



Project Vote is the leading technical assistance and direct service provider to the voter engagement and civic participation community. Since its founding in 1982, Project Vote has provided professional training, management, evaluation and technical services on a broad continuum of key issues related to voter engagement and voter participation activities in low-income and minority communities.

RESTRICTIVE VOTER IDENTIFICATION REQUIREMENTS

Many states have passed laws that go beyond the federal Help America Vote Act (HAVA) and require additional unnecessary identification either at registration or voting. These restrictions hinder American citizens' efforts to exercise their right and responsibility to participate in elections. Voter identification laws include requirements such as proof of citizenship, government-issued photo ID, other types of photo ID, or a broad range of documents not necessarily including a photo.

Several ID laws have prompted lawsuits from voting rights advocates because they disproportionately impact the elderly, students, women, people with disabilities, low income people and people of color. This briefing paper outlines the current state of legislation around the country regarding additional identification at voting, summarizes recent litigation, and discusses the reasons why additional voter identification is an unnecessary burden designed to address a problem - voter impersonation - that is remarkably rare.

State ID Requirements

States have adopted a wide range of ID requirements for voting. Twenty-four states and the District of Columbia do not require ID beyond what is mandated by the Help America Vote Act of 2002, while 26 go beyond HAVA's requirements. Of those, 20 states allow voters to show a range of documents, including utility bills, bank statements, paychecks and, in some cases, voter identification cards that provide the voter's name and address. Six states and one city (Albuquerque, NM) have chosen to require or request all voters to provide either picture ID or government issued photo ID. Voters challenged the Albuquerque law challenged in federal court and won an injunction against enforcement in February 2007. Picture ID may include credit cards, employee badges or student IDs while government issued IDs are limited to driver's licenses, state IDs or passports. Three states that allow Election Day Registration (EDR) require ID for first-time voters registering on Election Day, such as utility bills, driver's licenses and student IDs.

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Restrictive Voter Identification Requirements

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| State Voter ID Requirements | |
|--|--------------------------|
| Photo ID required for all voters | |
| Florida <i>(with signature)</i> | |
| Photo ID requested | |
| Hawaii | Louisiana ⁱ |
| South Dakota ⁱⁱ | |
| Government-issued photo ID required for all voters | |
| Arizona ⁱⁱⁱ | Indiana |
| ID—including non-photo ID—required for all voters | |
| Alabama | Montana |
| Alaska | New Mexico |
| Arkansas | North Dakota |
| Colorado | Ohio |
| Connecticut | South Carolina |
| Delaware | Tennessee |
| Georgia | Texas |
| Kentucky | Virginia |
| Missouri ^{iv} | Washington |
| ID required only for first-time voters | |
| Kansas | |
| Pennsylvania <i>(First time in an election district)</i> | |
| Only HAVA ID requirements^v | |
| California ^{**} | Nevada ^{**} |
| District of Columbia | New York |
| Illinois | North Carolina |
| Iowa | New Jersey ^{**} |
| Maine | Oklahoma |
| Maryland ^{**} | Oregon |
| Massachusetts ^{**} | Rhode Island |
| Michigan ^{**} | West Virginia |
| Minnesota | Wisconsin |
| Mississippi | Utah |
| Nebraska | Vermont |
| **ID requirement waived if driver's license or Social Security numbers are matched to a federal database | |

ⁱ If the voter does not present a photo ID she may sign an affidavit and vote a regular ballot. Such voters may be challenged.

ⁱⁱ If the voter does not present a photo ID she may sign an affidavit and vote a regular ballot.

ⁱⁱⁱ Photo ID or two other forms of ID are required.

^{iv} The Missouri Supreme Court affirmed an order striking down the state's voter ID statute in October 2006.

^v HAVA requires first time registrants who register by mail to provide proof of identity. A broad range of documents may be used to establish identity. The identification requirement is waived if the state can match the applicant's to information in another government database, typically Social Security or the state's motor vehicle database.

