

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

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

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

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

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

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

to 79 have a license.²⁹

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

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

²⁹ *Distribution of Licensed Drivers – 2004 by Sex and Percentage in Each Age Group and Relation to Population*, U.S. Department of Transportation, Federal Highway Administration, Highway Statistics 2004; available at <http://www.fhwa.dot.gov/policy/ohim/hs04/hm/dl20.htm>.

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

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

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

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

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

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

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

South Carolina

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

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

of Public Safety at the polls. Under an amendment passed in 1988, if the voter is not licensed, the voter can alternatively present the written registration notification received after registering to vote as required by §7-5-125. This exception was first effective for the 1988 general election.

An examination of South Carolina's turnout figures shows no effect from the state's identification requirements even with the state's significant minority population. According to the 2000 Census, South Carolina was 67.2% white and 29.5% black.³⁶ The percentage of the voting age population with driver's licenses in 2004 was 94.5%.³⁷

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

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

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

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

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

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

Census Survey of Turnout of VAP by Race
South Carolina

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

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

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

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

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

Virginia

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

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

Georgia

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

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

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

⁴² VA. CODE §42.2-643.

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

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

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

⁴⁴Federal Highway Administration, Highway Statistics, 2004.

⁴⁵GA. CODE §21-2-417.

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

Census Survey of Turnout of VAP by Race
Georgia

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

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

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

⁴⁶ Census Bureau reports.

⁴⁷ Census Bureau reports.

⁴⁸ 42 U.S.C. §1973c.

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

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

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

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

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

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

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

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

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

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

Louisiana

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

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

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

⁵⁵ *Billups*, slip op. at 129.

⁵⁶ *Id.* at 127.

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

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

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

⁶⁰ Federal Highway Administration, Highway Statistics, 2004.

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

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

Census Survey of Turnout of VAP by Race
Louisiana

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

Other States – Alabama and Florida

⁶¹LA. REV. STAT. ANN. §18:562.

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

⁶³ Census Bureau reports.

⁶⁴ Census Bureau reports.

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

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

Recently Adopted Laws

Indiana

Indiana passed a photo identification requirement in 2005 as Senate Enrolled Act No. 483. It requires all voters to present a valid photo identification issued either by Indiana or the United States that has a picture of the voter, his name, and an expiration date that is either current or expires after the date of the most recent general election.⁶⁹ The law does not apply to absentee voters who send their ballot through the mail or to voters who reside in nursing homes.

A voter without identification can vote a provisional ballot and has until the second Monday following election day to appear before county officials either with a photo identification or with an affidavit stating that he is indigent or has a religious objection to being photographed.⁷⁰ The Indiana Democratic Party filed suit against the state, claiming the identification requirement violated the 1st and 14th Amendments, 42 U.S.C. §1971, and the portions of the Indiana Constitution.

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

⁶⁶ ALA. CODE § 17-10A-1.

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

⁶⁸ FLA. STAT. §101.043.

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

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

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

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

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

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

Arizona

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

⁷² *Id.* at 3.

⁷³ *Id.*

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

⁷⁵ *Id.* at 51.

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

⁷⁷ *Rokita* at 53.

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

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

Missouri

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

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

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

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

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

Conclusion

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

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

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

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

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

ACT NUMBER E4019904; EAC CONTRACT NUMBER 06-04
Personal Services Contract for Interim Expert Services

Background

Section 241 of H.R. 2000 lists a number of election administration topics on which the U.S. Election Assistance Commission may elect to do research. In particular, Section 241(b) (6) and (7) state the two topics of nationwide statistics and methods of identifying, deterring and investigating voting fraud in elections for Federal offices; and identifying, deterring and investigating methods of voter intimidation. The EAC Board of Advisors has recommended that the EAC make research on these topics a high priority.

The EAC seeks to obtain consulting services from an individual who can provide advice drawn from broad professional and technical experience in the area of voter fraud and intimidation. The EAC needs this expert to conduct a preliminary examination of these topics to determine if a larger research project might be warranted. To promote a balanced and non-partisan approach to this effort, EAC is contracting with two experts, who will work jointly to perform the work described below. This contract is a follow-on agreement to EAC Contract Number 05-66. That agreement for non-severable services expires February 15, 2006, without completion of the project. The originally estimated labor hours for this project were insufficient. As such, the EAC seeks to continue the work started in this previous contract but has changed the scope (or duties) of the contractor to limit project costs. This change is reflected in the scope of work section, below.

Nature of the Appointment

The EAC enters into this contract pursuant to its authority to contract for consultants and experts under 5 U.S.C. §3109 (See 42 U.S.C. §15324(b)). As such, this contract is for personal services and creates a limited employment relationship. (See 5 C.F.R. §304). The initial appointment under this agreement shall be for the intermittent employment of an expert as defined by 5 C.F.R. §304.102(d) and (e). The expert (hereinafter "contractor") shall work as required by the EAC, without a regularly scheduled tour of duty. Under no circumstances may contractor work more than 225 hours during the term of this agreement (5 C.F.R. §304.103(c)(2)(i)).

Supervision and Management.

The EAC Manager and Contracting Officer's Representative (COR) for this effort is Peggy Sims. Ms Sims will provide taskings, and authorize, supervise, review and approve all work and performance. She will also approve all labor hours on invoices and travel vouchers submitted for compensation under this agreement.

Period of Appointment.

The appointment under this contract is temporary and shall be for a period of up to four months. The contract period shall begin February 26, 2006. The contract may be extended and contractor reappointed for an additional period (not exceed one year) upon agreement of both parties. (See 5 C.F.R. §304.103(c)).

Compensation

The consultant shall be paid at a rate of \$111 per hour. Contractor shall perform the services prescribed by this agreement as directed by the COR on an intermittent basis. However, in any event, the contractor shall not work more than [41 hours] in either of the 2 two week periods that make up each four week pay period. Further, as aforementioned, the contractor may not work more than 225 hours during the term of this agreement. The dates of performance are flexible but shall be based upon the needs of the project and the EAC. COR shall provide contractor notice and authorization when performance under this agreement is required.

The consultant shall not incur overtime and is not eligible for premium pay under subchapter V of chapter 55 of title 5, United States Code. (5 C.F.R. §304.106(b)). The contractor, as an intermittent appointee, is also not entitled to sick or annual leave. Contractor will not receive compensation for Federal holidays when no work is performed. (5 C.F.R. §304.106(b)). The contractor shall not receive automatic adjustments of pay based upon 5 U.S.C. §5303. Contractor's pay rate may be increased at the sole discretion of the Contracting Officer, consistent with Federal regulations. Contractor may be reimbursed for other costs, such as local travel, consistent with this agreement if approved by the COR and submitted in writing via invoice.

Travel

The contractor may be required to travel on a periodic, as needed basis, throughout the duration of their appointment. All travel must be pre-approved by the EAC COR. The contractor will be reimbursed for hotel and ground transportation costs, proper incidental expenses, and per diem while on official, pre-approved EAC travel. Compensation for travel shall be made in accordance with the rates set forth in the Federal Travel Regulation. The amount reimbursed for travel shall not exceed \$6,500 in Federal Fiscal Year 2006.

Release of Information

As a result of the limited employment relationship created by this agreement, and pursuant to this agreement, you are required to follow all Federal laws and regulations as they relate to the release of agency documents and information. All research, information, documents and any other intellectual property (including but not limited to policies, procedures, manuals, and other work created at the request or otherwise while laboring for the EAC) shall be owned exclusively by the EAC, including copyright. All

such work product shall be turned over to the EAC upon completion of your appointment term or as directed by the EAC. The EAC shall have exclusive rights over this material. You may not release government information or documents without the express written permission of the EAC.

Compensation Procedures

Compensation shall be made for work done (labor hours) by submitting invoices. Invoices shall be submitted every four weeks from the date of award. A week shall be from Sunday to Saturday. The first pay period shall begin February 26, 2006. Invoices must be submitted every 4 weeks when compensable work under this contract has been performed. The COR will provide the contractor with an invoice schedule, identifying each of the invoice periods, and model invoice forms. Invoices shall be delivered to the COR for review and approval. Each invoice shall:

- (1) Identify each day (by date) that work was performed and the number of labor hours performed that day. Briefly describe the nature of the work performed for that day;
- (2) State the total number of labor hours that have been expended under the agreement for the invoice period;
- (3) State the total number of hours worked for each of the two week periods that make up the total invoice time;
- (4) Provide a cumulative total of hours worked during the entire contract performance period (one year);
- (5) Submit, as a separate line item, all reimbursable travel costs for approval. The submission must provide dates of travel, receipts and other information as required by the Federal Travel Regulation.
- (6) Include the contractor's signature, affirming that information contained in the invoice is accurate.

Duty Location

Contractor's duty station shall be his/her home or place of business. The contractor has access to and shall supply common office equipment to include telecommunications, internet access, a computer, office supplies, facsimile machine and common workplace software (including Microsoft Word, Project and Excel). All other resources will be provided by the EAC as needed and at its discretion.

Notices

Any notice, given by any of the parties hereunder, shall be sufficient only if in writing and delivered in person or sent by telegraph, telegram, registered, or regular mail as follows:

To EAC: 1225 New York Avenue, Suite 1100, Washington, DC 20005,
Attention: Contracting Officer Representative, Peggy Sims.

To Contractor: At EAC and at the Contractor's address shown on the Cover Page of this contract or to such other address as either of such parties shall designate by notice given as herein required. Notices hereunder shall be effective in accordance with this clause or on the effective date of the notice whichever is later.

Areas of Responsibility (Statement of Work)

1. Submit a revised work plan reflecting revised due dates for deliverables.
2. Develop a comprehensive description of what constitutes voting fraud and voter intimidation, in the context of Federal elections.
3. Using the description developed for 2 above, perform background research, including both Federal and State administrative and case law review, and a summation of current activities of key government agencies, civic and advocacy organizations regarding these topics. Deliver a written summary of this research and all source documentation.
4. Work in consultation with other EAC staff and the Commissioners to identify a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation. The Working Group will be provided with the results of the consultant's research (discussed in 2 and 3, above) as background information. The consultant will be responsible for developing a discussion agenda and convene the Working Group with the objective of identifying promising avenues for future research by EAC.
5. The consultant shall be responsible for creating a report summarizing the findings of this preliminary research effort and Working Group deliberations. This report should include any recommendations for future EAC research resulting from this effort.

Terms and Conditions

The following additional terms and conditions shall apply to this personal services contract:

a. Federal Acquisition Regulation Clauses Incorporated by Reference:

This contract incorporates the following clauses by reference with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. These clauses may be obtained on the internet at <http://farsite.hill.af.mil/>.

52.203-7 Anti-Kickback Procedures (JUL 1995)

52.203-12 Limitation on Payments to Influence Certain Federal Transactions (Sept 2005)

- 52.215-2 Audit and Records -- Negotiation (Jun 1999)
- 52.224-1 Privacy Act Notification (APR 1984)
- 52.224-2 Privacy Act (APR 1984)
- 52.232-17 Interest (JUN 1996)
- 52.246-25 Limitation of Liability-Services (FEB 1997)
- 52.252-4 Alterations in Contract (APR 1984)

b. Federal Acquisition Regulation Clauses in Full Text:

Contract Termination (FAR 52.249-12)

The Government may terminate this contract at any time upon at least 15 days' written notice by the Contracting Officer to the Contractor. The Contractor, with the written consent of the Contracting Officer, may terminate this contract upon at least 15 days' written notice to the Contracting Officer. (End of Clause)

Site Visit (FAR 52.237-1)

Offerors or quoters are urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after contract award. (End of Clause)

Protection of Government Buildings, Equipment, and Vegetation (FAR 52.237-2)

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price. (End of Clause)

Covenant Against Contingent Fees (FAR 52.203-5)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty,

the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Contingent Fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.
(End of Clause)

Disputes (FAR 52.233-1), Alternate I

(a) This contract is subject to the Contract Disputes Act of 1973, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)

(i) The contractor shall provide the certification specified in paragraph (d)(2)(ii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from

(1) the date that the Contracting Officer receives the claim (certified, if required); or

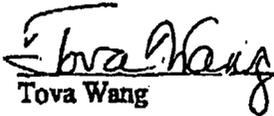
(2) the date that payment otherwise would be due, if that date is later, until the date of payment.

With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

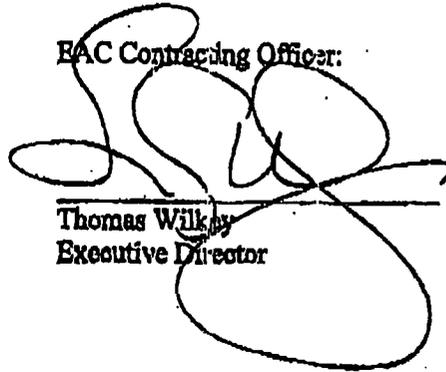
(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.
(End of Clause)

By signing below, contractor agrees to furnish the personal services set forth or otherwise identified, above, consistent with the conditions noted above and for the consideration stated herein.

Contractor:


Tova Wang

EAC Contracting Officer:


Thomas Wilkey
Executive Director

ACT NUMBER E4019905; EAC CONTRACT NUMBER 06-05
Personal Services Contract for Interim Expert Services

Background

Section 241 of HAVA lists a number of election administration topics on which the U.S. Election Assistance Commission may elect to do research. In particular, Section 241(b) (6) and (7) state the two topics of nationwide statistics and methods of identifying, deterring and investigating voting fraud in elections for Federal offices; and identifying, deterring and investigating methods of voter intimidation. The EAC Board of Advisors has recommended that the EAC make research on these topics a high priority.

The EAC seeks to obtain consulting services from an individual who can provide advice drawn from broad professional and technical experience in the area of voter fraud and intimidation. The EAC needs this expert to conduct a preliminary examination of these topics to determine if a larger research project might be warranted. To promote a balanced and non-partisan approach to this effort, EAC is contracting with two experts, who will work jointly to perform the work described below. This contract is a follow-on agreement to EAC Contract Number 05-67. That agreement for non-severable services expires February 25, 2006, without completion of the project. The originally estimated labor hours for the project were insufficient. As such, the EAC seeks to continue the work started in the previous contract but has changed the scope (or duties) of the contractor to limit project costs. This change is reflected in the scope of work section, below.

Nature of the Appointment

The EAC enters into this contract pursuant to its authority to contract for consultants and experts under 5 U.S.C. §3109 (See 42 U.S.C. §15324(b)). As such, this contract is for personal services and creates a limited employment relationship. (See 5 C.F.R. §304). The initial appointment under this agreement shall be for the intermittent employment of an expert as defined by 5 C.F.R. §304.102(d) and (e). The expert (hereinafter "contractor") shall work as required by the EAC, without a regularly scheduled tour of duty. Under no circumstances may contractor work more than 225 hours during the term of this agreement (5 C.F.R. §304.103(c)(2)(i)).

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The EAC Manager and Contracting Officer's Representative (COR) for this effort is Peggy Sims. Ms. Sims will provide taskings, and authorize, supervise, review and approve all work and performance. She will also approve all labor hours on invoices and travel vouchers submitted for compensation under this agreement.

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such work product shall be turned over to the EAC upon completion of your appointment term or as directed by the EAC. The EAC shall have exclusive rights over this material. You may not release government information or documents without the express written permission of the EAC.

