ballots cast in the said election by qualified voters.

3. On or about September 25, 2006, at Kansas City, in the Western District of Missouri, the defendant BRIAN GARDNER knowingly and willfully caused to be submitted to the Kansas City Board of Election Commissioners a materially false voter registration application, and thereby attempted to deprive or

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defraud the residents of the State of Missouri of a fair and impartially conducted election process, to wit, the said defendant caused to be submitted Missouri Voter Registration Application No. 3282572 for XXXX, which was false in that XXXX did not register to vote on or about September 25, 2006; she did not reside at the address shown on the voter registration application; her date of birth is not that shown on the voter registrations; and the signature on the voter registration was not signed by XXXX.

All in violation of Title 42, United States Code, Section 1973gg-10, and Title 18, United States Code, Section 2.

A TRUE BILL

_____
FOREPERSON OF THE GRAND JURY

_____
Linda Parker Marshall #24954
Assistant United States Attorney

Dated:_____

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IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	No. _____
	)	
v.	)	COUNT ONE:
	)	42 U.S.C. § 1973i(c) and
KWAIM A. STENSON,	)	18 U.S.C. § 2
[DOB: XX/XX/1987]	)	NMT: 5 years and $250,000
	)	Class D Felony
Defendant.	)	NMT: 3 years Supervised Release
	)	
	)	COUNT TWO:
	)	42 U.S.C. § 1973gg-10 and
	)	18 U.S.C. § 2
	)	NMT: 5 years and $250,000
	)	Class D Felony
	)	NMT: 3 years Supervised Release
	)	
	)	
	)	$100 Special Assessment on each count.

I N D I C T M E N T

THE GRAND JURY CHARGES THAT:

COUNT ONE

1. At all times material herein:

a. The Board of Election Commissioners for Kansas City, Missouri, receives and processes voter registration applications submitted for the purpose of registering new voters or, if the voter is already registered, for updating the registration information maintained by the Board.

b. Election registration in the State of Missouri is unitary, that is, a registrant registers once to become simultaneously eligible to vote for federal as well as non-federal candidates.

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c. On November 7, 2006, an election will be held in Missouri, including in Kansas City and Jackson County, for the purpose of selecting and electing candidates for federal, state, and local offices. Qualified voters eligible to vote under the laws of the State of Missouri cast ballots for candidates of their preference at these elections.

d. In the general election on November 7, 2006, candidates for members of the United States Senate and House of Representatives will be on the ballot in the State of Missouri.

e. ACORN is a not-for-profit organization, the mission of which is to improve minority and low-income communities.

f. Project Vote is a not-for-profit organization that works with ACORN to register voters for federal and local elections.

g. ACORN and Project Vote recruit and assign workers to visit low-income and minority neighborhoods in Kansas City, Jackson County, Missouri, and elsewhere, to obtain voter registrations. The workers are trained and instructed regarding how to obtain voter registrations and the preparation of voter registration applications, including that the actual voter must sign the voter application and that a forged signature is a violation of the law.

2. In or about July and August 2006, at Kansas City, in the Western District of Missouri, the defendant KWAIM A. STENSON worked as a voter registration recruiter for ACORN, obtaining voter registrations.

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3. On or about July 31, 2006, at Kansas City, in the Western District of Missouri, the defendant KWAIM A. STENSON knowingly and willfully caused to be submitted to the Kansas City Board of Election Commissioners a false voter registration application, to wit, the said defendant caused to be submitted Missouri Voter Registration Application No. 3077376 for XXXX, which was false in that Damian Ross did not register to vote on or about July 31, 2006, and the signature thereon was not that of Damian Ross.

All in violation of Title 42, United States Code, Section 1973i(c), and Title 18 United States Code, Section 2.

COUNT TWO

1. The Grand Jury incorporates paragraphs 1 and 2 of Count One as if fully set forth herein.

2. The qualified voters in the November 7, 2006, election have a right guaranteed by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution to have the aforesaid election officials count their votes and certify elections based on the number of valid ballots cast in the said election by qualified voters.