Rationale for Voter ID Requirements

Voter identification requirements, while increasingly popular in state legislatures around the country, are a solution without a problem. There is virtually no evidence that voters engage in voter impersonation - the only kind of fraud addressed by additional ID requirements - with any frequency. As noted by the Brennan Center for Justice at New York University School of Law: "This rare kind of fraud is very risky and promises little reward."

- In Ohio, a statewide survey found four instances of ineligible persons voting or attempting to vote in 2002 and 2004, out of 9,078,728 votes cast - a rate of 0.00004%.
- Despite the invocation of fraud as support for the new Georgia law, Georgia Secretary of State Cathy Cox has stated that she could not recall one documented case of voter fraud relating to the impersonation of a registered voter at the polls during her ten-year tenure as an election official.
- Nationwide, since October 2002, 52 individuals have been convicted of federal crimes relating to election fraud (including several offenses not remedied by ID requirements), while 196,139,871 ballots have been cast in federal general elections. Statistically, Americans are more likely to be killed by a bolt of lightning.¹

The fact that this crime is almost never committed can be attributed in part to the severe penalties already in place under existing law. Most states and the federal government have criminalized election fraud, and the crime may result in fines up to \$10,000 and up to five years in prison.

Discriminatory Impact of ID Requirements

In a comprehensive 2006 study commissioned by the Election Assistance Commission (EAC),² an analysis of the impact of voter identification laws on voter turnout revealed that there was a 2.7% decrease in turnout overall in states that required documentary ID compared to states that required voters to give their names. In states that require photo ID, the percentage increased to 2.9% as compared to states that only require the voters' names.³ The decrease in voter turnout is dramatically higher among minority Americans. African-American registered voters in the 2004 Current Population Survey were 5.7 percent less likely to say they voted in states that required a form of identification compared to states where one had to give one's name. Hispanic voters in states that required a form of ID were 10 percent less likely to say



they had voted compared to Hispanic voters in states where voters only gave their names. The percentage of decrease for Asian-American voters was 8.5 percent.

Eleven percent of Americans surveyed in a recent survey commissioned by the Brennan Center for Justice do not have government-issued photo ID, such as driver's licenses or state-issued non-driver's photo ID. According to U.S. Census data, that amounts to greater than 21⁴ million citizens. Those without photo ID are disproportionately the elderly, students, women, people with disabilities, low income people and people of color.⁵

- Women are more than twice as likely than men not to have a drivers' license.
- One of every five senior women does not have a license.
- Of all Americans without a license:
 - One-fifth are 18-24 year olds;
 - Over one-third are seniors;
 - Over 70% are women.⁶

A Wisconsin study revealed that African Americans are half as likely to have driver's licenses as whites, and the disparity increases among younger voters; only 22% of black men aged 18-24 had a valid driver's license. In Georgia, researchers found that 36% of citizens over age 75 did not have a driver's license.⁷

Even among those that do have driver's licenses, a substantial percentage does not show their current address. Again, this is even more the case among lower income Americans who move more frequently.⁸

If an ID card such as a driver's license does not contain the voter's current address, which is true of millions of Americans, he or she is likely to be turned away from the polls. In Wisconsin, for example, 97% of all students do not have their current address on their photo ID.⁹ If an eligible voter forgets to bring ID, some states will not give them a provisional ballot, and most that do will not count those provisional ballots. This undermines an important "safety net" under the Help America Vote Act.

There is also some question as to whether strict identification laws can even be implemented without effectively shutting down voter registration. Arizona has attempted to implement a very strict form of identification - proof of citizenship at the time of registration. In the first six months of 2005, more than 5,000 Arizona citizens had their voter registrations rejected for failing to provide adequate proof of citizenship.¹⁰

Challenges Obtaining Identification

While it may seem benign to require voters to present a state-issued photo ID, in fact, there are multiple barriers to obtaining this ID. For those who are most likely not to have the identification, it is a significant burden to obtain the necessary back-up documentation, take time off during business hours, find transportation to offices that issue the ID, and find the funds for application fees and transportation.