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Areas of Responsibility (Statement of Work)

1. Submit a revised work plan reflecting revised due dates for deliverables.
2. Develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections.
3. Using the description developed for 2 above, perform background research, including both Federal and State administrative and case law review, and a summation of current activities of key government agencies, civic and advocacy organizations regarding these topics. Deliver a written summary of this research and all source documentation.
4. Work in consultation with other EAC staff and the Commissioners to identify a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation. The Working Group will be provided with the results of the consultant's research (discussed in 2 and 3, above) as background information. The consultant will be responsible for developing a discussion agenda and convene the Working Group with the objective of identifying promising avenues for future research by EAC.
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52.203-7 Anti-Kickback Procedures (JUL 1995)

52.203-12 Limitation on Payments to Influence Certain Federal Transactions (Sept 2005)

- 52.215-2 Audit and Records -- Negotiation (Jun 1999)
- 52.224-1 Privacy Act Notification (APR 1984)
- 52.224-2 Privacy Act (APR 1984)
- 52.232-17 Interest (JUN 1996)
- 52.246-25 Limitation of Liability-Services (FEB 1997)
- 52.252-4 Alterations in Contract (APR 1984)

b. Federal Acquisition Regulation Clauses in Full Text:

Contract Termination (FAR 52.249-12)

The Government may terminate this contract at any time upon at least 15 days' written notice by the Contracting Officer to the Contractor. The Contractor, with the written consent of the Contracting Officer, may terminate this contract upon at least 15 days' written notice to the Contracting Officer. (End of Clause)

Site Visit (FAR 52.237-1)

Offerors or quoters are urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after contract award. (End of Clause)

Protection of Government Buildings, Equipment, and Vegetation (FAR 52.237-2)

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price. (End of Clause)

Covenant Against Contingent Fees (FAR 52.203-5)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, expect a bona fide employee or agency. For breach or violation of this warranty,

the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Contingent Fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.
(End of Clause)

Disputes (FAR 52.233-1), Alternate I

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)

(i) The contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from

(1) the date that the Contracting Officer receives the claim (certified, if required); or

(2) the date that payment otherwise would be due, if that date is later, until the date of payment.

With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.
(End of Clause)

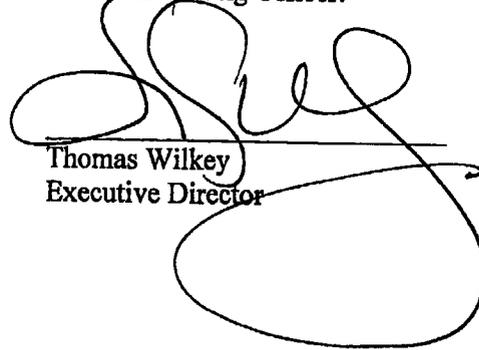
By signing below, contractor agrees to furnish the personal services set forth or otherwise identified, above, consistent with the conditions noted above and for the consideration stated herein.

Contractor:



Job Serebrov

EAC Contracting Officer:



Thomas Wilkey
Executive Director

ACT NUMBER E4019697; EAC CONTRACT NUMBER 05-66

Consulting Services to Assist EAC in the Development of a Voting Fraud and Voter Intimidation Project

Background

Section 241 of HAVA lists a number of election administration topics on which the U.S. Election Assistance Commission may elect to do research. In particular, Section 241(b) (6) and (7) state the two topics of nationwide statistics and methods of identifying, deterring and investigating voting fraud in elections for Federal offices; and identifying, deterring and investigating methods of voter intimidation. The EAC Board of Advisors has recommended that the EAC make research on these topics a high priority.

The EAC seeks to obtain consulting services from an individual who can provide advice drawn from broad professional and technical experience in the area of voter fraud and intimidation. The EAC needs this consultant to conduct a preliminary examination of these topics to determine if a larger research project might be warranted. If so, the consultant would also be tasked to define the scope of the project and prepare a Statement of Work for the EAC to use for a subsequent competitive procurement. To promote a balanced and non-partisan approach to this effort, EAC is contracting with two consultants, who will work jointly to perform the work described below.

Nature of the Appointment

The EAC enters into this contract pursuant to its authority to contract for consultants under 5 U.S.C. §3109 (See 42 U.S.C. §15324(b)). As such this contract is for personal services and creates a limited employment relationship. (See 5 C.F.R. §304). As a result of this unique relationship, and pursuant to this agreement, you are required to follow all Federal laws and regulations as they relate to the release of agency documents and information, travel and conduct. All research, information, documents and any other intellectual property, (including but not limited to policies, procedures, manuals, and other work created at the request or otherwise while laboring for the EAC) shall be owned exclusively by the EAC, including copyright. All such work product shall be turned over to the EAC upon completion of your appointment term or as directed by the EAC. The EAC shall have exclusive rights over this material. You may not release government information or documents without the express permission of the EAC.

Supervision and Management.

The EAC Project Manager for this effort is Margaret Sims, EAC Research Specialist. Ms. Sims will provide taskings, and supervise, review and approve all work and performance.

Period of Appointment, Compensation and Travel.

The period of appointment under this contract is estimated at six months. The appointment shall constitute intermittent appointment (without a regularly scheduled tour of duty) per 5 C.F.R. §340.401(b). The consultant shall not incur overtime. The consultants shall not receive automatic adjustments of pay based upon 5 U.S.C. 5303. The consultants are not eligible for sick and annual leave, nor compensation for work performed on federal holidays. The Consultant is expected to work 450 hours during the estimated six month appointment period. These hours must be distributed evenly over the period so that the Consultant is working approximately, but no more than 20 hours per week. The consultant shall be paid at a rate of \$111 per hour. The dates of performance are flexible but shall be based upon the needs of the project and the EAC. The project at issue is sought to be completed within the sixth month period. The period of appointment shall continue until the project, outlined below, is completed.

Consultant's duty station shall be his/her home or place of business. The consultant has access to and shall supply common office equipment to include telecommunications, internet, a computer, office supplies, facsimile machine and common workplace software (including Microsoft Word and Excel). Other resources will be provided by the EAC as needed and at its discretion.

The Consultant is required to travel on a periodic, as needed basis, throughout the duration of their appointment. All travel must be pre-approved by the EAC per Federal Travel Regulations and EAC policy. The Consultant will be reimbursed, at the Federal government rates, for hotel and ground transportation costs, proper incidental expenses, and per diem while on official, pre-approved EAC travel.

Areas of Responsibility

1. Develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections.
2. Using the description developed above, perform background research, including both Federal and State administrative and case law review, and a summation of current activities of key government agencies, civic and advocacy organizations regarding these topics. Deliver a written summary of this research and all source documentation.
3. Work in consultation with other EAC staff and the Commissioners to identify a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation. The Working Group will be provided with the results of Tasks 1 and 2 as background information. The consultant will be responsible for developing a discussion agenda and convene the Working Group with the objective of identifying promising avenues for future research by EAC.

4. The consultant shall be responsible for creating a report summarizing the findings of this preliminary research effort and Working Group deliberations. This report should include any recommendations for future research resulting from this effort.
5. Should the EAC decide to pursue one or more of the recommendations made in the report noted above, the consultant will be responsible for defining the appropriate project scope(s) and preparing Statement(s) of Work sufficient for use in a competitive procurement.

Compensation Procedures

Compensation shall be made for work done by submitting invoices. Invoices shall be submitted on a monthly basis. These invoices shall state the number of labor hours that have been expended. Invoices shall be delivered to Ms. Margaret Sims for review and Ms. Diana Scott, Administrative Officer, U.S. Election Assistance Commission, 1225 New York Avenue, N.W., Suite 1100, Washington DC 20005. Compensation for travel shall be submitted by travel voucher consistent with federal travel regulation and EAC requirements.

Termination

This consultant contract can be terminated without cause in advance of the current end date by two weeks' notice in writing by either of the parties.

Estimated Project Timetable.

Deliverable	Due Date
Project work plan	10 days after contract award
Progress reports	monthly
Description of voting fraud and voter intimidation	October 2005
Summary of background research and associated source documentation	January 2006
Convene working group	February 2006
Summary report describing findings and recommendations for future EAC research	March 2006
Statement(s) of Work for future research project(s)	TBD



U.S. ELECTION ASSISTANCE COMMISSION
1225 NEW YORK AVENUE, N.W., SUITE 1100
WASHINGTON, D.C. 20005

OFFICE OF THE CHAIR

November 8, 2005

Mr. Job Serebrov
2110 South Spring Street
Little Rock, AR 72206

Via U.S. Mail and Facsimile Transmission
(202) 566-3117

Dear Mr. Serebrov:

Enclosed is a signed personal services contract (EAC 05-67) in the amount for the provision of services to the U.S. Election Assistance Commission (EAC) in researching and developing a plan for a voter fraud and intimidation study. On or about September 1, 2005, an EAC employee communicated to you that EAC agreed to enter this personal services agreement with you. You began work based upon this notice of award. Despite the fact that the agreement was entered and communicated by an unauthorized person, EAC has reviewed the contract and concluded that ratification of this agreement is appropriate. EAC has ratified the agreement made with you on September 1, 2005. EAC has also received your first invoice for the period September 1 through September 30. That invoice will be reviewed and placed in line for payment.

To acknowledge receipt of this contract, please countersign and date below and return one copy of this letter to the attention of Nicole Mortellito.

We appreciate your work on these important efforts.

Sincerely,

Gracia Hillman
Chair

Job Serebrov

ACT NUMBER E4019698; EAC CONTRACT NUMBER 05-67

Consulting Services to Assist EAC in the Development of a Voting Fraud and Voter Intimidation Project

Background

Section 241 of HAVA lists a number of election administration topics on which the U.S. Election Assistance Commission may elect to do research. In particular, Section 241(b) (6) and (7) state the two topics of nationwide statistics and methods of identifying, deterring and investigating voting fraud in elections for Federal offices; and identifying, deterring and investigating methods of voter intimidation. The EAC Board of Advisors has recommended that the EAC make research on these topics a high priority.

The EAC seeks to obtain consulting services from an individual who can provide advice drawn from broad professional and technical experience in the area of voter fraud and intimidation. The EAC needs this consultant to conduct a preliminary examination of these topics to determine if a larger research project might be warranted. If so, the consultant would also be tasked to define the scope of the project and prepare a Statement of Work for the EAC to use for a subsequent competitive procurement. To promote a balanced and non-partisan approach to this effort, EAC is contracting with two consultants, who will work jointly to perform the work described below.

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U.S. ELECTION ASSISTANCE COMMISSION
1225 NEW YORK AVENUE, N.W., SUITE 1100
WASHINGTON, D.C. 20005

OFFICE OF THE CHAIR

November 8, 2005

Ms. Tova Wang
201 West 74th Street, Apt. 11F
New York, NY 10023

Dear Ms. Wang:

Enclosed is a signed personal services contract (EAC 05-66) in the amount for the provision of services to the U.S. Election Assistance Commission (EAC) in researching and developing a plan for a voter fraud and intimidation study. On or about September 1, 2005, an EAC employee communicated to you that EAC agreed to enter this personal services agreement with you. You began work based upon this notice of award. Despite the fact that the agreement was entered and communicated by an unauthorized person, EAC has reviewed the contract and concluded that ratification of this agreement is appropriate. EAC has ratified the agreement made with you on September 1, 2005. EAC has also received your first invoice for the period September 1 through September 30. That invoice will be reviewed and placed in line for payment.

To acknowledge receipt of this contract, please countersign and date below and return one copy of this letter to the attention of Nicole Mortellito.

We appreciate your work on these important efforts.

Sincerely,

Gracia Hillman
Chair

Tova Wang

Comm. DeGregorio Files

027929

FINAL DRAFT

For Review by the Standards Board and Board of Advisors

**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
Public Law 107-252**

May 16, 2006

Submitted by

The Eagleton Institute of Politics, Rutgers, The State University of New Jersey

The Moritz College of Law, The Ohio State University

027930

FINAL DRAFT

For Review by the Standards Board and Board of Advisors

The Research Team

This research report on Voter Identification Requirements in the 2004 election is part of a broader analysis that also includes a study of Provisional Voting, which has already been submitted to the EAC. Conducting the work was a consortium of The Eagleton Institute of Politics of Rutgers, The State University of New Jersey, and The Moritz College of Law of The Ohio State University.

The Eagleton Institute explores state and national politics through research, education, and public service, linking the study of politics with its day-to-day practice. It focuses attention on how contemporary political systems work, how they change, and how they might work better. Eagleton regularly undertakes projects to enhance political understanding and involvement, often in collaboration with government agencies, the media, non-profit groups, and other academic institutions.

The Moritz College of Law has served the citizens of Ohio and the nation since its establishment in 1891. It has played a leading role in the legal profession through countless contributions made by graduates and faculty. Its contributions to election law have become well known through its Election Law @ Moritz website. *Election Law @ Moritz* illuminates public understanding of election law and its role in our nation's democracy.

Project Management Team

Dr. Ruth B. Mandel
Director, Eagleton Institute of Politics
Board of Governors Professor of Politics
Principal Investigator
Chair of the Project Management Team

Edward B. Foley
Robert M. Duncan/Jones Day Designated
Professor of Law
The Moritz College of Law
Director of Election Law @ Moritz

Ingrid Reed
Director of the New Jersey Project
The Eagleton Institute of Politics

Daniel P. Tokaji
Assistant Professor of Law
The Moritz College of Law

John Weingart
Associate Director
The Eagleton Institute of Politics

Thomas M. O'Neill
Consultant, The Eagleton Institute of Politics
Project Director

Dave Andersen
Graduate Assistant

John Harris
Graduate Assistant
The Eagleton Institute of Politics

Donald Linky
Senior Policy Fellow
The Eagleton Institute of Politics

Sara A. Sampson
Reference Librarian,
Moritz College of Law

Tim Vercellotti
Assistant Research Professor
Assistant Director, Center for Public Interest
Polling
The Eagleton Institute

Laura Williams
The Moritz College of Law

FINAL DRAFT

For Review by the Standards Board and Board of Advisors

Peer Review Group

A draft of this report and the statistical analysis in its appendix were critiqued by a Peer Review Group. The comments of its members improved the quality of our work. While the Group as a whole and the comments of its members individually contributed generously to the research effort, any errors of fact or weaknesses in inference are the responsibility of the Eagleton-Moritz research team. The members of the Peer Review Group do not necessarily share the views reflected in our recommendations.

R. Michael Alvarez
Professor of Political Science
California Institute of Technology

Timothy G. O'Rourke
Dean, Fulton School of Liberal Arts
Salisbury University

John C. Harrison
Massee Professor of Law
University of Virginia School of Law

Bradley Smith
Professor of Law
Capital University Law School

Martha E. Kropf
Assistant Professor Political Science
University of Missouri-Kansas City

Tim Storey
Program Principal
National Conference of State Legislatures

Daniel H. Lowenstein
Professor of Law, School of Law
University of California at Los Angeles

Peter G. Verniero
former Attorney General, State of New Jersey
Counsel, Sills, Cummis, Epstein and Gross, PC

REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES

Report Background

The Help America Vote Act of 2002 (HAVA) (Public Law 107-252) authorizes the United States Election Assistance Commission (EAC) (Sec. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient.

This study provides information on voter identification practices in the 2004 election. It makes recommendations for best practices to evaluate future proposals for voter ID requirements, including the systematic collection and evaluation of information from the states. The research was conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at the Ohio State University under a contract with the EAC, dated May 24, 2005. The work included a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting as well as a statistical analysis of the relationship of various requirements for voter identification to turnout in the 2004 election. This report is a companion to a report on Provisional Voting submitted to the EAC on November 28, 2005 under the same contract.

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Background and Methods

This report arrives at a time of considerable ferment over the issue of voter identification. The debate across the nation over requiring voters to produce a specific identification document before being permitted to cast a regular (as opposed to a provisional) ballot, has revealed supporters and opponents in polarized camps.

- Proponents of stricter identification requirements base their case on improving the security of the ballot by reducing opportunities for one kind of vote fraud --multiple voting or voting by those who are not eligible. The proponents argue that their goal is to ensure that only those legally entitled to vote do so, and do so only once at each election.

REVISED FINAL D R A F T
For review by the EAC's Advisory Boards

- Opponents seek to forestall more stringent identification requirements, such as for government-issued photo ID, in order to ensure broad access to a regular ballot. They fear that some voters --such as, they argue, racial and ethnic minorities, the young, and elderly voters-- may lack convenient access to the required ID documents, or that such voters may be fearful of submitting their ID documents to official scrutiny and thus stay away from the polls.
- Both sides argue that their preferred policy will engender faith in the electoral process among citizens.