3. On or about July 31, 2006, at Kansas City, in the Western District of Missouri, the defendant KWAIM A. STENSON knowingly and willfully caused to be submitted to the Kansas City Board of Election Commissioners a materially false voter registration application, and thereby attempted to deprive or defraud the residents of the State of Missouri of a fair and

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impartially conducted election process, to wit, the said defendant caused to be submitted Missouri Voter Registration Application No. 3077376 for XXXX, which was false in that Damian Ross did not register to vote on or about July 31, 2006, and the signature thereon was not that of Damian Ross.

All in violation of Title 42, United States Code, Section 1973gg-10, and Title 18, United States Code, Section 2.

A TRUE BILL

_____
FOREPERSON OF THE GRAND JURY

_____
Linda Parker Marshall #24954
Assistant United States Attorney

Dated:_____

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Our view on improving el ctions: The problem with ID laws

Supreme Court ruling opens door to efforts to suppress voter turnout.

It sounds like the opening line in a *Tonight Show* monologue, but it actually happened: A dozen or so nuns were turned away when they tried to vote in last week's Indiana presidential primary.

The nuns, all in their 80s and 90s and living at a convent retirement home, didn't have driver's licenses, and Indiana is one of an increasing number of states that require voters to show photo ID in an effort to deter fraud.

(Photo - In Indiana: Sister Julie McGuire had to turn away fellow nuns from voting / AP)

When the U.S. Supreme Court upheld Indiana's ID law last month, it opened the door for more states to follow suit, perhaps in time for the November election. That Indiana's statute snared elderly nuns instead of devious fraudsters illustrates the problem with such laws: They're at least as likely to turn away legitimate lifelong voters as to catch cheaters.

While most Americans have driver's licenses or passports and use them every day, there are some people — mostly elderly, poor or disabled — who don't typically have photo ID and who tend to vote for Democrats. So there's a fine line between protecting against fraud and trying to suppress one party's turnout.

States do have a legitimate interest in taking steps to minimize fraud and bolster voter confidence that the system is fair. Requiring citizens to show photo ID when they vote is a reasonable way to promote trust — as long as IDs are made easily available at no cost to all who qualify, with aggressive outreach to those who have difficulty traveling.

But election fraud happens more rarely than state legislators claim when they pass laws such as Indiana's. Exhaustive studies by the Brennan Center for Justice, a group that advocates for voting rights, show that most instances of fraudulent voting are actually administrative mistakes or the sort of fraud — vote buying, or ballot tampering by election officials — that photo IDs won't prevent.

Legislators who support laws requiring photo IDs, most of them Republicans, would be more convincing if they were as enthusiastic about making IDs easily available as they are about fighting supposed vote fraud. The evidence suggests that's not the case. For example, Indiana has one mobile outreach vehicle in a state of more than 6 million people and 36,000 square miles.

The photo ID laws in seven states are problematic enough, but now several states are also looking at ways to require voters to prove U.S. citizenship. Arizona does that already, and Missouri's legislature is debating a constitutional amendment that would pave the way for requiring voters to present a driver's license or a substitute when they vote. Obtaining such an ID in Missouri requires proof of citizenship, so voters would, in effect, have to prove their citizenship to cast ballots.

To be sure, only citizens should vote. But as with photo IDs, there's little evidence that voting by illegal immigrants is a problem. Most stay as far away from government officials as they can lest they be caught and deported, and fraudulent voting is a felony. Proof-of-citizenship requirements are likely to trap legal citizens who don't have their birth certificates and would have significant trouble getting them.

The bigger problem at U.S. polling places isn't that too many people vote or that illegal voters are scheming to do so. It's that too few Americans show up on Election Day.

Posted at 12 21 AM/ET, May 14, 2008 in Elections/Voting - Editorial, Politics - Editorial, USA TODAY editorial | Permalink

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THE WALL STREET JOURNAL. ONLINE

May 20, 2008

OPINION

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Anatomy of a Beltway Smear Campaign

By HANS A. VON SPAKOVSKY

May 20, 2008; Page A23

During the past two years, while my nomination to the Federal Election Commission was pending – and before I withdrew last week – friends would call whenever the latest newspaper story or blog post attacking me was planted by political operatives and left-wing advocacy organizations.

They always asked the same question: Why was I putting up with the character assassination that has become the norm in Senate confirmation battles whenever a conservative is nominated for public office?

David Gothard

In 17 years of practicing law I'd never been accused of ethical or professional lapses. Since my arrival in Washington, however, I've been called corrupt and unethical, and labeled as everything from a Klansman to a Nazi (my last name seems to generate that latter pejorative) for my work at the Department of Justice.