Beyond the costs of money and time, voters face other barriers as well. Most states require a government-issued birth certificate (or the equivalent, such as a US passport) in order to issue a state ID. Many citizens do not have a birth certificate or, if they do, they have one issued by a hospital, not a state or local government. There are often fees associated with ordering a birth certificate, ranging from \$7 to \$26, and paradoxically, many state agencies require photo identification in order to obtain a birth certificate.

A study by the Center on Budget and Policy Priorities shows that low-income people, African-Americans, the elderly, those without high school diplomas, and rural residents are much more likely not to have a passport or birth certificate available.¹¹ It is important to note that these are self-reported responses and therefore underestimate the problem. Many people believe that their hospital birth certificate is enough, while obtaining state-issued ID generally requires a government-issued birth certificate.

Congress has recently been considering several bills that would make it even more difficult and expensive to get the ID necessary to vote. On September 20, the House passed a bill that would require voters to show either a U.S. passport or possibly the so-called "REAL ID" card - a federally mandated driver's license that does not exist yet. The Senate has considered an even stricter version that only allows the "REAL ID" card.

If either bill passes, voters will have to buy expensive ID to vote. A U.S. passport - which only 25-27% of Americans currently have - now costs \$97. And because the "REAL ID" card does not exist yet (states are required to provide them in 2008), nobody knows how much it will cost. But a similar new ID for 750,000 transportation workers will cost \$140 per person. The National Governor's Association warns that "the days of going to the DMV and getting your license on the same day are probably over."¹²



Additional bureaucracy and confusion

Even if they have valid ID, many eligible voters will be turned away. Voter ID requirements place an inordinate amount of discretion in the hands of overworked poll workers. State election systems are underfunded, and do not have the resources to adequately train poll workers. Because many voter ID laws do not explain how disputes over the validity of an ID card should be handled, and because they often keep voters who do not have “valid” ID from obtaining provisional ballots, they can easily open the door to widespread racial and ethnic discrimination at polling places. Even under the more lenient requirements of the Help America Vote Act, ID provisions are often implemented in a discriminatory way. According to the nation’s largest nonpartisan exit poll of Asian Americans, nearly 70% of Asian voters were asked for ID at the polls - in states where no ID was required.¹³ In New York City, where there is no ID requirement, a study showed that 1 in 6 Asian Americans were asked for ID, while white Americans in the same study were not asked for ID.

Legal Context

HAVA mandates that all states require identification from first-time voters who registered to vote by mail and did not provide verification of their identification with their mail-in registration. Most states interpret this law as written, to mean that first time voters (people voting for the first time in that state) who register by mail are required to write their drivers’ license number, the last four digits of their social security number, or their state ID number on the application. If the voter does not have or does not provide one of those numbers, or if she does and the state is not able to match it to their available databases, the voter will be required to show one of a broad list of acceptable ID’s at the polls in order to vote on a regular ballot.

Twenty-six states and the District of Columbia have chosen to implement more restrictive ID requirements at voting than those mandated by HAVA.

- Two states require all people voting for the first time to provide ID in order to vote on a regular ballot. In Pennsylvania, that rule also applies to anyone voting for the first time in a particular election district. This includes long-time voters who have moved within the state. The list of acceptable ID’s is broader than a photo (KS, PA).
- Eighteen states require everyone to show ID in order to vote on a regular ballot. The list of acceptable ID’s is

broader than a photo (AK, AL, AR, CO, CT, DE, GA, KY, MO, MT, ND, N.M., OH, SC, TN, TX, VA, WA).

- Four states require everyone to show photo ID in order to vote on a regular ballot, and require a photo ID (FL, HI, LA, SD).
- One state requires everyone to show ID in order to vote on a regular ballot, and requires a government-issued photo ID, or two other forms of ID (AZ).
- One state requires everyone to show ID in order to vote on a regular ballot, and requires a government-issued photo ID (IN).

According to the National Council of State Legislatures website, all states have “some sort of recourse” for voters without identification to cast a vote, but in most cases that vote can only be provisional and will not be counted. By passing laws regarding additional identification, states push more and more voters onto provisional paper ballots that may never be counted, and subject voters to the confusing, contradictory, and poorly implemented regulations governing the issuance and counting of provisional ballots. With additional identification laws, states also put a great deal more discretion into the hands of local pollworkers, who may have been poorly trained.