This report considers policy issues associated with the voter ID debate and investigates whether empirical study can suggest a way to estimate the effects of different voter ID requirements on turnout, and important first step in assessing tradeoffs between ballot security and ballot access. The aim is to contribute to the effort to raise the quality of the debate over this contentious topic. The tradeoffs between ballot security and ballot access are crucial. A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent eligible voters from casting a ballot. If the ID requirement of a ballot protection system blocks ineligible voters from the polls at the cost of preventing eligible voters who lack the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

As part of the project's effort to analyze the relationship between Voter ID requirements, turnout, and their policy implications, a statistical analysis was conducted to examine the potential variation in turnout. This statistical study developed a model to illuminate the relationships between voter ID requirements and turnout. This model's findings and limitations suggest avenues for further research and analysis that may assist the EAC and the states as they explore policies to balance the goals of ballot integrity and ballot access.

The statistical analysis describes one possible way to estimate what might be the incremental effect on voters' access to the ballot of an increase in the rigor of voter identification requirements. We do not offer this statistical analysis as the last word, but rather as a preliminary word on the subject. Its findings must be regarded as tentative; the information that might permit greater certainty is simply not available. Indeed, as our recommendations indicate, the next step to improve understanding of the effects of stricter voter identification on turnout and on vote fraud is to collect more information on both topics systematically and regularly.

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For review by the EAC's Advisory Boards

Making a statistical estimate of the effect of voting regulations on turnout is difficult. The dynamics of turnout are complex, much studied, and only partially understood. Some agreement exists, however, that three factors that exert substantial influence on voter turnout are:¹ the socioeconomic status of the potential voter; legal requirements to vote; and the political context of the election. By focusing on how voters identify themselves at the polls, this report emphasizes legal requirements. The statistical analysis also considers some of the socioeconomic, racial, and age characteristics of the electorate, as well as the political context in 2004 (such as whether a state was a battleground in the presidential race).

Examining tradeoffs between ballot security and ballot access requires some measure of the effectiveness of voter ID requirements in reducing multiple voting or voting by ineligible voters. The existing evidence on the incidence of vote fraud, especially on the kind of vote fraud that could be reduced by requiring more rigorous voter identification, is not sufficient to evaluate those tradeoffs.² Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. This research does not include consideration of vote fraud, nor does it estimate the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. Our analysis also cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

Despite these qualifications regarding the quality of the available data and the limitations of statistical analysis, however, although it used different statistical methods and two different sets of data on turnout in 2004 election, it points to the same general finding. As discussed at greater length in the appendix to this report, stricter voter identification requirements were correlated with reduced turnout in the models employed.³ As explained below, these models find that a statistically significant relationship exists, even when controlling for other factors (such as whether the election was in a battleground state) that might affect turnout. Without knowing more about the effects of stricter voter ID on reducing multiple voting or voting by ineligible

¹ See, for example, Tom William Rice and Patrick J. Kenney, "Voter Turnout in Presidential Primaries." 1985. Political Behavior, 7: 101-112. Identification requirements are not the only legal restrictions on voting. States also differ, for example, in their registration requirements (including how long before the election registration must take place and the identity documents required register).

² The EAC has contracted with other researchers to study vote fraud issues.

³ Appendix C: Tim Vercellotti, Eagleton Institute of Politics, *Analysis of Effects of Voter Identification Requirements on Turnout*.

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For review by the EAC's Advisory Boards

voters, however, the tradeoffs between ballot security and ballot access cannot be assessed fully.

Methodology

The report includes detailed information on the nature of the statutory requirements across the country in 2004 and on the statutes and court decisions that provide the legal context for the voter ID debate. We gathered information on the requirements in effect in the 50 states and the District of Columbia in that year. Based on our interpretation of state statutes, supplemented in some cases by conversations with state election officials, we divided the states' ID requirements into five categories. We believe each category is more rigorous than the one preceding, based on the demands they make on voters.⁴ The categories range from "Stating Name" which we judge to be somewhat less demanding than "Signing Name." "Signature Match" requires poll workers to examine the signature and compare it to a sample, which is slightly more demanding than the voter simply signing. "Present ID" requires voters to offer some documentary evidence of their identity, ranging from a utility bill to a passport. It is more demanding than the previous three categories because it requires that the voter remember to bring this documentation to the polls. (Even a simple ID, such as a utility bill, may not be available to some renters or, say, those in group housing.) We regard a government "Photo ID" as the most rigorous requirement. Such identity documents may not be uniformly and conveniently available to all voters.

For each state, we identified both the "maximum" and "minimum" identification requirements. The term "maximum" refers to the most that voters may be *asked* to do or show at the polling place (putting aside cases in which particular voter's eligibility may be questioned pursuant to a state challenge process). The term "minimum," on the other hand, refers to the most that voters can be *required* to do or show, in order to cast regular ballot (again leaving aside a state challenge process). We have included "maximum" requirements in our analysis, and not simply "minimum" requirements, because simply asking voters to produce particular identifying information may have a deterrent effect, even if voters are ultimately allowed to cast a regular ballot without that identification. For example, in a state where voters are asked to show photo ID at the polling place, but still allowed to vote by completing an affidavit confirming their eligibility, the "maximum" of being asked to show photo ID may deter some voters even though the "minimum" would allow them to vote without photo ID.

⁴ Even the most relaxed provisions for identification at the polls—anything stricter than the honor system used in North Dakota—will impose some burden on particular voters. Harvard Law Review 119:1146

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It is worth emphasizing that, at the time of the 2004 election, there was *no* state that had a "minimum" requirement of showing photo ID – in other words, there was no state that required voters to show photo ID in order to cast a regular ballot. For this reason, our report does not measure the impact of laws, like those recently enacted in Indiana and Georgia, which require voters to show photo ID in order to cast a regular ballot without an affidavit exception.

To examine the potential variation on turnout rates associated with each type of voter ID requirements in effect on Election Day 2004, the statistical analysis drew on two sets of data. These were, first, aggregate turnout data at the county level for each state and, second, the reports of individual voters collected in the November 2004 Current Population Survey by the U. S. Census Bureau. Using two different data sets makes it possible to check the validity of one analysis against the other. It also provides insights not possible using only one of the data sets. The aggregate analysis cannot provide valid estimates on the effects of different ID requirements on particular demographic groups (e.g., the old, the young, African-Americans, the poor, or high school graduates). The Current Population Survey data does permit that kind of analysis, although it has the disadvantage of relying on self-reports by respondents about their registration status and experience in the polling place.

To understand legal issues that have been raised in recent litigation over voter ID requirements, we collected and analyzed the few major cases that have been decided so far on this issue. The decisions so far provide some guidance on the constitutional and other constraints as to voter ID requirements.

Summary of Findings

As voter identification requirements vary, voter turnout varies as well. This finding emerged from both the statistical analysis's aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall relationship between the stringency of ID requirements and turnout was fairly small, but still statistically significant.

In the model used with the aggregate data in the statistical analysis, the match signature requirement, the provide a non-photo ID requirement, and the photo ID requirement were all correlated with lower turnout compared to requiring that voters state their names. With the addition of the registration closing data to the aggregate analysis, photo id is no longer a

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significant predictor of turnout. Signature match and non-photo id remain significant and negative predictors in the model.

The reduction in turnout was not the same for all demographic groups in the citizen voting age population.

The non-photo identification requirement showed the most significant and consistent correlation with reduced turnout. This result may be surprising given the intense debates surrounding photo identification requirements. The effect of photo ID requirements cannot, however, be assessed from the data the statistical analysis examined, since none of the states had laws in 2004 that conditioned voting on presentation of photo ID. Each of the five states that had photo ID as a "maximum" requirement (i.e., the most that voters could be asked to show at the polls) accepted another type of identification or an affidavit as a "minimum" requirement in the 2004 election (i.e., they were allowed to cast a regular ballot with something less than photo ID).

Significant questions about the relationship of voter identification requirements to turnout remain unanswered. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If ID requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? Other factors that may also be correlated with stricter ID laws – such as less user-friendly voter registration systems – may actually be causing lower turnout. The CPS data do not include the information needed to answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

Our analysis of litigation suggests that the courts will look more strictly at requirements that voters produce a photo ID in order to cast a regular ballot, than at non-photo ID laws. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for

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example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, a best practice for the states may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

The current lack of understanding of precisely how voter ID requirements affect turnout could be ameliorated by requiring the collection and reporting of additional data, including the reasons potential voters are required to cast a provisional ballot and the reasons for rejecting provisional ballots during the 2006 and subsequent elections. Also useful would be the results of surveys of voters on their experiences in meeting voter ID requirements and on what type of ballot they cast.⁵ And, of course, more information is needed on the incidence and varieties of vote fraud, but that inquiry is outside the scope of this report.

Recommendations for consideration and action by the EAC

The dynamics of Voter ID requirements –how more rigorous voter ID requirements may affect the decision by potential voters to go or stay away from the polls-- are not perfectly understood. This lack of understanding should be recognized in the policy process in the states. The debate over voter ID in the states would be improved by additional research sponsored by the EAC.

The EAC should consider the following actions to improve understanding of the relationship between voter ID requirements and the two important goals of ensuring ballot access and ensuring ballot integrity.

1. Encourage or sponsor further research to clarify the connection between Voter ID requirements and the number of potential voters actually able to cast a ballot that is actually counted.
2. Recommend as a best practice the publication of a "Voting Impact Statement" by states as they assess their voter ID requirements to protect the integrity of the ballot. The analysis will help ensure that efforts to increase ballot security have a neutral effect on electoral participation by eligible voters. The Voter Impact Statement would estimate the number and demographics of 1) eligible, potential voters that may be kept from the polls

⁵ Arizona held its first election with its new, stricter ID requirements on March 14, 2006. In at least one county (Maricopa) election officials handed a survey to voters that asked if they knew about the voter identification law and if they did, how they found out about it. Edythe Jensen, "New Voter ID Law Goes Smoothly in Chandler," *Arizona Republic*, March 15, 2006. More surveys of this kind can illuminate the dynamics of voter ID and voting in ways that are not possible now because of insufficient data.

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or permitted to cast a provisional ballot by a stricter ID requirement; and 2) and assess the number of ineligible voters who will be prevented from voting by the stricter ID requirements.

3. Encourage or require the states in the 2006 election and beyond, to collect and report reliable, credible information on the relationship between ballot access and ballot security. EAC should publish an analysis of this information to provide a sound factual basis for the states to consider as they estimate the incidence of the kinds of vote fraud that more stringent ID requirements may prevent. The analysis should describe the dynamics of the voter ID process in preserving the security of the ballot. EAC can also use this information to encourage the states to assess the effectiveness of programs to ensure that all eligible voters have required ID and are permitted to vote in future elections. Well-designed longitudinal studies in the states can show the results of changing voter ID requirements on electoral participation over time. The studies should include precinct-level data to provide the fine-grained analysis that can provide a solid foundation for policy.
 - I. Useful information could be supplied by state-sponsored surveys of voters by local election officials. It would make clear why those who cast a provisional ballot were found ineligible to cast a regular ballot. The answers would illuminate the frequency with which ID issues divert voters into the provisional ballot line.
 - II. Surveys to ask voters what they know about the voter id requirements would also provide useful context for evaluating the effect of various voter ID requirements on electoral participation.
 - III. Spot checks by state election officials on how the identification process works at polling places could provide information on how closely actual practice tracks statutory or regulatory requirements. Such reports should be available to the public.
4. Encourage states to examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. In eleven states, voters who had to cast a provisional ballot because they lacked the ID required for a regular ballot were permitted to return later with their ID. Their provision of this ID is the critical step in evaluating the ballots. The length of the period in which the voter may return with ID is important. In setting the time period for return, which now varies among the states from the same day to about two weeks, states should consider three factors:

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the convenience of the voter, the total time allowed to evaluate ballots⁶, and the safe harbor provision in presidential elections.

5. Recommendations to the states from EAC should reflect current judicial trends.

Requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more uncertain.

*What about
Indiana
case?*

SUMMARY OF RESEARCH

Background and Approach of the Study

Voter ID requirements are just one set of rules governing voting that may affect turnout. Social scientists have long studied how election rules affect participation in elections. The general view today is that the individual citizen makes the choice of whether to vote in a way similar to other decisions that a rational citizen makes, by comparing costs and benefits. The benefits of voting are fairly stable and hard to specify given the remote probability that any one vote will make a difference in an election. But whatever the benefit as perceived by an individual voter, as the costs of voting (for example, time, hassle, acquisition of information) increase, the likelihood that a citizen will vote decrease. Not all groups in the population calculate the cost of participation in the same way, so that election laws (such as registration or identification requirements) may affect different groups differently.

A short summary of some of the social science literature illustrates what may be a broad consensus that the rules of elections affect turnout, but note the important differences in the details of what groups may be most affected.

- Bowler, Brockington and Donovan in "Election Systems and Voter Turnout: Experiments in the United States". *The Journal of Politics*, 63:3 (August 2001) concluded that electoral systems help shape turnout by altering the benefits perceived by voters. For example, cumulative voting systems have 5% greater turnout than plurality systems
- The effect of registration systems has been the subject of many studies over the last 40 years. Kelley, Ayres, and Bowen in "Registration and Voting: Putting First Things First." *American Political Science Review*. 61:2 (June 1967) found that local variations in the

⁶ Our research on provisional voting reveals that states that provide more than a week to evaluate provisional ballots end up counting substantially more of those ballots than states that provide less than a week.

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rate of voting are most directly tied to variations in the rate of registering to vote, and that the rate of registering to vote in localities is most directly related to the laws and administration of the registration process. They concluded that the decline in voting over the past 80 years was due, in part, to the rise of registration laws.

- Brians and Grofman in "Election Day Registration's Effect on U.S. Voter Turnout." *Social Science Quarterly*. 82:1 (March 2001), found that relaxing registration laws produces higher turnout. In particular, they observed that relaxing registration laws is more likely to promote voter turnout among those with medium levels of income and education, rather than those at the lowest levels. Highton in "Easy Registration and Voter Turnout," *Journal of Politics*. 59:2 (May 1997); concluded similarly that registration laws affect voter turnout, but also observed that easier registration promotes turnout among those in lower socio-economic status.

- Mitchell and Wlezien. "The Impact of Legal Constraints on Voter Registration, Turnout, and the Composition of the American Electorate," *Political Behavior*. 17:2 (June 1995) agreed that easier registration promotes higher turnout, but also concluded that higher turnout from easier registration would be unlikely to change the composition of the electorate. Nagler in "The Effect of Registration Laws and Education on U.S. Voter Turnout." *American Political Science Review*. 85:4 (December 1991) found that registration laws decrease voter turnout by depressing the eligible electorate, but that lower educated people are not disproportionately impacted by these laws. But Rosenstone and Raymond E. Wolfinger in "The Effect of Registration Laws on Voter Turnout." *American Political Science Review*. 72:1 (March 1978) found that while registration laws did affect both voter turnout and the composition of the electorate, the sharpest effect of these restrictions was felt in the South and among the least educated.

- Squire, Wolfinger, and Glass in "Residential Mobility and Voter Turnout." *American Political Science Review*. 81:1 (March 1987) found that people who move constitute a major demographic group affected by registration laws. They estimated that altering laws to facilitate voting by recently moved people could increase turnout by 9%. Highton in "Residential Mobility, Community Mobility, and Voter Turnout." *Political Behavior*. 22:2 (June 2000) also found that people who move have lower turnout than stable residents, and estimated that the decline was more a result of registration laws than a loss of social connections.

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- Highton and Wolfinger in "Estimating the Effects of the National Voter Registration Act of 1993." *Political Behavior*. 20:2 (June 1998) concluded that the Motor Voter laws led to a significant increase in voting; that eliminating voter purges for not voting also increases voting; and that these effects are felt most heavily by the young (under 30) and the mobile (moved within past 2 years). Knack, in "Does 'Motor Voter' Work? Evidence from State-Level Data." *Journal of Politics*., 57:3 (August 1995), also found that motor voter does lead to increased registration and voting, but that other parts of NVRA of 1993, like mail-in registrations, agency-based registrations, and limitations on voter purges had not been as influential two years after the passage of the act.

While voter ID may not have been the subject of as much research as the registration process, establishing the eligibility of a person to vote has long been part of the electoral process. Voters may have to identify themselves twice in the electoral process: when registering to vote and then when casting a ballot. The pressures felt by the voter arising from the need to check ID, even so simple a check as a signature match, can be greater at the polls on Election Day than at the time of registration. Poll workers may feel under pressure when faced with long lines and limited time.