All of these charges were levied because I dared to take a different view of the law than the political left in the area of civil rights, voting and election law. Those outside Washington cannot conceive how far advocacy organizations, party activists and congressional staffers are willing to go to personally destroy anyone who doesn't agree with their political agenda.

In 2001, I joined the Justice Department as a career lawyer in the civil rights division. True enough, I had been warned the division was a cauldron of left-wing political activism. In fact, in a 1990s redistricting case, a federal judge criticized the career lawyers of the division for behaving like the in-house counsel of the ACLU. He said that "the considerable influence of ACLU advocacy on the voting rights decisions of the United States Attorney General is an embarrassment."

The reputation of the division was well-deserved. From the very first day on the job it was clear that my new colleagues were offended by my presence. Indeed, I eventually learned from a few friendlier lawyers in the division that it was a miracle I had been hired: The career staff would discard qualified applicants if they saw anything that suggested conservative leanings.

A number of former career lawyers in the division very publicly criticized my nomination to the FEC in 2006. Their criticisms were trumpeted by the media. While the stories always portrayed these critics as "nonpartisan" professionals, nothing could be further from the truth.

The legal work I saw from these and other lawyers in the division was distorted by politics and partisan policy views. They often misrepresented the facts and applicable law in order to manipulate the division's political appointees.

Take, for example, a Mississippi case in which the Justice Department ultimately won a judgment against local officials for blatant and intentional discrimination to deny voters their right to vote. The chief of the voting section, Joseph Rich, deleted the recommendation to file a lawsuit from the original memorandum prepared by the investigating attorney that summarized the case. Why? Because this case involved discrimination by black officials against white voters. According to lawyers involved in the case, Mr. Rich did not believe the Voting Rights Act should be used to protect white voters against racial discrimination.

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In a 2003 Texas redistricting controversy, the recommendations of Mr. Rich and his lawyers to object to the Texas plan exactly paralleled the claims of the attorney representing the Democratic plaintiffs in a later lawsuit against the state. The attorney was formerly in the civil rights division of the Justice Department.

I opposed their objections, because they were clearly wrong under the facts and the applicable law. A federal court had already determined that under the Voting Rights Act there were only eight protected majority-minority congressional districts in Texas. Mr. Rich and his colleagues tried to claim that there were 11. But the claims were specious, and were only put forth to help the Democratic Party.

I have been relentlessly attacked over the past two years for my stance in that Texas redistricting controversy, and for the Justice Department's preclearance, under the Voting Rights Act, of a voter ID law from Georgia. But the Supreme Court and other federal courts have made it quite clear that the Justice Department reached the correct legal conclusion in both cases. The opinions of the career lawyers in those cases were rejected for good reason; as I held all along, they were legally wrong.

I explained all of this in great detail in materials I provided to the Senate after my confirmation hearing in June 2007. No matter; the reasoned – and undisputed – legal explanation was ignored by the left, the media and the Democratic Senators trying to stop my confirmation. Yet I am still being called a racist and a "vote suppressor" because I agree with the Supreme Court on the constitutionality of voter ID laws.

The Bush administration filed more voting-rights lawsuits in its first five years than the Clinton administration filed in its last five years. And we did so without having over $4 million in attorneys' fees levied against us for filing frivolous discrimination claims, as occurred during that administration.

I do plead guilty to this: bringing to the attention of superiors at the Justice Department the legal manipulations of ideologues in the Civil Rights Division who passed themselves off as professional civil servants while carrying water for their friends and allies in left-wing organizations like the ACLU. Had I kept silent, I would likely be in a far different position than I am today. But I did not, and those I butted heads with have their revenge.

My own hard feelings will pass. But the political system has been damaged once more by the poisonous tactics of the left, and there is no reason to think that the whole sorry spectacle will not be repeated again and again and again. So long as such tactics are accepted and even encouraged by politicians and the media, it will become harder and harder to find ordinary citizens willing to submit to the character assassination that now passes for our confirmation process.

Mr. Spakovsky was a recess appointee on the Federal Election Commission and a career counsel to the Assistant Attorney General for Civil Rights at the

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Department of Justice.

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May 20, 2008, 6:00 a.m.

Disadvantaged Arguments
Voter-ID facts.