Litigation in the States

ARIZONA

Arizona is currently the only state in the country requiring proof of citizenship at registration and government-issued photo ID at voting, and it is being challenged repeatedly in the courts. *Gonzalez et al. v. State of Arizona et al.*, filed in May 2006, challenges Proposition 200, an initiative passed by the State of Arizona that requires voter registration applicants to provide evidence of citizenship when they register to vote. It also requires all voters to present a government-issued photo ID or two forms of non-photo ID at voting. The evidence is limited to drivers’ licenses issued after October 1, 1996, a passport, naturalization documents, or a Bureau of Indian Affairs card number. Original naturalization documents have to be shown personally to the County Recorder.

While the lawsuit made its way through the courts, community groups were interested in using the federal mail voter registration application, which under the NVRA does not require proof of citizenship. While the federal Election Assistance Commission issued an opinion stating that the national form should be accepted without proof of citizenship in Arizona, the Secretary of State of Arizona announced



her intention to reject those national mail applications that came in without proof of citizenship. Therefore, plaintiffs also applied in May 2006 for a temporary restraining order that would compel the state to distribute, use, and accept the federal mail registration application. The judge denied the request for a restraining order.

In federal district court, plaintiffs' motion for a preliminary injunction to halt enforcement of the law was denied in September 2006. Plaintiffs appealed, and in October 2006 the federal circuit granted injunctive relief, suspending implementation of the voter identification requirements of Proposition 200 for the November general election. In October 2006, the Supreme Court vacated the injunction granted by the Court of Appeals, permitting Proposition 200 to be implemented in the November 2006 election. The lawsuit is still awaiting resolution.

GEORGIA

Georgia's ID law has been challenged both in state court (*Lake v. Perdue*) and federal court (*Common Cause v. Billups*). The Georgia statute requires that all voters provide valid, state-issued photo identification prior to voting. The cost of obtaining valid, state-issued photo ID ranges from \$20-\$35. In the fall of 2006, public interest groups successfully challenged Georgia's statute, obtaining a temporary injunction against its enforcement in the federal district court in Rome, Georgia. The Court of Appeals for the 11th Circuit upheld the district court's decision. The court stated that Georgia's ID requirements unnecessarily burdened the right to vote and represented an illegal poll tax. The court also held that the statute violated the Equal Protection Clause of the Fourteenth Amendment since it did not similarly burden in-person and absentee ballots. The court was especially concerned that there were no incidences of in-person fraud for at least nine years preceding enactment of Georgia's photo ID requirements. The fact that fraud concerns were limited to cases involving absentee ballots supported the argument that the state's photo identification requirements were merely a pretext to prevent poor, elderly, and members of minority groups from voting.

Georgia's legislature attempted to address the court's concerns by passing a law allowing the state to distribute free identification cards, and proceeded to implement the photo ID requirement. Advocates, however, returned to court and obtained a second injunction to block the amended statute.

In September 2006, the judge in the state case declared Georgia's voter identification law to be unconstitutional and

permanently enjoined its enforcement. The decision is on appeal to the Georgia Supreme Court where oral arguments are scheduled to be heard on March 12, 2007. In the federal case, the judge enjoined the law from being implemented for the September primary. On September 28, 2006, the federal court stayed all proceedings pending the outcome of the appeal in the state case.

MISSOURI

Jackson County v. Missouri challenged the requirement that a government-issued photo ID be presented to vote. On September 14, 2006, a judge in state court issued a final judgment striking down the state's photo ID law. On October 16, 2006, the Missouri Supreme Court affirmed the ruling. ID is still required to vote, but the list of acceptable forms of ID is much broader and includes some documents without a photo.