Voter ID requirements on Election Day

This analysis focuses on ID requirements on Election Day, but with an appreciation that the ID requirements at time of registration and on Election Day are inter-related.⁷ The emphasis in this report is on Voter ID requirements on Election Day and afterwards as election judges evaluate provisional ballots. This is the critical period for the electoral system, the time when ballot access and ballot security are in the most sensitive balance.

The report looks at voter ID issues that go beyond the rather narrow identification requirements in HAVA. Much of the current debate in state legislatures over voter ID ranges beyond HAVA to require more rigorous documentation of identity for all would-be voters, not just those who had not registered in person and are casting a ballot for the first time. Current controversies in the states over voter ID seems to have been sparked in part by the HAVA requirements, but goes beyond those requirements, and sets the context for the analysis here.⁸

⁷ As the Carter-Baker Commission noted, photo ID requirements for in-person voting do little to address the problem of fraudulent registration by mail, especially in states that do not require third-party organizations that register voters to verify ID. Commission on Federal Election Reform, pp 46-47.

⁸ Harvard Law Review 119:1127: "Legislators hoping to stiffen their state antifraud laws have taken their cue from identification provisions buried in HAVA."

*Carter-Baker
only
Comments
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We recognize that the previously technical, rather dull subject of voter ID requirements has become fiercely partisan and divisive in many states. The polarization of the debate has raised the stakes over this issue, making dispassionate analysis both more valuable and more rare.⁹ Voter ID is often described as the critical step in protecting the integrity of the ballot, the process to ensure that the potential voter is eligible and, if eligible, is permitted to cast one ballot and one ballot only. Truly protecting the integrity of the ballot, however, requires a perspective that takes in the entire voting process. It demands more than preventing the ineligible from voting, and should also ensure that all those who are eligible and want to vote can cast a ballot that counts. The protection effort must embrace all forms of voting, including absentee ballots, and consider each step in the process from registration through vote counting.

A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent the eligible from casting a ballot. If the ID requirements block ineligible voters from the polls at the cost of preventing eligible voters who cannot obtain or have left at home the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit. Ultimately, a normative evaluation of whether a state should adopt a stricter voter ID requirement (and, if so, what particular form that new requirement should take) will weigh value judgments as well as available factual evidence. Nonetheless, this report has proceeded on the premise that increased understanding of the factual evidence relating to the imposition of voter ID requirements, based on available data and statistical analysis of that data, can help inform the policy process.

Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. The EAC has commissioned a separate analysis of the incidence of vote fraud. Consequently, this research does not include consideration of vote fraud nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. As a result, our study of the possible effects of voter

⁹ "Of the various electoral procedure laws passed in the fifty states since the 2000 and 2004 presidential elections and those still being debated in state legislatures and local media, few arouse more potent partisan feelings than voter identification laws." *Harvard Law Review* 119:1144. John Fund's 2004 book, *Stealing Elections: How Voter Fraud Threaten Our Democracy*, cites (pages 16 – 17) a Rasmussen Research poll that asked respondents if they were more concerned with voting by ineligible participants or with disenfranchisement of eligible voters. Sixty-two percent of Kerry supporters, but only 18 percent of Bush supporters, worried more about *disenfranchisement*; 58 percent of Bush supporters, but only 19 percent of Kerry supporters were more concerned with *voter fraud*.

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ID requirements on turnout cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

In some states, voters lacking required ID, or who have ID that does not reflect their current address, are able to vote only by casting a provisional ballot.¹⁰ Voter ID requirements that require voters to bring a document to the polls --rather than simply sign their names-- may divert more voters to the provisional ballot. Requiring poll workers to request and check ID, can put stress on the already demanding environment of the polling place. Scrutiny of ID can create lines at the polling places. Further delays can result when voters cast a provisional ballot and fill out the ballot envelope. Voters who cast a provisional ballot because they lack their ID on Election Day, and who then fail to return with the needed document or documents, will have their ballot rejected.¹¹ And, of course, the cost of processing provisional ballots is greater than the cost of regular ballots.

Each of these potential consequences of more elaborate voter identification processes can increase the chance of litigation. Long lines will, at best, discourage voters and at worst make voting seem a hassle, an impression that could keep more citizens (even those with ID) from the polls.

Evaluating the effect of different Voter ID regimes can be most effective when based on clear standards --legal, equitable, practical. The standards outlined here might be described as questions policy-makers should ask about Voter ID requirements. We suggest 7 questions that address important dimensions of the problem.

1. Is the Voter ID system designed on the basis of valid and reliable empirical studies of the incidence of the sorts of vote fraud it is designed to prevent?¹²

¹⁰ For example, the Florida voter ID law adopted after the 2004 election and pre-cleared by the Department of Justice, permits voters who cannot meet the ID requirements to sign an affidavit on the envelope of a provisional ballot, which will be counted if the signature matches that on the voter's registration form.

¹¹ The EAC's Election Day Study found "improper ID," to be the third most common reason for a provisional ballot to be rejected. "Improper ID" was cited by 7 states responding to the survey, compared to 14 mentions for voting in the wrong precinct. *Election Day Study*, Chapter 6, p. 5.

¹² "Often where the battle over voter identification is most heated, real evidence of voter fraud proves scarce: in Georgia, for example, the Secretary of State averred that she had never encountered a single instance of voter impersonation at the polls. State laws might sometimes impose tighter restrictions on in-person voting than on absentee ballots, which yield the greatest incidence of, and provide the easiest avenue for, voter fraud. . ." Harvard Law Review 127:1144 (2006)

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2. How effective is the ID requirement in increasing the security of the ballot? How well can it be coordinated with a statewide voter database?¹³
3. How practical is the requirement? (Can it be administered smoothly by the staff and budget likely to be made available? How much additional training of polling place workers might be required?) Is it simple enough or can it be defined with sufficient clarity that poll workers throughout the state can administer it uniformly and with a minimum of local interpretation made on the fly under the pressure of Election Day?¹⁴
4. How cost-effective is the system? Does it demonstrably increase the security of the ballot affordably, measured in both monetary and other costs? To improve understanding of the non-monetary component of the costs, conducting a voter impact study might be appropriate. The voter impact study would examine, before the adoption of the regulation, the cost of compliance by the voter (such as the cost in time and money of acquiring a photo ID card), any offsetting benefits to voters, and the possible disparate effects of the regulation on various groups of voters.¹⁵ A thorough, objective impact statement that demonstrated the nexus between the identification regime and the integrity of the ballot could provide protection against inevitable legal challenges.
5. If a side effect of the Voter ID regulation is likely to reduce turnout, generally or among particular groups, is it possible to take other steps to ameliorate the adverse consequences?¹⁶
6. Does it comply with the letter and spirit of Voting Rights Act?
7. The seventh question is the most difficult to answer. How neutral is the effect of the Voter ID requirement on the composition of the qualified and eligible electorate? Might it,

¹³ See the final section of this report for a brief overview of possible effects of a statewide voter database on voter identification issues.

¹⁴ In New York, in 2004, disparities in training and voting information were made apparent in a study finding elections officials had wildly varying interpretations of what the state's voter identification requirement actually was. Tova Wang, "Warning Bell in Ohio," December 5, 2005. Website, the Foundation for National Progress.

¹⁵ "Absent clear empirical evidence demonstrating widespread individual voter fraud, legislatures need to fashion narrowly tailored voter identification provisions with an eye toward the inevitable and well-grounded constitutional challenges that will arise in the courts. Only as states grow more adept at administering elections will courts likely demonstrate greater willingness to uphold strict identification requirements." *Harvard Law Review* 127:1144 (2006)

¹⁶ For example, the Carter-Baker Commission coupled its recommendation for a national voter ID card to a call for an affirmative effort by the states to reach out and register the unregistered, that is, to use the new Voter ID regime as a means to enroll more voters. Similarly, Richard Hasen has suggested combining a national voter ID with universal registration. See his "Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown," *62 Washington and Lee Law Review* 937 (2005).

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intentionally or unintentionally, reduce the turnout of particular groups of voters or supporters of one party or another without an offsetting decrease in vote fraud?

Voter ID and Turnout

Based on research for this study by the Moritz College of Law, states had one of five types of maximum requirements in place on Election Day 2004. These are shown in Table 1, *Voter ID Requirements*. The five categories: at the polling place, voters were asked to either: state their names (10 states); sign their names (13 states and the District of Columbia); sign their names, to be matched to a signature on file (seven states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).¹⁷ Using this information made it possible to code the states according to these requirements, and examine the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification, however, in all "photo ID" states in 2004, voters without photo ID could cast a regular ballot after signing an affidavit concerning their identity and eligibility or provide other forms of ID). The report refers to this set of ID requirements as "maximum," the most rigorous ID the voter can be asked to present at the polling place in order to cast a regular ballot.¹⁸

Election laws in several states offer exceptions to these requirements if potential voters lack the necessary form of identification. Laws in those states set a minimum standard – that is the minimum requirement that a voter may be required to satisfy in order to vote using a regular ballot. States can be categorized based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. That is, voters who lacked photo ID would still be allowed to vote in all states, if able to meet another requirement. Four states required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). The analysis also examined this array of minimum

¹⁷ Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

¹⁸ As noted above, our analysis does not consider additional requirements that particular voters may be subjected to as part of an official challenge process, in the event that their eligibility is called into question.

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identification requirements to assess how they correlated with turnout: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit. As noted above, *no* state had a "minimum" requirement of showing photo ID. This analysis therefore cannot estimate the effect of laws, such as those recently enacted in Indiana and Georgia that require voters to show photo ID in order to cast a regular ballot without an affidavit or other exception.

We recognize the difficulties in summarizing each state's voter ID requirements. The problem is illustrated by the number of footnotes to Table 1 below. The variety of statutory and regulatory details among the states is complex.

Moving beyond the statutes and regulations, we also recognize that the assignment of each state to one category may fail to reflect actual practice at many polling places. As in any system run by fallible humans, the voter ID process is subject to variation in practice.¹⁹ Voters may have been confronted with demands for identification different from the directives in state statutes or regulation. It seems reasonable to conclude, however, that while actual practices may vary, the variance is around each state's legal requirement for ID. The analysis of the effect of state requirements on turnout must be viewed with some caution. We believe that the categories used in this report provide an acceptable level of discrimination among voter identification regimes.

¹⁹ One state election official told us that, "We have 110 election jurisdictions in Illinois, and I have reason to believe [the voter ID requirements] are administered little bit differently in each one. We wish it weren't that way, but it probably is."

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TABLE 1 – Voter ID Requirements²⁰

State	Maximum Forms of ID Required 2004	Current ID Requirement for First-Time Voters	Current ID Requirements for All Other Voters	Verification Method for Provisional Ballots
Alabama	Provide ID	Provide ID	Provide ID	Address & Registration
Alaska	Provide ID	Provide ID	Provide ID	Signature
Arizona	Provide ID	Gov-issued Photo ID	Gov-issued Photo ID ¹	Address & Registration
Arkansas	Provide ID	Provide ID	Provide ID	Address & Registration
California	Sign Name	Sign Name	Sign Name	Signature
Colorado	Provide ID	Provide ID	Provide ID	Address & Registration
Connecticut	Provide ID	Provide ID	Provide ID	Affidavit
D.C.	Sign Name	Provide ID*	Sign Name	Address & Registration
Delaware	Provide ID	Provide ID	Provide ID	Affidavit
Florida	Photo ID ²	Photo ID	Photo ID	Signature
Georgia	Provide ID	Gov. Issued Photo ID	Gov. Issued Photo ID	Affidavit
Hawaii	Photo ID ^{^^}	Photo ID	Photo ID ^{^^}	Affidavit
Idaho	Sign Name	Provide ID*	Sign Name	EDR
Illinois	Give Name	Provide ID*	Match Sig.	Affidavit
Indiana	Sign Name	Gov. Issued Photo ID	Gov. Issued Photo ID	Bring ID Later
Iowa	Sign Name	Provide ID*	Sign Name	Bring ID Later
Kansas	Sign Name	Sign Name	Sign Name	Bring ID Later
Kentucky	Provide ID	Provide ID	Provide ID	Affidavit
Louisiana	Photo ID	Photo ID	Photo ID [^]	DOB and Address
Maine	Give Name	Provide ID*	Give Name	EDR
Maryland	Sign Name	Provide ID*	Sign Name	Bring ID Later
Mass.	Give Name	Provide ID*	Give Name	Affidavit
Michigan	Sign Name	Provide ID*	Sign Name	Bring ID Later
Minnesota	Sign Name	Provide ID*	Sign Name	EDR
Mississippi	Sign Name	Provide ID*	Sign Name	Affidavit
Missouri	Provide ID	Provide ID*	Provide ID	Address & Registration
Montana	Provide ID	Provide ID*	Provide ID	Bring ID Later
Nebraska	Sign Name	Provide ID*	Sign Name	Affidavit
Nevada	Match Sig.	Provide ID*	Match Sig.	Affidavit
New Jersey	Match Sig.	Provide ID*	Match Sig.	Bring ID Later
New Mexico	Sign Name	Provide ID	Provide ID	Bring ID Later
New York	Match Sig.	Provide ID*	Match Sig.	Affidavit
NH	Give Name	Provide ID	Give Name	EDR
North Carolina	Give Name	Provide ID*	Give Name	Varies
North Dakota	Provide ID	Provide ID	Provide ID	No Registration
Ohio	Match Sig.	Provide ID	Provide ID	Address & Registration
Oklahoma	Sign Name	Provide ID*	Sign Name	Address & Registration
Oregon	Match Sig.	Provide ID*	Match Sig.	Signature
Penn.	Match Sig.	Provide ID ⁴	Match Sig.	Address & Registration
Rhode Island	Give Name	Provide ID*	Give Name	Address & Registration

²⁰ See Appendix 1 for a more detailed summary, including citations and statutory language, of the identification requirements in each state.

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South Carolina	Photo ID ^b	Photo ID	Photo ID ^{aa}	Address & Registration
South Dakota	Photo ID ^b	Photo ID	Photo ID ^{aa}	Affidavit
Tennessee	Provide ID	Provide ID ^c	Provide ID	Affidavit
Texas	Provide ID	Provide ID ^b	Provide ID	Bring ID Later
Utah	Give Name	Provide ID	Give Name	Bring ID Later
Vermont	Give Name	Provide ID	Give Name	Affidavit
Virginia	Provide ID	Provide ID	Provide ID	Affidavit
Washington	Sign Name	Provide ID	Provide ID	Address & Registration
West Virginia	Match Sig.	Provide ID	Match Sig.	Address & Registration
Wisconsin	Give Name	Provide ID	Give Name	Bring ID Later
Wyoming	Give Name	Provide ID	Give Name	Affidavit

* States applies only HAVA's ID requirement, applicable to first-time voters who registered by mail and did not provide applicable ID at the time of registration.

¹ Arizona voters who lack a photo ID may present 2 forms of ID with no photograph.

² Florida required a photo ID in 2004, but voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot. Florida subsequently changed its law to require that voters present photo ID to cast a regular ballot, though voters without photo ID may still cast a provisional ballot by signing an affidavit, which ballot should ordinarily be counted.

³ Louisiana required a photo ID in 2004. Voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot.

⁴ Pennsylvania requires ID of all first-time voters, whether they registered by mail or in-person.

⁵ Voters lacking a photo ID could vote by providing another form of ID in 2004.

⁶ Voters lacking a photo ID could vote by providing another form of ID in 2004.

⁷ Tennessee voters must provide signature and address. In counties without computerized lists, the signature is compared to the registration card. In counties with computerized lists, the signature is compared to a signature on ID presented with the registration.

⁸ Texas voters must present a current registration certificate. Those without a certificate can vote provisionally after completing an affidavit.

Relationship of Voter ID requirements to Turnout

The statistical analysis examined the potential variation in turnout rates based on the type of voter identification required in each state on Election Day 2004 using two sets of data: aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau.