By Hans A. von Spakovsky

The ink was barely dry on the Supreme Court's decision in the *Crawford* case upholding Indiana's voter-identification law before the editorial pages were filled with dire predictions of the mass disenfranchisement of voters. The *New York Times* thundered that "disadvantaged groups" would be "discouraged from casting ballots." Cynthia Tucker of the *Atlanta Journal Constitution* insulted the author of the lead opinion, staunchly liberal Justice John Paul Stevens, writing that it was no surprise that "a group of wealthy male jurists favors suppression of the franchise...[a]fter all, the Founding Fathers believed that only white men should have the vote." She must have been truly dismayed last year when Georgia's voter-ID law was also upheld by the Georgia Supreme Court and a federal court, and was even praised in Justice Breyer's dissenting opinion in *Crawford.*

Justice Stevens, who came of age professionally in Chicago, where voter fraud has been endemic for decades, held that requiring voters to show ID is justified by the interest in deterring and detecting voter fraud and preserving public confidence in the election process. However, the critical editorials have repeated the same specious arguments made in both the Indiana and Georgia voter-ID cases — there are supposedly hundreds of thousands of voters who don't have a photo ID (and can't obtain one), and thus the turnout of voters (particularly minorities) will be diminished.

Unfortunately for the naysayers, the facts, as opposed to paranoid fantasies conjured up by lawyers and editorial writers, don't support those claims. Both trial judges in the Indiana and Georgia cases rejected as incredible and utterly unreliable the claim that there were hundreds of thousands of voters without photo ID. In two years of litigation, lawyers were unable, as the Indiana judge noted, to introduce "evidence of a single, individual Indiana resident who will be unable to vote" as a result of the photo-ID law. In Georgia, the ACLU sent out a desperate e-mail asking their contacts to find an individual who could not vote because of the voter-ID requirement — but they could not find one. And none of the organizations like the NAACP that sued could produce a single member unable to vote. The Georgia court found that the failure to identify any such individuals was "particularly acute in light of Plaintiffs' contention that a large number of Georgia voters lack acceptable Photo ID."

The Supreme Court's decision is bolstered by recent academic studies that show voter turnout (including that of minorities) is unaffected by voter-ID laws. A national study of voting behavior from 2000 to 2006 by scholars at the University of Nebraska-Lincoln and University of Delaware concluded that concern over such laws hurting the turnout of voters was "much ado about nothing." The Heritage Foundation's review of the 2004

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election found that voter-ID laws do not reduce voter turnout, including of Hispanics and African Americans. A 2007 survey of 36,500 individuals by M.I.T. found overwhelming support for voter ID across ethnic and racial lines, and only 23 people out of the entire 36,500 person sample could not vote because of ID requirements. A study by John Lott found evidence that regulations preventing fraud "can actually increase the voter participation rate," showing how ID requirements encourage public confidence in the voting process as noted by Justice Stevens.

Recent election results in Georgia and Indiana also show the fallacy of these criticisms. In her editorial, Cynthia Tucker completely ignored what actually happened in February when Georgia held its first presidential preference primary with the photo-ID law in effect. The state had a record turnout of over 2 million voters, almost one million more than in its 2004 primary before the ID requirement was in effect. Voters who did not have any ID were less than 0.01 percent. The number of black Georgians who voted more than doubled from the 2004 election and there were 100,000 more votes cast in the Democratic than the Republican primary.

Indiana's turnout in its initial elections after the photo-ID law went into effect went up two percent overall. A study by the University of Missouri found no evidence that turnout of minority, poor, elderly, or less-educated populations was reduced, and in fact, the "only consistent and statistically significant impact of photo ID in Indiana is to increase voter turnout in counties with a greater percentage of Democrats relative to other counties." When Indiana held its presidential primary on May 6, the turnout of Democratic voters quadrupled over 2004 and over 862,000 more votes were cast in the Democratic than the Republican primary. If this was some kind of plot by Republicans to hurt Democratic turnout as critics have alleged, it did not work very well.

Contrary to the beliefs of critics like the *New York Times,* impersonation fraud does exist. It is true that direct evidence of such fraud is hard to come by, but for a simple reason: Election officials cannot discover an impersonation if they are denied the very tool needed to detect it, an identification requirement. Justice Stevens, however, pointed out that "flagrant examples of such fraud in other parts of the country have been documented throughout this Nation's history by respected historians and journalists."