NAACP v. Carnahan is a federal lawsuit challenging the same voter ID requirement at issue in *Jackson County v. Missouri*, except this suit raises federal statutory and constitutional claims, including violations of the 14th and 24th Amendments, violations of the 1964 Civil Rights Act and 1965 Voting Rights Act. After the preliminary injunction hearing, the court granted a stay pending resolution of the state case. After the Missouri Supreme court affirmed the judgment striking down the voter ID law in *Jackson County*, the federal case was dismissed on November 21, 2006.

INDIANA

Indiana Democratic Party v. Rokita challenges an Indiana statute requiring that voters provide valid government-issued photo identification prior to voting. If a person cannot provide valid photo identification, the person must vote provisionally and provide valid identification by the second Monday after the election to have the vote counted. If an individual does not have valid photo identification, he must sign an affidavit claiming indigence or religious objection to having personal photographs taken. The district court denied plaintiffs' motion for declaratory and injunctive relief in April 2006. On January 4, 2007, the United States Court of Appeals for the Seventh Circuit upheld the judgment. The plaintiffs filed a motion for rehearing en banc.

ALBUQUERQUE, NM

ACLU of New Mexico et al. v. Santillanes was filed in federal district court in November 2005, and challenges the city's law requiring photo ID's from all voters. This law was passed by ballot initiative in October 2005. The district court judge granted an injunction against the voter photo ID law on February 13, 2007.



Policy Recommendations

Multiple existing laws, when properly implemented, would prevent voter impersonation. The Brennan Center for Justice issued a brief on alternatives to identification requirements that address issues of fraud while still allowing voters - particularly voters who have historically been disenfranchised - fair and equal access to the polls. Their alternatives, including capturing digital photographs of voters, comparing signatures, and asking voters to complete affidavits asserting their identity are reasonable measures to prevent voter fraud without putting burdensome barriers between voters and the polls.¹⁴

Conclusion

By passing burdensome laws that address an almost non-existent problem, representatives erode the public's faith in the electoral system. When the impact of additional identification laws is examined, one sees their dangerous potential to disenfranchise eligible citizens. Americans need more than ever to believe that their government acts truthfully and honorably where their constitutional rights are concerned. Americans have real concerns about the integrity of their election system, given recent controversies about ballot design, vote counting, and the security of new voting machines. By passing burdensome laws that address a non-existent problem, elected officials risk further eroding the public's faith in their ability to govern with the interests of the voters in mind.

Endnotes

- ¹ Brennan Center for Justice at New York University School of Law, "Voter Identification".
- ² Best Practices to Improve Pursuant to the Help America Vote Act of 2002, Eagleton Institute of Politics, Rutgers, The State University of New Jersey.
- ³ Email communication from TimVercellotti, Assistant Director, Eagleton Center for Public Interest Polling Eagleton Institute of Politics, Rutgers, The State University of New Jersey. February 14, 2007.
- ⁴ "Citizens Without Proof, A Survey of Americans Possession of Documentary Proof of Citizenship and Photo Documentation, Brennan Center for Justice, New York School of Law. November 2006.
- ⁵ Brennan Center for Justice at New York University School of Law, "Voter Identification".
- ⁶ US Census Bureau Detailed Tables. "Sex by Age Total Population." July 24, 2006. Federal Highway Administration. "Licensed drivers, by State, sex, and age group." July 24, 2006.
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- ⁹ Pawasarat, John. "The Driver License Status of the Voting Age Population in Wisconsin." Employment and Training Institute, University of Wisconsin - Milwaukee: June 2005. May 10, 2006.
- ¹⁰ Díaz, Elvia and Robbie Sherwood, Prop. 200.s Effect Minimal, ARIZONA REPUBLIC, Jun. 5, 2005.
- ¹¹ Ku, Leighton, Donna Cohen Ross, and Matt Broaddus. "Survey Indicates Deficit Reduction Act Jeopardizes Medicaid Coverage for 3 to 5 Million U.S. Citizens." Center on Budget and Policy Priorities. May 10, 2006.
- ¹² "ID Program Will Cost States \$11 Billion, Report Says," Washington Post, September 22, 2006.
- ¹³ Brennan Center for Justice at New York University School of Law, "Voter Identification".
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