The statistical analysis examined turnout among U.S. citizens of voting age in both the aggregate and the individual-level data. Determining citizenship status in the individual-level data simply involved restricting the analyses to individuals who identified themselves as citizens in the November 2004 Current Population Survey. (Those who said they were not citizens did not have the opportunity to answer the supplemental voting questions contained in the Current Population Survey.)

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Findings of the statistical analysis

The analysis looked at the voter identification requirements in two ways, as a continuous variable and as a series of discrete variables. As a continuous variable the maximum voter identification requirements are ranked according to how demanding they were judged to be, with photo ID as the most demanding requirement. As discrete variables, the statistical analysis assume that stating name is the least demanding ID requirement and compare each other requirement to it.

The analysis treating the requirements as a continuous variable offers some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with maximum voter identification requirements ($r = -.30, p < .05$). In considering the array of minimum requirements, with affidavit as the most demanding requirement, however, the correlation between voter identification and turnout is negative, but it is not statistically significant ($r = -.20, p = .16$). This suggests that the relationship between turnout rates and minimum requirements may not be linear. Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

Table 2 – Variation in 2004 State Turnout Based on Voter Identification Requirements

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	Mean Voter Turnout for States in that Category	Voter Identification Required in the States	Mean Voter Turnout for States in that Category
State Name	64.2 %	State Name	63.0 %
Sign Name	61.1 %	Sign Name	60.4 %
Match Signature	60.9 %	Match Signature	61.7 %
Provide Non-Photo ID	59.3 %	Provide Non-Photo ID	59.0 %
Provide Photo ID	58.1 %	Swear Affidavit	60.1 %
<i>Average Turnout (All States)</i>	60.9 %		

This table displays the mean turnout using the aggregate county level data for each state in 2004.

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Differences in voter turnout at the state level in 2004 varied based on voter identification requirements. Taking into account the maximum requirements, an average of 64.6 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend

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emerged when considering minimum requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their names, compared to 60.1 percent in states that required an affidavit from voters. Given the lack of a clear, consistent linear relationship between turnout and minimum identification requirements, however, we opted to treat the voter identification requirements as a series of dichotomous variables in subsequent analyses.²¹

Voter identification requirements are just one factor that may affect voter turnout. Multivariate models that take into account other predictors of turnout can paint a more complete picture of the relationship between voter identification requirements and turnout. This analysis estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county. While the model takes account of several important variables, statistical models do not capture all the messiness of the real world. It is a simplification of a complex reality, and its results should be treated with appropriate caution.

The model also took into account such variables as:

- Was the county in a presidential battleground state?
- Was the county was in a state with a competitive race for governor and/or the U.S. Senate?
- Percentage of the voting-age population in each county that was Hispanic or African-American²²
- Percentage of county residents age 65 and older
- Percentage of county residents below the poverty line

Another contextual factor to consider is voter registration requirements, such as the deadline for registration. As states set the deadline farther away from Election Day, the task of remembering to register to vote becomes more challenging. Thus our model takes into account the number of days between each state's registration deadline and the election.

²¹ The voter identification requirements are coded as a series of dummy variables, coding each variable as one if the requirement existed in a given state, and zero otherwise. This yielded five dichotomous variables for maximum requirements (state name, sign name, match signature, non-photo identification, or photo identification), and five dichotomous variables for minimum requirements (state name, sign name, match signature, non-photo identification, or providing an affidavit). Omitted is the variable for stating one's name so that it could serve as the reference category in comparison with the other four identification requirements in each of the statistical analyses.

²² The U.S. Census projections for 2003 provided the data for the percentage of the voting-age population in each county that was Hispanic or African-American and for the percentage of county residents age 65 and older.

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The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the citizen voting-age population that voted in the 2004 election.

The results of this modeling suggest that voter identification requirements such as signature matching, a non-photo ID or a photo ID are associated with lower turnout than in states that required voters to simply state their name, holding constant the electoral context and demographic variables.

Contextual factors, such as whether the county was in a battleground state or whether that state had a competitive race for governor and/or U.S. Senate, were associated with increased voter turnout. The time between the closing date for registration and the election was correlated with a slight negative effect on turnout. As the percentage of Hispanics in the county's population increased, turnout declined. The percentage of senior citizens in the county and household median income were associated with higher turnout. The percentage of African-Americans in the county did not have a significant effect in the model. The percentage of senior citizens in the county and household median income showed a positive correlation with turnout. In this aggregate model, the percentage of African-Americans in the county was not associated with a significant difference in turnout.

The relationship of the minimum voter identification requirements to turnout was not demonstrated. None of the dummy variables for voter identification requirements were statistically significant. Being a battleground state and having a competitive statewide race were significant and positive, as was the percentage of senior citizens in the county and household median income. The percentage of Hispanics in the county's population continued to be associated with reduced turnout, as was the number of days between the closing date for registration and the election.²³

Analysis of the aggregate data at the county level generates some support for the hypothesis that stricter identification requirements are correlated with lower turnout. For the maximum

²³ This test incorporated a series of interactions between the maximum and minimum voter identification requirements and the percentage of African-Americans and Hispanics living in the counties. In each case the interactions did not improve the fit of the models to the data. See tables A-1 and A-2 in the appendix of Vercellotti's paper in the appendices.

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requirements, a signature match, non-photo identification or photo identification were correlated with lower turnout in 2004, compared to requiring that voters simply state their names.

Aggregate data, however, cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote.²⁴ Voter identification requirements could have a relationship to the turnout of particular groups of voters, in ways that county-level aggregate data on turnout would not capture. To explore the effects of voter identification requirements on turnout more completely, it is important to examine individual-level data as well.

Individual-level Analysis

Individual-level turnout data exists in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. The Census Bureau conducts the CPS monthly to measure unemployment and other workforce data, but the bureau adds a battery of voter participation questions to the November survey in even-numbered years to coincide with either a presidential or midterm Congressional election.

One of the of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.²⁵ The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The statistical analysis in relying on the CPS is based on reports from *self-described* registered voters. Omitted are those who said they were not registered to vote, as are those who said they cast absentee ballots because the identification requirements for absentee ballots may differ from those required when one votes in person. Eliminated from the sample are respondents who said they were not U.S. citizens; the questionnaire design skipped those individuals past the voter registration and turnout questions in the survey. In addition to the voter identification requirements, the models include other socioeconomic, demographic, and political environment factors that might have

²⁴ For example, previous research has found that education is a powerful determinant of turnout (Wolfinger and Rosenstone 1980, but see also Nagler 1991).²⁴ Married people also are more likely to vote than those who are not married (Alvarez and Ansolabehere 2002; Alvarez, Nagler and Wilson 2004; Fisher, Kenny, and Morton 1993).

²⁵ It is important to note that the Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports concerning whether another member of the household voted, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent (U.S. Census Bureau 1990).

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influenced turnout in 2004.²⁶ The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election.²⁷

In the model, three of the voter identification requirements have a statistically significant correlation with whether survey respondents said they had voted in 2004. That is, compared to states that require voters only to state their names, the requirement to sign one's name, provide a non-photo ID, or photo ID in the maximum requirements or affidavit in the minimum is associated with lower turnout.

Of the other state factors, only the competitiveness of the presidential race showed a significant, correlation with increased turnout. In terms of demographic influences, African-American voters were more likely than white voters or other voters to say they had cast a ballot, while Asian-Americans were less likely than white or other voters to say they had turned out. Hispanic voters were not statistically different from white or other voters in terms of reported turnout. Consistent with previous research, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Among the age categories, those ages 45 to 64 and 65 and older were more likely than those ages 18 to 24 to say they voted. Respondents who had earned a high school diploma, attended some college, graduated from college or attended graduate school were all more likely to say they voted than those who had not finished high school.

While the probit models provide statistical evidence for the relationship of voter identification requirements and other variables to turnout, probit coefficients do not lend themselves to intuitive interpretation.²⁸ Table 3 below shows predicted probabilities (calculated from the probit coefficients) of voting for each level of voter identification requirements while holding all other independent variables in the models at their means.²⁹

²⁶ The models are estimated using probit analysis, which calculates the effects of independent variables on the probability that an event occurred – in this case whether a respondent said he or she voted and using robust standard errors to control for correlated error terms for observations from within the same state.

²⁷ The U.S. Census Bureau reported, based on the November 2004 CPS, that 89 percent of those who identified themselves as registered voters said they voted in 2004 (U.S. Census Bureau 2005). Previous research has shown that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be up to 10 percentage points higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

²⁸ A probit model is a popular specification of a generalized linear regression model, using the probit link function.

²⁹ In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

why?

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Table 3. Predicted probability of voter turnout – all voters		
	Maximum requirement	Minimum requirement
State name	91.7%	91.5%
Sign name	89.9%	90.2%
Match signature	Not significant	Not significant
Non-photo ID	89.0%	89.0%
Photo ID	88.8%	----
Affidavit	----	87.5%
Total difference from “state name” to “photo ID” or “affidavit”	2.9%	4.0%
N	54,973	
<p>Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies stating one's name to providing photo identification or an affidavit, with all other variables held constant. N.S. = nonsignificant coefficient in the probit model.</p> <p>Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.</p>		

Taking into account that signature matches were not a predictor of turnout, the differences in predicted probability decline from stating one's name to providing a photo identification or affidavit. Voters in states that required photo identification were 2.7 percent less likely to vote than voters in states where individuals had to give their names.³⁰ In terms of the minimum requirement, voters in states that required an affidavit at minimum were 4 percent less likely to turn out than voters in states where they had to give their names.

The differences were more pronounced for those lower in education. Constraining the model to show predicted probabilities only for those with less than a high school diploma, the probability of voting was 5.1 percent lower in states that required photo identification as the maximum requirement and 7 percent lower in states that required an affidavit as the minimum requirement compared to states where stating one's name was the maximum or minimum requirement.

³⁰ The voter turnout percentages may seem disproportionately high compared to the turnout rates reported in the aggregate data analysis. It is important to consider that the turnout rates in the aggregate data were a proportion of all citizens of voting-age population, while the turnout rates for the individual-level data are the proportion of only registered voters who said they voted.

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Race and ethnicity have generated particular interest in the debate over voter ID requirements.³¹ The analysis using the aggregate data shed no light on the association between voter ID requirements and turnout for African-American and Hispanic voters. But in the models using the individual data, some significant relationships emerged for African-American, Hispanic and Asian citizens. For the entire population, the signature, non-photo identification and photo identification requirements all were associated with lower turnout compared to the requirement that voters simply state their names. These correlations translated into reduced probabilities of voting of about 3 to 4 percent for the entire sample, with larger differences for specific subgroups. For example, the predicted probability that Hispanics would vote in states that required non-photo identification was about 10 percentage points lower than in states where Hispanic voters gave their names. The difference was about 6 percent for African-Americans and Asian-Americans, and about 2 percent for white voters.

The model also showed that Hispanic voters were less likely to vote in states that required non-photo identification as opposed to stating one's name. Hispanic voters were 10 percent less likely to vote in non-photo identification states compared to states where voters only had to give their name.

Varying voter identification requirements were associated with lower turnout rates for Asian-American voters as well. Asian-American voters were 8.5 percent less likely to vote in states that required non-photo identification compared to states that require voters to state their names under the maximum requirements, and they were 6.1 percent less likely to vote where non-photo identification was the minimum requirement.

Conclusions of the Statistical Analysis

The statistical analysis found that, as voter identification requirements vary, voter turnout varies as well. This finding emerged from both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall relationship between ID requirements and turnout for all registered voters was fairly small, but still statistically significant.

³¹ Incorporating discrete variables for Hispanics, African-Americans, and Asian-Americans into one model carries the implicit assumption that the remaining variables, including education and income, will influence each of these groups in a similar manner in terms of deciding whether to vote. These assumptions are not always born out by the data (see Leighley and Vedlitz, 1999.) To isolate the effects of voter identification and other variables on voter turnout within specific racial and ethnic groups, the sample is divided into sub-samples and the model re-run to calculate the data discussed and shown in Tables 5, 6, and 7 in Appendix C.

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In the aggregate data, the match signature requirement, the provide a non-photo ID requirement, and the photo ID requirement were all correlated with lower turnout compared to requiring that voters state their names.

The signature, non-photo ID, and photo ID requirements were all correlated with lower turnout compared to the requirement that voters simply state their names. That the non-photo identification requirement was the most consistent in terms of statistical significance across the groups is intriguing given the intense debates surrounding photo identification requirements.

Significant questions about the relationship between voter identification requirements and turnout remain unanswered. The data examined in the statistical analysis could not capture the dynamics of how identification requirements might lower turnout, nor could they rule out that other attributes of a state's electoral system might explain the statistically significant correlations that the study found. If ID requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day , or forced to cast a provisional ballot that is not ultimately counted? The CPS data do not include measures that can answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

Litigation Over Voter ID Requirements

A handful of cases have challenged identification requirements in court in recent years. In general, requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more doubtful. To date, only two cases have considered laws requiring voters to show photo ID (*Common Cause v. Billups* and *Indiana Democratic Party v. Rokita*). Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.

Non-photo identification. For the most part, courts have looked favorably on requirements that voters present some form of identifying documents if the photo identification is not the

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only form accepted. In *Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485, at *1 (Colo. Dist. Ct. Oct. 18, 2004), plaintiffs challenged a law requiring all in-person voters to show identification (not just first-time registrants). The court upheld this requirement against a constitutional challenge. Similarly, in *League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004), the court rejected a challenge to an Ohio directive requiring first-time voters who registered by mail to provide one of the HAVA-permitted forms of identification, in order to have their provisional ballots counted. Specifically, the directive provided that their provisional ballots would be counted if the voter (a) orally recited his driver's license number or the last four digits of his social security number or (b) returned to the polling place before it closed with some acceptable identification (including reciting those identification numbers). *Id.* This was found to be consistent with HAVA.

Photo ID. Since the 2004 election, two states have adopted laws requiring photo identification at the polls in order to have one's vote counted, without an affidavit exception: Georgia and Indiana.³² Both these requirements were enacted in 2005 and both have been challenged in court. The Georgia law required voters attempting to cast a ballot in person present a valid form of photographic identification. O.C.G.A. § 21-2-417. On October 18, 2005, the District Court granted the plaintiffs' motion for a preliminary injunction, enjoining the application of the new identification requirements on constitutional grounds. In granting the injunction, the court held that plaintiffs' claims under both the Fourteenth Amendment (equal protection) and Twenty-Fourth Amendment (poll tax) had a substantial likelihood of succeeding on the merits at trial (*Common Cause v. Billups*, Prelim. Inj. 96, 104). In January 2006, Georgia enacted a modified version of its photo ID law, which the court has not yet ruled on. In the other state that has enacted a photo ID requirement (Indiana), legal challenges have also been filed. (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*). On April 14, 2006, the district court granted defendants' motion for summary judgment, concluding that plaintiffs had failed to produce evidence showing that the state's ID law would have an adverse impact on voters. Another case of significance, for purposes of photo ID requirements, is *American Civil Liberties Union of Minnesota v. Kiffmeyer*, No. 04-CV-4653, 2004 WL

³² Indiana's law does allow voters without ID to cast provisional ballots, and then to appear before the county board of elections to execute an affidavit saying that they are indigent and unable to obtain the requisite ID without payment of a fee. But in contrast to other states, voters cannot cast a ballot that will be counted by submitting an affidavit at the polls, affirming that they are the registered voter and are otherwise eligible to vote.

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2428690, at *1 (D. Minn. Oct. 28, 2004). In that case, the court enjoined a Minnesota law that allowed the use of tribal photo ID cards, only for an Indian who lived on the reservation. 2004 WL 2428690, at *1. The Court found no rational basis for distinguishing based on whether or not the cardholder lives on the reservation. *Id.* at *1, 3. These decisions indicate that courts are likely to carefully scrutinize the evidence regarding the impact of photo ID requirements.