The *New York Times* should have checked its own archives for stories of a 1984 grand-jury report finding extensive impersonation fraud in Democratic primary elections in Brooklyn between 1968 and 1982 affecting races for the U.S. Congress and the New York State legislature. This successful 14-year conspiracy included not only the forgery of fictitious voter-registration cards, but also the recruitment of crews who cast multiple votes in person using those fictitious names as well as the names of deceased, moved, and newly registered voters. Thousands of fraudulent votes were cast in numerous elections, something that would not have happened with a photo-ID requirement.

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Impersonation fraud is not just part of a bygone era. Last June, a man who tried to vote under the name of another registered voter in Hoboken, New Jersey admitted to the police after he was challenged by the local zoning board president that a group of homeless men had been paid $10 each to vote in the names of other voters. In 2007, the Department of Justice won a judgment in Noxubee, Mississippi, against a Tammany Hall-type political machine run by the local Democratic-party chief. One of the witnesses testified that he saw the party official telling an individual to go into a poll and use any name to vote because no one was going to question her identity — Mississippi has no ID requirement.

The critics also miss the fact that requiring government-issued photo ID's safeguards against more than just impersonation fraud. During recent elections, thousands of fraudulent voter-registration forms were submitted all over the country, and media investigations have found thousands of individuals registered in more than one state. Without ID requirements, bogus votes can be cast based on fictitious voter registrations or multiple registrations (or by illegal aliens). On the very day the Indiana lawsuit was argued before the Supreme Court, a newspaper discovered that an Indiana voter highlighted by the League of Women Voters was also registered to vote in Florida, where she owns a second home. She tried to use her Florida driver's license to vote — clear evidence that the law worked to prevent double voting.

As the Supreme Court properly concluded, requiring voters to identify themselves insures the integrity of elections and guarantees public confidence. Every phony vote cast steals the vote of a legitimate voter, just as if that voter had been prevented from voting. The saddest truth of the opposition to photo ID by those critics who are supposedly concerned about the "disadvantaged" is that those who are most often taken advantage of and hurt by voter fraud are, in fact, poor, elderly, and minority voters.

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National Review Online -
http://article.nationalreview.com/?q=OTZmNzViZGJjOThmN2QzNmMzNGNiMmNmODE4MDZhZjk=

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Appendix to 'The Effect of Identification Requirements on Minority Voter Turnout"

By

Hans A. von Spakovsky

Since this article was first presented at a meeting of the Federalist Society in the fall of 2006 and published by the Federalist Society in February 2007,[1] there have been a number of developments in the social science area and in litigation that support the conclusion that voter identification laws have no effect on the turnout of minority voters, that there are only a relatively small number of individuals (if any) who cannot meet such requirements, and that such laws are constitutional and not a violation of any federal voting rights laws.

Social Science

The Heritage Foundation's Center for Data Analysis released a report in September 2007 that concluded that voter identification laws do not reduce turnout.[2] The Heritage report reanalyzed the 2004 data used by Rutgers University's Eagleton Institute and the Moritz College of Law at Ohio State University in a report for the U.S. Election Assistance Commission that was the only systematic study of voter ID that had come to the opposite conclusion.[3] However, the Heritage report pointed out that the Eagleton Institute report was statistically flawed, used inappropriate variables, and even misclassified the voter identification laws of certain states. Heritage's analysis of the same data showed that voters in general were just as likely to report having voted in states that require photo identification as voters in states that only require a voter to state their name, and the same was true for African-American and Hispanic voters.[4] The Eagleton study has also been criticized by other academics for its methodological flaws as well as the authors' "mischaracterizing their own findings" which does a "disservice to the public debate."[5] The Eagleton study was so poorly done it was not cited in the petitioner's briefs filed in the Supreme Court in the *Crawford* case.