Privacy. In *Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993), the court struck down on due process grounds a Virginia law requiring disclosure of voters' social security numbers for voter registration. The social security numbers recorded in voter registration lists had been disclosed to the public and political parties that had requested the lists. The court found that the requirement to give the social security number effectively conditioned rights on the consent to an invasion of privacy. It concluded that this public disclosure of the social security numbers was not necessary to achieve the government's interest in preventing fraud. On the other hand, in *McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000), the court rejected privacy challenges based on both the Constitution and federal statutes, to a Tennessee law requiring social security numbers for voter registration since 1972. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. The distinction appears to be between the use of Social Security numbers for internal purposes only, which was deemed permissible, and the disclosure of those numbers to the public, which was not.

These decisions suggest that the courts will carefully scrutinize the evidence, where states require that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, these early decisions suggest that best practice may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

Not true!

Developments since 2004

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Since the passage of HAVA, with its limited requirements for voter identification, and following the 2004 election, debate over voter ID has taken place in state legislatures across the country. That debate has not been characterized by solid information on the consequences of tightening requirements for voters to identify themselves before being permitted to cast a regular, rather than a provisional, ballot.

Better information might improve the quality of the debate. Answers to the following key questions are not available in a form that might satisfy those on both sides of the argument.

- What is the overall incidence of vote fraud?
- How does fraud take place in the various stage of the process: registration, voting at the polls, absentee voting, or ballot counting?
- What contribution can tighter requirements for voter ID make to reducing vote fraud?
- What would be the other consequences of increasingly demanding requirements for voters to identify themselves? This is the question addressed, within the limits of the available data, in the analysis in this report.

Answering these questions would provide the information needed for more informed judgment in the states as they consider the tradeoffs among the competing goals of ballot integrity, ballot access, and administrative efficiency. The Carter-Baker Commission recognized the tradeoffs when it tied recommendation for national ID to an affirmative effort by government to identify unregistered voters and make it easy for them to register.

State Voter Databases and Voter ID

With the implementation of the HAVA Computerized Statewide Voter Registration List, an application for voter registration for an election for Federal office may not be accepted or processed unless the application includes a driver's license number or last four digits of the Social Security number on the voter registration form. This information can be used to verify the identity of the registrant through interfacing with lists maintained by the Motor Vehicle office and Social Security office. If registrants do not have either a driver's license or Social Security number, the State will assign a unique identifier number to that person.

Some states are wrestling now with these unresolved issues. In New Jersey, for example, pending legislation would require that voters must be able to confirm their registration through a secure access to the Statewide Voter Registration List. It also requires voters to present ID at

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the polls in order to cast a regular ballot if the numbers recorded on the registration have not been verified (or if no verifiable number appears on the registration). It recognizes the HAVA requirement that if the number provided by the voter has not been verified and if the voter does not present ID at the polls, that voter may cast a provisional ballot. The bill does not specify they have to provide ID within 48 hours in order for their vote to count, as is the case with first-time mail-in registrants.

As some states gain experience in this area, the EAC would perform a useful service by making timely recommendations of best practices for all states to consider.

Conclusions

The analysis of voter ID requirements is complex. It takes into account important values associated with an electoral process, such as ballot access and integrity. The continuing effort to understand how voter ID requirements may affect turnout and the integrity of the ballot could benefit from additional factual information, including statistical analyses. Our research includes a statistical study of this kind. It indicated that the level of voter turnout in a state is correlated with the stringency of the voter ID requirement imposed by that state. Additional empirical research of this nature, with additional data collected by or for the EAC, would further illuminate the relationship between stricter voter ID rules and turnout, perhaps explaining if awareness of a strict ID requirement tends to discourage would-be voters from going to the polls. Or, additional research may shed light on whether, if voters did go to the polls, stricter Voter ID requirements will divert more voters into the line for provisional ballots. The consequence of increased reliance on provisional ballots can be longer lines at the polls and confusion, without necessarily a clear demonstration that the security of the ballot is correspondingly increased.³³

The debate over voter ID in the states would be improved by additional research sponsored by the EAC. That might include longitudinal studies of jurisdictions that have changed voter ID requirements, as well as precinct-level analyses that would allow more finely tuned assessment of the correlation between stricter identification requirements and turnouts. Further research could also identify methods to eliminate the need for voters to bring specific identity documents

³³ In this connection, the Brennan Center's response to the Carter-Baker Commission report observes that, "while it might be true that in a close election "a small amount of fraud could make the margin of difference," it is equally true that the rejection of a much larger number of eligible voters could make a much bigger difference in the outcome." *Response to the Report of the 2005 Commission on Federal Election Reform*, The Brennan Center for Justice at NYU School of Law and Spencer Overton, On Behalf Of The National Network on State Election Reform, September 19, 2005

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with them to the polls, while assuring that each voter who casts a ballot is eligible and votes only once.

FINAL DRAFT

For Review by the Standards Board and Board of Advisors

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

Public Law 107-252

May 16, 2006

Submitted by

The Eagleton Institute of Politics, Rutgers, The State University of New Jersey

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FINAL DRAFT

For Review by the Standards Board and Board of Advisors

The Research Team

This research report on Voter Identification Requirements in the 2004 election is part of a broader analysis that also includes a study of Provisional Voting, which has already been submitted to the EAC. Conducting the work was a consortium of The Eagleton Institute of Politics of Rutgers, The State University of New Jersey, and The Moritz College of Law of The Ohio State University.

The Eagleton Institute explores state and national politics through research, education, and public service, linking the study of politics with its day-to-day practice. It focuses attention on how contemporary political systems work, how they change, and how they might work better. Eagleton regularly undertakes projects to enhance political understanding and involvement, often in collaboration with government agencies, the media, non-profit groups, and other academic institutions.

The Moritz College of Law has served the citizens of Ohio and the nation since its establishment in 1891. It has played a leading role in the legal profession through countless contributions made by graduates and faculty. Its contributions to election law have become well known through its Election Law @ Moritz website. *Election Law @ Moritz* illuminates public understanding of election law and its role in our nation's democracy.

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FINAL DRAFT

For Review by the Standards Board and Board of Advisors

Peer Review Group

A draft of this report and the statistical analysis in its appendix were critiqued by a Peer Review Group. The comments of its members improved the quality of our work. While the Group as a whole and the comments of its members individually contributed generously to the research effort, any errors of fact or weaknesses in inference are the responsibility of the Eagleton-Moritz research team. The members of the Peer Review Group do not necessarily share the views reflected in our recommendations.

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REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES

Report Background

The Help America Vote Act of 2002 (HAVA) (Public Law 107-252) authorizes the United States Election Assistance Commission (EAC) (Sec. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient.

This study provides information on voter identification practices in the 2004 election. It makes recommendations for best practices to evaluate future proposals for voter ID requirements, including the systematic collection and evaluation of information from the states. The research was conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at the Ohio State University under a contract with the EAC, dated May 24, 2005. The work included a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting as well as a statistical analysis of the relationship of various requirements for voter identification to turnout in the 2004 election. This report is a companion to a report on Provisional Voting submitted to the EAC on November 28, 2005 under the same contract.

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Background and Methods

This report arrives at a time of considerable ferment over the issue of voter identification. The debate across the nation over requiring voters to produce a specific identification document before being permitted to cast a regular (as opposed to a provisional) ballot, has revealed supporters and opponents in polarized camps.

- Proponents of stricter identification requirements base their case on improving the security of the ballot by reducing opportunities for one kind of vote fraud --multiple voting or voting by those who are not eligible. The proponents argue that their goal is to ensure that only those legally entitled to vote do so, and do so only once at each election.

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- Opponents seek to forestall more stringent identification requirements, such as for government-issued photo ID, in order to ensure broad access to a regular ballot. They fear that some voters --such as, they argue, racial and ethnic minorities, the young, and elderly voters-- may lack convenient access to the required ID documents, or that such voters may be fearful of submitting their ID documents to official scrutiny and thus stay away from the polls.
- Both sides argue that their preferred policy will engender faith in the electoral process among citizens.

This report considers policy issues associated with the voter ID debate and investigates whether empirical study can suggest a way to estimate the effects of different voter ID requirements on turnout, and important first step in assessing tradeoffs between ballot security and ballot access. The aim is to contribute to the effort to raise the quality of the debate over this contentious topic. The tradeoffs between ballot security and ballot access are crucial. A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent eligible voters from casting a ballot. If the ID requirement of a ballot protection system blocks ineligible voters from the polls at the cost of preventing eligible voters who lack the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

As part of the project's effort to analyze the relationship between Voter ID requirements, turnout, and their policy implications, a statistical analysis was conducted to examine the potential variation in turnout. This statistical study developed a model to illuminate the relationships between voter ID requirements and turnout. This model's findings and limitations suggest avenues for further research and analysis that may assist the EAC and the states as they explore policies to balance the goals of ballot integrity and ballot access.

The statistical analysis describes one possible way to estimate what might be the incremental effect on voters' access to the ballot of an increase in the rigor of voter identification requirements. We do not offer this statistical analysis as the last word, but rather as a preliminary word on the subject. Its findings must be regarded as tentative; the information that might permit greater certainty is simply not available. Indeed, as our recommendations indicate, the next step to improve understanding of the effects of stricter voter identification on turnout and on vote fraud is to collect more information on both topics systematically and regularly.

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Making a statistical estimate of the effect of voting regulations on turnout is difficult. The dynamics of turnout are complex, much studied, and only partially understood. Some agreement exists, however, that three factors that exert substantial influence on voter turnout are:¹ the socioeconomic status of the potential voter; legal requirements to vote; and the political context of the election. By focusing on how voters identify themselves at the polls, this report emphasizes legal requirements. The statistical analysis also considers some of the socioeconomic, racial, and age characteristics of the electorate, as well as the political context in 2004 (such as whether a state was a battleground in the presidential race).

Examining tradeoffs between ballot security and ballot access requires some measure of the effectiveness of voter ID requirements in reducing multiple voting or voting by ineligible voters. The existing evidence on the incidence of vote fraud, especially on the kind of vote fraud that could be reduced by requiring more rigorous voter identification, is not sufficient to evaluate those tradeoffs.² Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. This research does not include consideration of vote fraud, nor does it estimate the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. Our analysis also cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

Despite these qualifications regarding the quality of the available data and the limitations of statistical analysis, however, although it used different statistical methods and two different sets of data on turnout in 2004 election, it points to the same general finding. As discussed at greater length in the appendix to this report, stricter voter identification requirements were correlated with reduced turnout in the models employed.³ As explained below, these models find that a statistically significant relationship exists, even when controlling for other factors (such as whether the election was in a battleground state) that might affect turnout. Without knowing more about the effects of stricter voter ID on reducing multiple voting or voting by ineligible

¹ See, for example, Tom William Rice and Patrick J. Kenney, "Voter Turnout in Presidential Primaries." 1985. *Political Behavior*, 7: 101-112. Identification requirements are not the only legal restrictions on voting. States also differ, for example, in their registration requirements (including how long before the election registration must take place and the identity documents required register).

² The EAC has contracted with other researchers to study vote fraud issues.

³ Appendix C: Tim Vercellotti, Eagleton Institute of Politics, *Analysis of Effects of Voter Identification Requirements on Turnout*.

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voters, however, the tradeoffs between ballot security and ballot access cannot be assessed fully.

Methodology

The report includes detailed information on the nature of the statutory requirements across the country in 2004 and on the statutes and court decisions that provide the legal context for the voter ID debate. We gathered information on the requirements in effect in the 50 states and the District of Columbia in that year. Based on our interpretation of state statutes, supplemented in some cases by conversations with state election officials, we divided the states' ID requirements into five categories. We believe each category is more rigorous than the one preceding, based on the demands they make on voters.⁴ The categories range from "Stating Name" which we judge to be somewhat less demanding than "Signing Name." "Signature Match" requires poll workers to examine the signature and compare it to a sample, which is slightly more demanding than the voter simply signing. "Present ID" requires voters to offer some documentary evidence of their identity, ranging from a utility bill to a passport. It is more demanding than the previous three categories because it requires that the voter remember to bring this documentation to the polls. (Even a simple ID, such as a utility bill, may not be available to some renters or, say, those in group housing.) We regard a government "Photo ID" as the most rigorous requirement. Such identity documents may not be uniformly and conveniently available to all voters.

For each state, we identified both the "maximum" and "minimum" identification requirements. The term "maximum" refers to the most that voters may be *asked* to do or show at the polling place (putting aside cases in which particular voter's eligibility may be questioned pursuant to a state challenge process). The term "minimum," on the other hand, refers to the most that voters can be *required* to do or show, in order to cast regular ballot (again leaving aside a state challenge process). We have included "maximum" requirements in our analysis, and not simply "minimum" requirements, because simply asking voters to produce particular identifying information may have a deterrent effect, even if voters are ultimately allowed to cast a regular ballot without that identification. For example, in a state where voters are asked to show photo ID at the polling place, but still allowed to vote by completing an affidavit confirming their eligibility, the "maximum" of being asked to show photo ID may deter some voters even though the "minimum" would allow them to vote without photo ID.

⁴ Even the most relaxed provisions for identification at the polls—anything stricter than the honor system used in North Dakota—will impose some burden on particular voters. Harvard Law Review 119:1146

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It is worth emphasizing that, at the time of the 2004 election, there was *no* state that had a "minimum" requirement of showing photo ID – in other words, there was no state that required voters to show photo ID in order to cast a regular ballot. For this reason, our report does not measure the impact of laws, like those recently enacted in Indiana and Georgia, which require voters to show photo ID in order to cast a regular ballot without an affidavit exception.

To examine the potential variation on turnout rates associated with each type of voter ID requirements in effect on Election Day 2004, the statistical analysis drew on two sets of data. These were, first, aggregate turnout data at the county level for each state and, second, the reports of individual voters collected in the November 2004 Current Population Survey by the U. S. Census Bureau. Using two different data sets makes it possible to check the validity of one analysis against the other. It also provides insights not possible using only one of the data sets. The aggregate analysis cannot provide valid estimates on the effects of different ID requirements on particular demographic groups (e.g., the old, the young, African-Americans, the poor, or high school graduates). The Current Population Survey data does permit that kind of analysis, although it has the disadvantage of relying on self-reports by respondents about their registration status and experience in the polling place.

To understand legal issues that have been raised in recent litigation over voter ID requirements, we collected and analyzed the few major cases that have been decided so far on this issue. The decisions so far provide some guidance on the constitutional and other constraints as to voter ID requirements.

Summary of Findings

As voter identification requirements vary, voter turnout varies as well. This finding emerged from both the statistical analysis's aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall relationship between the stringency of ID requirements and turnout was fairly small, but still statistically significant.

In the model used with the aggregate data in the statistical analysis, the match signature requirement, the provide a non-photo ID requirement, and the photo ID requirement were all correlated with lower turnout compared to requiring that voters state their names. With the addition of the registration closing data to the aggregate analysis, photo id is no longer a

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significant predictor of turnout. Signature match and non-photo id remain significant and negative predictors in the model.

The reduction in turnout was not the same for all demographic groups in the citizen voting age population.

The non-photo identification requirement showed the most significant and consistent correlation with reduced turnout. This result may be surprising given the intense debates surrounding photo identification requirements. The effect of photo ID requirements cannot, however, be assessed from the data the statistical analysis examined, since none of the states had laws in 2004 that conditioned voting on presentation of photo ID. Each of the five states that had photo ID as a "maximum" requirement (i.e., the most that voters could be asked to show at the polls) accepted another type of identification or an affidavit as a "minimum" requirement in the 2004 election (i.e., they were allowed to cast a regular ballot with something less than photo ID).

Significant questions about the relationship of voter identification requirements to turnout remain unanswered. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If ID requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? Other factors that may also be correlated with stricter ID laws – such as less user-friendly voter registration systems – may actually be causing lower turnout. The CPS data do not include the information needed to answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

Our analysis of litigation suggests that the courts will look more strictly at requirements that voters produce a photo ID in order to cast a regular ballot, than at non-photo ID laws. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for

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example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, a best practice for the states may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

The current lack of understanding of precisely how voter ID requirements affect turnout could be ameliorated by requiring the collection and reporting of additional data, including the reasons potential voters are required to cast a provisional ballot and the reasons for rejecting provisional ballots during the 2006 and subsequent elections. Also useful would be the results of surveys of voters on their experiences in meeting voter ID requirements and on what type of ballot they cast.⁵ And, of course, more information is needed on the incidence and varieties of vote fraud, but that inquiry is outside the scope of this report.

Recommendations for consideration and action by the EAC

The dynamics of Voter ID requirements –how more rigorous voter ID requirements may affect the decision by potential voters to go or stay away from the polls-- are not perfectly understood. This lack of understanding should be recognized in the policy process in the states. The debate over voter ID in the states would be improved by additional research sponsored by the EAC.

The EAC should consider the following actions to improve understanding of the relationship between voter ID requirements and the two important goals of ensuring ballot access and ensuring ballot integrity.

1. Encourage or sponsor further research to clarify the connection between Voter ID requirements and the number of potential voters actually able to cast a ballot that is actually counted.
2. Recommend as a best practice the publication of a "Voting Impact Statement" by states as they assess their voter ID requirements to protect the integrity of the ballot. The analysis will help ensure that efforts to increase ballot security have a neutral effect on electoral participation by eligible voters. The Voter Impact Statement would estimate the number and demographics of 1) eligible, potential voters that may be kept from the polls

⁵ Arizona held its first election with its new, stricter ID requirements on March 14, 2006. In at least one county (Maricopa) election officials handed a survey to voters that asked if they knew about the voter identification law and if they did, how they found out about it. Edythe Jensen, "New Voter ID Law Goes Smoothly in Chandler," *Arizona Republic*, March 15, 2006. More surveys of this kind can illuminate the dynamics of voter ID and voting in ways that are not possible now because of insufficient data.

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or permitted to cast a provisional ballot by a stricter ID requirement; and 2) and assess the number of ineligible voters who will be prevented from voting by the stricter ID requirements.

3. Encourage or require the states in the 2006 election and beyond, to collect and report reliable, credible information on the relationship between ballot access and ballot security. EAC should publish an analysis of this information to provide a sound factual basis for the states to consider as they estimate the incidence of the kinds of vote fraud that more stringent ID requirements may prevent. The analysis should describe the dynamics of the voter ID process in preserving the security of the ballot. EAC can also use this information to encourage the states to assess the effectiveness of programs to ensure that all eligible voters have required ID and are permitted to vote in future elections. Well-designed longitudinal studies in the states can show the results of changing voter ID requirements on electoral participation over time. The studies should include precinct-level data to provide the fine-grained analysis that can provide a solid foundation for policy.
 - I. Useful information could be supplied by state-sponsored surveys of voters by local election officials. It would make clear why those who cast a provisional ballot were found ineligible to cast a regular ballot. The answers would illuminate the frequency with which ID issues divert voters into the provisional ballot line.
 - II. Surveys to ask voters what they know about the voter id requirements would also provide useful context for evaluating the effect of various voter ID requirements on electoral participation.
 - III. Spot checks by state election officials on how the identification process works at polling places could provide information on how closely actual practice tracks statutory or regulatory requirements. Such reports should be available to the public.
4. Encourage states to examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. In eleven states, voters who had to cast a provisional ballot because they lacked the ID required for a regular ballot were permitted to return later with their ID. Their provision of this ID is the critical step in evaluating the ballots. The length of the period in which the voter may return with ID is important. In setting the time period for return, which now varies among the states from the same day to about two weeks, states should consider three factors:

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the convenience of the voter, the total time allowed to evaluate ballots⁶, and the safe harbor provision in presidential elections.

5. Recommendations to the states from EAC should reflect current judicial trends.

Requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more uncertain.

SUMMARY OF RESEARCH

Background and Approach of the Study

Voter ID requirements are just one set of rules governing voting that may affect turnout. Social scientists have long studied how election rules affect participation in elections. The general view today is that the individual citizen makes the choice of whether the vote in a way similar to other decisions that a rational citizen makes, by comparing costs and benefits. The benefits of voting are fairly stable and hard to specify given the remote probability that any one vote will make a difference in an election. But whatever the benefit as perceived by an individual voter, as the costs of voting (for example, time, hassle, acquisition of information) increase, the likelihood that a citizen will vote decrease. Not all groups in the population calculate the cost of participation in the same way, so that election laws (such as registration or identification requirements) may affect different groups differently.

A short summary of some of the social science literature illustrates what may be a broad consensus that the rules of elections affect turnout, but note the important differences in the details of what groups may be most affected.

- Bowler, Brockington and Donovan in "Election Systems and Voter Turnout: Experiments in the United States". *The Journal of Politics*, 63:3 (August 2001) concluded that electoral systems help shape turnout by altering the benefits perceived by voters. For example, cumulative voting systems have 5% greater turnout than plurality systems
- The effect of registration systems has been the subject of many studies over the last 40 years. Kelley, Ayres, and Bowen in "Registration and Voting: Putting First Things First." *American Political Science Review*. 61:2 (June 1967) found that local variations in the

⁶ Our research on provisional voting reveals that states that provide more than a week to evaluate provisional ballots end up counting substantially more of those ballots than states that provide less than a week.

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rate of voting are most directly tied to variations in the rate of registering to vote, and that the rate of registering to vote in localities is most directly related to the laws and administration of the registration process. They concluded that the decline in voting over the past 80 years was due, in part, to the rise of registration laws.

- Brians and Grofman in "Election Day Registration's Effect on U.S. Voter Turnout." *Social Science Quarterly*. 82:1 (March 2001), found that relaxing registration laws produces higher turnout. In particular, they observed that relaxing registration laws is more likely to promote voter turnout among those with medium levels of income and education, rather than those at the lowest levels. Highton in "Easy Registration and Voter Turnout," *Journal of Politics*. 59:2 (May 1997), concluded similarly that registration laws affect voter turnout, but also observed that easier registration promotes turnout among those in lower socio-economic status.

- Mitchell and Wlezien. "The Impact of Legal Constraints on Voter Registration, Turnout, and the Composition of the American Electorate," *Political Behavior*. 17:2 (June 1995) agreed that easier registration promotes higher turnout, but also concluded that higher turnout from easier registration would be unlikely to change the composition of the electorate. Nagler in "The Effect of Registration Laws and Education on U.S. Voter Turnout." *American Political Science Review*. 85:4 (December 1991) found that registration laws decrease voter turnout by depressing the eligible electorate, but that lower educated people are not disproportionately impacted by these laws. But Rosenstone and Raymond E. Wolfinger in "The Effect of Registration Laws on Voter Turnout." *American Political Science Review*. 72:1 (March 1978) found that while registration laws did affect both voter turnout and the composition of the electorate, the sharpest effect of these restrictions was felt in the South and among the least educated.

- Squire, Wolfinger, and Glass in "Residential Mobility and Voter Turnout." *American Political Science Review*. 81:1 (March 1987) found that people who move constitute a major demographic group affected by registration laws. They estimated that altering laws to facilitate voting by recently moved people could increase turnout by 9%. Highton in "Residential Mobility, Community Mobility, and Voter Turnout." *Political Behavior*. 22:2 (June 2000) also found that people who move have lower turnout than stable residents, and estimated that the decline was more a result of registration laws than a loss of social connections.

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- Highton and Wolfinger in "Estimating the Effects of the National Voter Registration Act of 1993." *Political Behavior*. 20:2 (June 1998) concluded that the Motor Voter laws led to a significant increase in voting; that eliminating voter purges for not voting also increases voting; and that these effects are felt most heavily by the young (under 30) and the mobile (moved within past 2 years). Knack, in "Does 'Motor Voter' Work? Evidence from State-Level Data." *Journal of Politics*., 57:3 (August 1995), also found that motor voter does lead to increased registration and voting, but that other parts of NVRA of 1993, like mail-in registrations, agency-based registrations, and limitations on voter purges had not been as influential two years after the passage of the act.

While voter ID may not have been the subject of as much research as the registration process, establishing the eligibility of a person to vote has long been part of the electoral process. Voters may have to identify themselves twice in the electoral process: when registering to vote and then when casting a ballot. The pressures felt by the voter arising from the need to check ID, even so simple a check as a signature match, can be greater at the polls on Election Day than at the time of registration. Poll workers may feel under pressure when faced with long lines and limited time.

Voter ID requirements on Election Day

This analysis focuses on ID requirements on Election Day, but with an appreciation that the ID requirements at time of registration and on Election Day are inter-related.⁷ The emphasis in this report is on Voter ID requirements on Election Day and afterwards as election judges evaluate provisional ballots. This is the critical period for the electoral system, the time when ballot access and ballot security are in the most sensitive balance.

The report looks at voter ID issues that go beyond the rather narrow identification requirements in HAVA. Much of the current debate in state legislatures over voter ID ranges beyond HAVA to require more rigorous documentation of identity for all would-be voters, not just those who had not registered in person and are casting a ballot for the first time. Current controversies in the states over voter ID seems to have been sparked in part by the HAVA requirements, but goes beyond those requirements, and sets the context for the analysis here.⁸

⁷ As the Carter-Baker Commission noted, photo ID requirements for in-person voting do little to address the problem of fraudulent registration by mail, especially in states that do not require third-party organizations that register voters to verify ID. Commission on Federal Election Reform, pp 46-47.

⁸ Harvard Law Review 119:1127: "Legislators hoping to stiffen their state antifraud laws have taken their cue from identification provisions buried in HAVA."

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We recognize that the previously technical, rather dull subject of voter ID requirements has become fiercely partisan and divisive in many states. The polarization of the debate has raised the stakes over this issue, making dispassionate analysis both more valuable and more rare.⁹ Voter ID is often described as the critical step in protecting the integrity of the ballot, the process to ensure that the potential voter is eligible and, if eligible, is permitted to cast one ballot and one ballot only. Truly protecting the integrity of the ballot, however, requires a perspective that takes in the entire voting process. It demands more than preventing the ineligible from voting, and should also ensure that all those who are eligible and want to vote can cast a ballot that counts. The protection effort must embrace all forms of voting, including absentee ballots, and consider each step in the process from registration through vote counting.

A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent the eligible from casting a ballot. If the ID requirements block ineligible voters from the polls at the cost of preventing eligible voters who cannot obtain or have left at home the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit. Ultimately, a normative evaluation of whether a state should adopt a stricter voter ID requirement (and, if so, what particular form that new requirement should take) will weigh value judgments as well as available factual evidence. Nonetheless, this report has proceeded on the premise that increased understanding of the factual evidence relating to the imposition of voter ID requirements, based on available data and statistical analysis of that data, can help inform the policy process.

Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. The EAC has commissioned a separate analysis of the incidence of vote fraud. Consequently, this research does not include consideration of vote fraud nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. As a result, our study of the possible effects of voter

⁹ "Of the various electoral procedure laws passed in the fifty states since the 2000 and 2004 presidential elections and those still being debated in state legislatures and local media, few arouse more potent partisan feelings than voter identification laws." *Harvard Law Review* 119:1144. John Fund's 2004 book, *Stealing Elections: How Voter Fraud Threaten Our Democracy*, cites (pages 16 – 17) a Rasmussen Research poll that asked respondents if they were more concerned with voting by ineligible participants or with disenfranchisement of eligible voters. Sixty-two percent of Kerry supporters, but only 18 percent of Bush supporters, worried more about *disenfranchisement*; 58 percent of Bush supporters, but only 19 percent of Kerry supporters were more concerned with *voter fraud*.

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ID requirements on turnout cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

In some states, voters lacking required ID, or who have ID that does not reflect their current address, are able to vote only by casting a provisional ballot.¹⁰ Voter ID requirements that require voters to bring a document to the polls --rather than simply sign their names-- may divert more voters to the provisional ballot. Requiring poll workers to request and check ID, can put stress on the already demanding environment of the polling place. Scrutiny of ID can create lines at the polling places. Further delays can result when voters cast a provisional ballot and fill out the ballot envelope. Voters who cast a provisional ballot because they lack their ID on Election Day, and who then fail to return with the needed document or documents, will have their ballot rejected.¹¹ And, of course, the cost of processing provisional ballots is greater than the cost of regular ballots.

Each of these potential consequences of more elaborate voter identification processes can increase the chance of litigation. Long lines will, at best, discourage voters and at worst make voting seem a hassle, an impression that could keep more citizens (even those with ID) from the polls.

Evaluating the effect of different Voter ID regimes can be most effective when based on clear standards --legal, equitable, practical. The standards outlined here might be described as questions policy-makers should ask about Voter ID requirements. We suggest 7 questions that address important dimensions of the problem.

1. Is the Voter ID system designed on the basis of valid and reliable empirical studies of the incidence of the sorts of vote fraud it is designed to prevent?¹²

¹⁰ For example, the Florida voter ID law adopted after the 2004 election and pre-cleared by the Department of Justice, permits voters who cannot meet the ID requirements to sign an affidavit on the envelope of a provisional ballot, which will be counted if the signature matches that on the voter's registration form.

¹¹ The EAC's Election Day Study found "improper ID," to be the third most common reason for a provisional ballot to be rejected. "Improper ID" was cited by 7 states responding to the survey, compared to 14 mentions for voting in the wrong precinct. *Election Day Study*, Chapter 6, p. 5.

¹² "Often where the battle over voter identification is most heated, real evidence of voter fraud proves scarce: in Georgia, for example, the Secretary of State averred that she had never encountered a single instance of voter impersonation at the polls. State laws might sometimes impose tighter restrictions on in-person voting than on absentee ballots, which yield the greatest incidence of, and provide the easiest avenue for, voter fraud. . ." *Harvard Law Review* 127:1144 (2006)

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2. How effective is the ID requirement in increasing the security of the ballot? How well can it be coordinated with a statewide voter database?¹³
3. How practical is the requirement? (Can it be administered smoothly by the staff and budget likely to be made available? How much additional training of polling place workers might be required?) Is it simple enough or can it be defined with sufficient clarity that poll workers throughout the state can administer it uniformly and with a minimum of local interpretation made on the fly under the pressure of Election Day?¹⁴
4. How cost-effective is the system? Does it demonstrably increase the security of the ballot affordably, measured in both monetary and other costs? To improve understanding of the non-monetary component of the costs, conducting a voter impact study might be appropriate. The voter impact study would examine, before the adoption of the regulation, the cost of compliance by the voter (such as the cost in time and money of acquiring a photo ID card), any offsetting benefits to voters, and the possible disparate effects of the regulation on various groups of voters.¹⁵ A thorough, objective impact statement that demonstrated the nexus between the identification regime and the integrity of the ballot could provide protection against inevitable legal challenges.
5. If a side effect of the Voter ID regulation is likely to reduce turnout, generally or among particular groups, is it possible to take other steps to ameliorate the adverse consequences?¹⁶
6. Does it comply with the letter and spirit of Voting Rights Act?
7. The seventh question is the most difficult to answer. How neutral is the effect of the Voter ID requirement on the composition of the qualified and eligible electorate? Might it,

¹³ See the final section of this report for a brief overview of possible effects of a statewide voter database on voter identification issues.

¹⁴ In New York, in 2004, disparities in training and voting information were made apparent in a study finding elections officials had wildly varying interpretations of what the state's voter identification requirement actually was. Tova Wang, "Warning Bell in Ohio," December 5, 2005. Website, the Foundation for National Progress.

¹⁵ "Absent clear empirical evidence demonstrating widespread individual voter fraud, legislatures need to fashion narrowly tailored voter identification provisions with an eye toward the inevitable and well-grounded constitutional challenges that will arise in the courts. Only as states grow more adept at administering elections will courts likely demonstrate greater willingness to uphold strict identification requirements." Harvard Law Review 127:1144 (2006)

¹⁶ For example, the Carter-Baker Commission coupled its recommendation for a national voter ID card to a call for an affirmative effort by the states to reach out and register the unregistered, that is, to use the new Voter ID regime as a means to enroll more voters. Similarly, Richard Hasen has suggested combining a national voter ID with universal registration. See his "Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown," 62 Washington and Lee Law Review 937 (2005).

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intentionally or unintentionally, reduce the turnout of particular groups of voters or supporters of one party or another without an offsetting decrease in vote fraud?