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[1] Engage: The Journal of the Federalist Society Practice Groups, Vol. 8, Issue 1 (February 2007).
[2] David B. Muhlhausen and Keri Weber Sikich, "New Analysis Shows Voter Identification Laws Do Not Reduce Turnout," September 10, 2007; available at http://www.heritage.org/Research/LegalIssues/upload/cda_07-04.pdf.
[3] See Timothy Vercellotti, Appendix C: Analysis of Effect of Voter ID Requirements on Turnout in Report to the U.S. Election Assistance Commission on Best Practices to Improve Voter Identification Requirements Pursuant to the Help America Vote Act of 2002; available at www.eac.gov.
[4] *Mulhausen* at 3-4.
[5] Jeffrey, Milyo, "The Effects of Photographic Identification on Voter Turnout in Indiana: A County-Level Analysis, November 2007, page 6-7; available at http://truman.missouri.edu/uploads/Publications/Report%2010-2007.pdf. Milyo notes that even taken at face value, the results of the Eagleton study "imply that the most strict forms of voter identification laws examined in their data... are associated with higher voter turnout among Black, Hispanic and Asian minorities than are the next most strict category of identification laws that they examine" and "voluntary photo ID requirements yield no difference in overall turnout compared to no-photo ID requirements" yet the authors failed to note these findings. *Id.*

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Another study by professors from the Universities of Delaware and Nebraska-Lincoln that examined voting behavior data across four elections (2000, 2002, 2004, and 2006) at both the aggregate and individual levels found that voter ID laws do not affect voting turnout at either level, concluding that "concerns about voter identification laws affecting turnout are much ado about nothing."[6] A review of turnout in Indiana both before and after its voter ID law became effective showed that statewide turnout actually *increased* by about 2 percentage points overall after the state began requiring photo ID for in-person voting. There was no evidence that counties with higher percentages of minority, poor, elderly or less-educated populations suffered any reduction in voter turnout and in fact, the estimated effect of photo ID on turnout was positive for counties with a greater percentage of minorities or families in poverty: "The only consistent and statistically significant impact of photo ID in Indiana is to increase voter turnout in counties with a greater percentage of Democrats relative to other counties."[7]

In another report in 2007, a professor from M.I.T. detailed the findings of an extensive national survey of 36,500 individuals about election day practices.[8] This survey found overwhelming support for photo ID requirements across ethnic and racial lines, with "[o]ver 70 percent of Whites, Hispanics, and Blacks support[ing] the requirement."[9] In fact, the lowest levels of support (although still a majority) were among "White Democrats and White Liberals," leading to the conclusion that the opposition to photo ID requirements by "[t]he Congressional Black Caucus and the Democratic party leadership were wholly out of step with the analogous segment of the electorate on this issue."[10] Only 23 people out of the entire 36,500 person sample said that "they were not allowed to vote because of voter identification requirements," and the survey had no information on whether those individuals were ineligible or voted using provisional ballots.[11]

Litigation

Georgia – Since this paper was first published, a federal district court in Georgia has issued a final decision in the litigation that ensued over Georgia's photo ID law. Although the court had initially issued a preliminary injunction against the photo ID law, his final order in the case dismissed *all* of the plaintiffs' claims, allowing the amended law to go into effect.[12] In a reprimand to the plaintiffs, the court acknowledged:

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[6] Jason D. Mycoff, Michael W. Wagner, and David C. Wilson, "The Effect of Voter Identification Laws on Aggregate and Individual Level Turnout," August 2007, pages 12 and 17; available at http://vote.caltech.edu/VoterID/apsa07_proceeding_211715.pdf.
[7] Jeffrey, Milyo, "The Effects of Photographic Identification on Voter Turnout in Indiana: A County-Level Analysis, November 2007; available at http://truman.missouri.edu/uploads/Publications/Report%2010-2007.pdf.
[8] Stephen Ansolabehere, "Access Versus Integrity in Voter Identification Requirements," February 2007; available at http://web.mit.edu/polisci/portl/cces/material/NYU_Identification1.pdf.
[9] *Id.* at 5.
[10] *Id.*
[11] *Id.* at 7.
[12] *Common Cause/Georgia v. Billups*, 504 F.Supp.2d 1333 (N.D.Ga. 2007).

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> that in its previous Orders addressing the preliminary injunction motions, it concluded that the Photo ID requirement severely burdens voters. It is important to note, however, that the preliminary injunction motions were made at an earlier stage of the litigation and were made under more relaxed evidentiary standards. Here, however, Plaintiffs must actually prove their contentions by a preponderance of the evidence, using evidence reduced to an admissible form. Plaintiffs have failed to do so here.[13]

The court found that none of the organizational or individual plaintiffs had standing to sue because none of the individual plaintiffs would be unable to vote due to the photo ID law, and the organizations, including the NAACP, after two years of litigation, had been unable to produce a single individual or member who did not have a photo ID:

> The failure to identify those individuals 'is particularly acute' in light of Plaintiffs' contention that a large number of Georgia voters lack acceptable Photo ID…the fact that Plaintiffs, in spite of their efforts, have failed to uncover anyone 'who can attest to the fact that he/she will be prevented from voting' provide significant support for a conclusion that the Photo ID requirement does not unduly burden the right to vote.[14]

Even though the court found that the plaintiffs did not have standing, "[i]n an abundance of caution," it considered the merits of the claims raised by the plaintiffs on the constitutionality of the Georgia law.[15] The court concluded that the law was rationally related to the state's objective of combating voter fraud and did not impose a significant burden on registered voters.[16]

Indiana - As noted previously, Indiana's photo ID law was upheld by a federal district court. That judgment was affirmed by the Seventh Circuit Court of Appeals.[17] The U.S. Supreme Court accepted the case for review and oral arguments were presented on January 9, 2008, on the constitutionality of a photo ID requirement. A decision is pending.[18]

Arizona – In the litigation over Arizona's voter ID law and its requirement that anyone registering to vote prove they are United States citizens, the U.S. Supreme Court vacated an injunction that had been issued against this law by the 9th Circuit Court of Appeals,

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[13] *Common Cause/Georgia* at 1379.
[14] *Id.* at 1380. In the same way that the federal district court in the Indiana voter ID case excluded the expert testimony of the plaintiffs as unreliable, the federal court in *Common Cause/Georgia* also excluded the expert testimony of the plaintiffs as unreliable and irrelevant. *Id.* at 1371.
[15] *Id.* at 1374.
[16] *Id.* at 1334.
[17] *Crawford v. Marion County Election Bd.*, 472 F.3d 949 (7th Cir. 2007).
[18] *Crawford v. Marion County Election Bd.*, Nos. 07-21 and 07-25 (U.S. Supreme Court, cert. granted Sept. 25, 2007)

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remanding the case for further proceedings.[19] The Supreme Court concluded that the Court of Appeals erred in not giving deference to the district court, since the Court of Appeals issued its injunction without any factual findings or reasoning of its own and before the district court had even issued its own factual findings.[20] In the wake of the Supreme Court's ruling, the plaintiffs decided "not to continue to seek injunctive relief with respect to the in-person voting identification requirement."[21] The Ninth Circuit also concluded that the district court did not abuse its discretion in denying injunctive relief with respect to the citizenship voter registration requirement.[22]

Michigan - In Michigan, the state House of Representatives requested an advisory opinion from the Michigan Supreme Court over the constitutionality of 2005 PA 71, MCL 168.523, which requires that voters present photo identification or sign an affidavit averring that the voter lacks photo ID. The Supreme Court held the photo ID requirement is facially constitutional and withstands scrutiny under both the Michigan Constitution and the United States Constitution, concluding that it "is a reasonable, nondiscriminatory restriction designed to preserve the purity of elections and to prevent abuses of the electoral franchise...thereby preventing lawful voters from having their votes diluted by those cast by fraudulent voters." It cannot be characterized as an unconstitutional poll tax.[23]

Missouri - In October 2006 and in stark contrast to all of the other courts, the Missouri Supreme Court struck down a state statute that required registered voters to present state or federally issued photo ID in order to cast regular ballots. It found the statute unconstitutional under Missouri's state constitution, which it noted provides "state constitutional protections even more extensive than those provided by the federal constitution." The court held that the state law violated equal protection and "unnecessarily burden[s] the right to vote of Missourians."[24]

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[19] *Purcell v. Gonzalez*, 549 U.S. ____, 127 S.Ct. 5, 166 L.Ed.2d 1 (2006).
[20] *Purcell, slip op.* at 4-5.
[21] *Gonzalez v. Arizona*, 485 F.3d 1041, 1046-1047 (9th Cir. 2007).
[22] *Id.* at 1047.
[23] *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71, 2007 Misc. 130589v06-071807* (Michigan Supreme Court July 18, 2007).
[24] *Weinschenk v. State*, 203 S.W.3d 201 (Mo. 2006).

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