Voter ID and Turnout

Based on research for this study by the Moritz College of Law, states had one of five types of maximum requirements in place on Election Day 2004. These are shown in Table 1, *Voter ID Requirements*. The five categories: at the polling place, voters were asked to either: state their names (10 states); sign their names (13 states and the District of Columbia); sign their names, to be matched to a signature on file (seven states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).¹⁷ Using this information made it possible to code the states according to these requirements, and examine the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification, however, in all "photo ID" states in 2004, voters without photo ID could cast a regular ballot after signing an affidavit concerning their identity and eligibility or provide other forms of ID). The report refers to this set of ID requirements as "maximum," the most rigorous ID the voter can be asked to present at the polling place in order to cast a regular ballot.¹⁸

Election laws in several states offer exceptions to these requirements if potential voters lack the necessary form of identification. Laws in those states set a minimum standard – that is the minimum requirement that a voter may be required to satisfy in order to vote using a regular ballot. States can be categorized based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. That is, voters who lacked photo ID would still be allowed to vote in all states, if able to meet another requirement. Four states required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). The analysis also examined this array of minimum

¹⁷ Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

¹⁸ As noted above, our analysis does not consider additional requirements that particular voters may be subjected to as part of an official challenge process, in the event that their eligibility is called into question.

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identification requirements to assess how they correlated with turnout: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit. As noted above, *no* state had a “minimum” requirement of showing photo ID. This analysis therefore cannot estimate the effect of laws, such as those recently enacted in Indiana and Georgia that require voters to show photo ID in order to cast a regular ballot without an affidavit or other exception.

We recognize the difficulties in summarizing each state's voter ID requirements. The problem is illustrated by the number of footnotes to Table 1 below. The variety of statutory and regulatory details among the states is complex.

Moving beyond the statutes and regulations, we also recognize that the assignment of each state to one category may fail to reflect actual practice at many polling places. As in any system run by fallible humans, the voter ID process is subject to variation in practice.¹⁹ Voters may have been confronted with demands for identification different from the directives in state statutes or regulation. It seems reasonable to conclude, however, that while actual practices may vary, the variance is around each state's legal requirement for ID. The analysis of the effect of state requirements on turnout must be viewed with some caution. We believe that the categories used in this report provide an acceptable level of discrimination among voter identification regimes.

¹⁹ One state election official told us that, “We have 110 election jurisdictions in Illinois, and I have reason to believe [the voter ID requirements] are administered little bit differently in each one. We wish it weren't that way, but it probably is.”

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TABLE 1 – Voter ID Requirements²⁰

State	Maximum Forms of ID Required 2004	Current ID Requirement for First-Time Voters	Current ID Requirements for All Other Voters	Verification Method for Provisional Ballots
Alabama	Provide ID	Provide ID	Provide ID	Address & Registration
Alaska	Provide ID	Provide ID	Provide ID	Signature
Arizona	Provide ID	Gov-issued Photo ID	Gov-issued Photo ID ¹	Address & Registration
Arkansas	Provide ID	Provide ID	Provide ID	Address & Registration
California	Sign Name	Sign Name	Sign Name	Signature
Colorado	Provide ID	Provide ID	Provide ID	Address & Registration
Connecticut	Provide ID	Provide ID	Provide ID	Affidavit
D.C.	Sign Name	Provide ID*	Sign Name	Address & Registration
Delaware	Provide ID	Provide ID	Provide ID	Affidavit
Florida	Photo ID ²	Photo ID	Photo ID	Signature
Georgia	Provide ID	Gov. Issued Photo ID	Gov. Issued Photo ID	Affidavit
Hawaii	Photo ID^^	Photo ID	Photo ID^^	Affidavit
Idaho	Sign Name	Provide ID*	Sign Name	EDR
Illinois	Give Name	Provide ID*	Match Sig.	Affidavit
Indiana	Sign Name	Gov. Issued Photo ID	Gov. Issued Photo ID	Bring ID Later
Iowa	Sign Name	Provide ID*	Sign Name	Bring ID Later
Kansas	Sign Name	Sign Name	Sign Name	Bring ID Later
Kentucky	Provide ID	Provide ID	Provide ID	Affidavit
Louisiana	Photo ID	Photo ID	Photo ID^	DOB and Address
Maine	Give Name	Provide ID*	Give Name	EDR
Maryland	Sign Name	Provide ID*	Sign Name	Bring ID Later
Mass.	Give Name	Provide ID*	Give Name	Affidavit
Michigan	Sign Name	Provide ID*	Sign Name	Bring ID Later
Minnesota	Sign Name	Provide ID*	Sign Name	EDR
Mississippi	Sign Name	Provide ID*	Sign Name	Affidavit
Missouri	Provide ID	Provide ID*	Provide ID	Address & Registration
Montana	Provide ID	Provide ID*	Provide ID	Bring ID Later
Nebraska	Sign Name	Provide ID*	Sign Name	Affidavit
Nevada	Match Sig.	Provide ID*	Match Sig.	Affidavit
New Jersey	Match Sig.	Provide ID*	Match Sig.	Bring ID Later
New Mexico	Sign Name	Provide ID	Provide ID	Bring ID Later
New York	Match Sig.	Provide ID*	Match Sig.	Affidavit
NH	Give Name	Provide ID	Give Name	EDR
North Carolina	Give Name	Provide ID*	Give Name	Varies
North Dakota	Provide ID	Provide ID	Provide ID	No Registration
Ohio	Match Sig.	Provide ID	Provide ID	Address & Registration
Oklahoma	Sign Name	Provide ID*	Sign Name	Address & Registration
Oregon	Match Sig.	Provide ID*	Match Sig.	Signature
Penn.	Match Sig.	Provide ID ⁴	Match Sig.	Address & Registration
Rhode Island	Give Name	Provide ID*	Give Name	Address & Registration

²⁰ See Appendix 1 for a more detailed summary, including citations and statutory language, of the identification requirements in each state.

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South Carolina	Photo ID ⁵	Photo ID	Photo ID ^{^^}	Address & Registration
South Dakota	Photo ID ⁶	Photo ID	Photo ID ^{^^}	Affidavit
Tennessee	Provide ID	Provide ID ⁷	Provide ID	Affidavit
Texas	Provide ID	Provide ID ⁸	Provide ID	Bring ID Later
Utah	Give Name	Provide ID	Give Name	Bring ID Later
Vermont	Give Name	Provide ID	Give Name	Affidavit
Virginia	Provide ID	Provide ID	Provide ID	Affidavit
Washington	Sign Name	Provide ID	Provide ID	Address & Registration
West Virginia	Match Sig.	Provide ID	Match Sig.	Address & Registration
Wisconsin	Give Name	Provide ID	Give Name	Bring ID Later
Wyoming	Give Name	Provide ID	Give Name	Affidavit

* States applies only HAVA's ID requirement, applicable to first-time voters who registered by mail and did not provide applicable ID at the time of registration.

¹ Arizona voters who lack a photo ID may present 2 forms of ID with no photograph.

² Florida required a photo ID in 2004, but voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot. Florida subsequently changed its law to require that voters present photo ID to cast a regular ballot, though voters without photo ID may still cast a provisional ballot by signing an affidavit, which ballot should ordinarily be counted.

³ Louisiana required a photo ID in 2004. Voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot.

⁴ Pennsylvania requires ID of all first-time voters, whether they registered by mail or in-person.

⁵ Voters lacking a photo ID could vote by providing another form of ID in 2004.

⁶ Voters lacking a photo ID could vote by providing another form of ID in 2004.

⁷ Tennessee voters must provide signature and address. In counties without computerized lists, the signature is compared to the registration card. In counties with computerized lists, the signature is compared to a signature on ID presented with the registration.

⁸ Texas voters must present a current registration certificate. Those without a certificate can vote provisionally after completing an affidavit.

Relationship of Voter ID requirements to Turnout

The statistical analysis examined the potential variation in turnout rates based on the type of voter identification required in each state on Election Day 2004 using two sets of data: aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau.

The statistical analysis examined turnout among U.S. citizens of voting age in both the aggregate and the individual-level data. Determining citizenship status in the individual-level data simply involved restricting the analyses to individuals who identified themselves as citizens in the November 2004 Current Population Survey. (Those who said they were not citizens did not have the opportunity to answer the supplemental voting questions contained in the Current Population Survey.)

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Findings of the statistical analysis

The analysis looked at the voter identification requirements in two ways, as a continuous variable and as a series of discrete variables. As a continuous variable the maximum voter identification requirements are ranked according to how demanding they were judged to be, with photo ID as the most demanding requirement. As discrete variables, the statistical analysis assume that stating name is the least demanding ID requirement and compare each other requirement to it.

The analysis treating the requirements as a continuous variable offers some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with maximum voter identification requirements ($r = -.30, p < .05$). In considering the array of minimum requirements, with affidavit as the most demanding requirement, however, the correlation between voter identification and turnout is negative, but it is not statistically significant ($r = -.20, p = .16$). This suggests that the relationship between turnout rates and minimum requirements may not be linear. Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

Table 2 – Variation in 2004 State Turnout Based on Voter Identification Requirements

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	Mean Voter Turnout for States in that Category	Voter Identification Required in the States	Mean Voter Turnout for States in that Category
State Name	64.2 %	State Name	63.0 %
Sign Name	61.1 %	Sign Name	60.4 %
Match Signature	60.9 %	Match Signature	61.7 %
Provide Non-Photo ID	59.3 %	Provide Non-Photo ID	59.0 %
Provide Photo ID	58.1 %	Swear Affidavit	60.1 %
<i>Average Turnout (All States)</i>	60.9 %		

This table displays the mean turnout using the aggregate county level data for each state in 2004.

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Differences in voter turnout at the state level in 2004 varied based on voter identification requirements. Taking into account the maximum requirements, an average of 64.6 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend

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emerged when considering minimum requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their names, compared to 60.1 percent in states that required an affidavit from voters. Given the lack of a clear, consistent linear relationship between turnout and minimum identification requirements, however, we opted to treat the voter identification requirements as a series of dichotomous variables in subsequent analyses.²¹

Voter identification requirements are just one factor that may affect voter turnout. Multivariate models that take into account other predictors of turnout can paint a more complete picture of the relationship between voter identification requirements and turnout. This analysis estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county. While the model takes account of several important variables, statistical models do not capture all the messiness of the real world. It is a simplification of a complex reality, and its results should be treated with appropriate caution.

The model also took into account such variables as:

- Was the county in a presidential battleground state?
- Was the county was in a state with a competitive race for governor and/or the U.S. Senate?
- Percentage of the voting-age population in each county that was Hispanic or African-American²²
- Percentage of county residents age 65 and older
- Percentage of county residents below the poverty line

Another contextual factor to consider is voter registration requirements, such as the deadline for registration. As states set the deadline farther away from Election Day, the task of remembering to register to vote becomes more challenging. Thus our model takes into account the number of days between each state's registration deadline and the election.

²¹ The voter identification requirements are coded as a series of dummy variables, coding each variable as one if the requirement existed in a given state, and zero otherwise. This yielded five dichotomous variables for maximum requirements (state name, sign name, match signature, non-photo identification, or photo identification), and five dichotomous variables for minimum requirements (state name, sign name, match signature, non-photo identification, or providing an affidavit). Omitted is the variable for stating one's name so that it could serve as the reference category in comparison with the other four identification requirements in each of the statistical analyses.

²² The U.S. Census projections for 2003 provided the data for the percentage of the voting-age population in each county that was Hispanic or African-American and for the percentage of county residents age 65 and older.

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The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the citizen voting-age population that voted in the 2004 election.

The results of this modeling suggest that voter identification requirements such as signature matching, a non-photo ID or a photo ID are associated with lower turnout than in states that required voters to simply state their name, holding constant the electoral context and demographic variables.

Contextual factors, such as whether the county was in a battleground state or whether that state had a competitive race for governor and/or U.S. Senate, were associated with increased voter turnout. The time between the closing date for registration and the election was correlated with a slight negative effect on turnout. As the percentage of Hispanics in the county's population increased, turnout declined. The percentage of senior citizens in the county and household median income were associated with higher turnout. The percentage of African-Americans in the county did not have a significant effect in the model. The percentage of senior citizens in the county and household median income showed a positive correlation with turnout. In this aggregate model, the percentage of African-Americans in the county was not associated with a significant difference in turnout.

The relationship of the minimum voter identification requirements to turnout was not demonstrated. None of the dummy variables for voter identification requirements were statistically significant. Being a battleground state and having a competitive statewide race were significant and positive, as was the percentage of senior citizens in the county and household median income. The percentage of Hispanics in the county's population continued to be associated with reduced turnout, as was the number of days between the closing date for registration and the election.²³

Analysis of the aggregate data at the county level generates some support for the hypothesis that stricter identification requirements are correlated with lower turnout. For the maximum

²³ This test incorporated a series of interactions between the maximum and minimum voter identification requirements and the percentage of African-Americans and Hispanics living in the counties. In each case the interactions did not improve the fit of the models to the data. See tables A-1 and A-2 in the appendix of Vercellotti's paper in the appendices.

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requirements, a signature match, non-photo identification or photo identification were correlated with lower turnout in 2004, compared to requiring that voters simply state their names.

Aggregate data, however, cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote.²⁴ Voter identification requirements could have a relationship to the turnout of particular groups of voters, in ways that county-level aggregate data on turnout would not capture. To explore the effects of voter identification requirements on turnout more completely, it is important to examine individual-level data as well.

Individual-level Analysis

Individual-level turnout data exists in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. The Census Bureau conducts the CPS monthly to measure unemployment and other workforce data, but the bureau adds a battery of voter participation questions to the November survey in even-numbered years to coincide with either a presidential or midterm Congressional election.

One of the of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.²⁵ The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The statistical analysis in relying on the CPS is based on reports from *self-described* registered voters. Omitted are those who said they were not registered to vote, as are those who said they cast absentee ballots because the identification requirements for absentee ballots may differ from those required when one votes in person. Eliminated from the sample are respondents who said they were not U.S. citizens; the questionnaire design skipped those individuals past the voter registration and turnout questions in the survey. In addition to the voter identification requirements, the models include other socioeconomic, demographic, and political environment factors that might have

²⁴ For example, previous research has found that education is a powerful determinant of turnout (Wolfinger and Rosenstone 1980, but see also Nagler 1991).²⁴ Married people also are more likely to vote than those who are not married (Alvarez and Ansolabehere 2002; Alvarez, Nagler and Wilson 2004; Fisher, Kenny, and Morton 1993).

²⁵ It is important to note that the Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports concerning whether another member of the household voted, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent (U.S. Census Bureau 1990).

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influenced turnout in 2004.²⁶ The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election.²⁷

In the model, three of the voter identification requirements have a statistically significant correlation with whether survey respondents said they had voted in 2004. That is, compared to states that require voters only to state their names, the requirement to sign one's name, provide a non-photo ID, or photo ID in the maximum requirements or affidavit in the minimum is associated with lower turnout.

Of the other state factors, only the competitiveness of the presidential race showed a significant, correlation with increased turnout. In terms of demographic influences, African-American voters were more likely than white voters or other voters to say they had cast a ballot, while Asian-Americans were less likely than white or other voters to say they had turned out. Hispanic voters were not statistically different from white or other voters in terms of reported turnout. Consistent with previous research, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Among the age categories, those ages 45 to 64 and 65 and older were more likely than those ages 18 to 24 to say they voted. Respondents who had earned a high school diploma, attended some college, graduated from college or attended graduate school were all more likely to say they voted than those who had not finished high school.

While the probit models provide statistical evidence for the relationship of voter identification requirements and other variables to turnout, probit coefficients do not lend themselves to intuitive interpretation.²⁸ Table 3 below shows predicted probabilities (calculated from the probit coefficients) of voting for each level of voter identification requirements while holding all other independent variables in the models at their means.²⁹

²⁶ The models are estimated using probit analysis, which calculates the effects of independent variables on the probability that an event occurred – in this case whether a respondent said he or she voted and using robust standard errors to control for correlated error terms for observations from within the same state.

²⁷ The U.S. Census Bureau reported, based on the November 2004 CPS, that 89 percent of those who identified themselves as registered voters said they voted in 2004 (U.S. Census Bureau 2005). Previous research has shown that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be up to 10 percentage points higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

²⁸ A probit model is a popular specification of a generalized linear regression model, using the probit link function.

²⁹ In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

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