

whether blacks are ahead or behind whites in card ownership. Were blacks behind on April 1, and registered at the same rate, or even at a higher rate, they might well still be behind in comparison to whites. If blacks were five times more likely to lack a DDS card on April 1, and obtained cards at a higher rate than whites, they might well be only four times more likely to lack a card by 2005.

(v) Other Data Limitations

The DDS data, and the population data, are of a quality far below what we are accustomed to using in the Voting Section. The number of people we are trying to identify, those without a license, is a fraction of the total VAP. There is also reason to believe that lack of card ownership varies with many attributes beyond race, including age, poverty, and perhaps urban or rural location. Even with good data on both sides of the equation (population and licenses), it would be a considerable task to derive conclusive relationships on an ecological basis. Survey work, Census data on vehicle accessibility, or qualitative data may provide better evidence.

Removing segments of the population at the county level eliminated one source of error and bias only to replace it with another, given the correlation between group quarters population and race at the county level, and the uncertainty surrounding ID ownership by military personnel, students and prisoners. Nonetheless, dealing with the issue appears to be key to deriving any usable estimates.

We also do not have a perfect grip on the current VAP in Georgia, particularly at the county level, although the error here is more unavoidable and probably less significant across counties. But our grasp of the base population, particularly in fast-growing counties, is shaky. This is a source of error but one that can only be minimized, not eliminated.

In sum, Dr. Moore concluded that use of the Georgia DDS data to infer the number or race of people who lack DDS cards is unsupported.

Analogous Wisconsin Study

A similar analysis of race and driver's license ownership was recently conducted in Wisconsin based on data from that state's Department of Transportation, which appears to contain more complete records, particularly with respect to racial identification, than Georgia. The study compared Wisconsin licensed drivers contained in the database of driver records on January 31, 2002, along with age, race, gender, and geography, and compared this information to Census population estimates. See John Pawasarat, "The Driver License Status of the Voting Age Population in Wisconsin," Employment and Training Institute, University of Wisconsin-Milwaukee (June 2005), available at <http://www.uwm.edu/Dept/ETI/barriers/DriversLicense.pdf>. The study found that minority and poor populations "are the most likely to have drivers license problems." Among voting age Wisconsin residents statewide, 80 percent of white males and 81 percent of white females have driver's licenses, compared to 45 percent of black males and 51

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percent of black females. In Milwaukee County, 80 percent of white males and 75 percent of white females have driver's licenses, compared to 61 percent of black males and 56 percent of black females.

Moreover, the study finds that 24 percent of the African-American voting age population in Wisconsin live in a household with no vehicle, compared to eight percent of white VAP. *See id.* at 16. This is nearly the same ratio as the disparity among black and white vehicle access in Georgia households, four times more black households lack access to vehicles compared to white households. This data suggests that complete records, or at least a more representative sample, from Georgia would be expected to yield a stronger correlation between driver's license ownership and race. As this study shows strong patterns of racial disparity among driver's license ownership in Wisconsin, it further underscores our concerns about the reliability of the Georgia DDS data, and suggests that predictions of driver's license ownership may be better analogized from vehicle access data.

Vehicle Access Data

Vehicle access has been used as a proxy for drivers license ownership on the assumption that people who lack access to a vehicle have less reason to get a license, as well as a more difficult time reaching a licensing office. Vehicle access data from the Census and Blueprint 2030 shows that 20 percent of black households and 4.4 percent of white households in Georgia lack access to a vehicle. Further, the Blueprint 2030 data show that among the nine counties with the largest lack of vehicle ownership, among households that lack access to a vehicle, 65 to 75 percent are headed by an African-American householder. This strongly supports an inference that African American residents in Georgia are less likely to have driver's licenses compared to whites.

If the relationship between driver's license ownership and vehicle access is similar in Georgia and Wisconsin, this would indicate potential gaps in driver's license ownership of 20-35% between blacks and whites. Approximately 9.7 percent of records in the Georgia DDS database are persons who hold only state ID cards, which would close this gap somewhat. As it is logical to infer that the relationship between owning a car and having a driver's license are similar in the two states, and the ratio of black to white households without vehicles are similar in Georgia and Wisconsin, an inference that a racial gap exists in driver's license ownership is appropriate.

United States passports: Rates of passport ownership by Georgia citizens were not addressed in the Senate and House debates, nor is it discussed by the submitting authority or any of the proponents in support of preclearance. As less than 20 percent of all United States citizens hold passports, it is reasonable to assume that no more than 20 percent of all Georgia citizens hold passports. Among this group, a much smaller proportion are likely to be black, given that blacks' per capita income is less than half that of whites, their representation in poverty more than twice that of whites, and the fact that passports are held in greater numbers by wealthier

individuals for the purpose of international travel. Moreover, the pool of individuals who lack a driver's license or ID card is very unlikely to include persons who hold passports, since the latter document is more expensive and difficult to obtain.

Employer-Issued ID: Our analysis of employer-issued identification points to no demonstrable conclusions. Approximately 77 percent of employed black Georgians work for private sector employers, and 19 percent work for public sector employers. Those in the public sector would not be affected by the change to the voter ID law if they have been issued photo identification by their employer. Our research showed employees of the state's largest counties were the most likely to have county-issued photo identification, while employees of small counties were generally not issued such identification. Most employees of mid-size counties were also not routinely issued photo identification unless they were in certain professions or locations such as courthouses. As a result, the option to use one's government issued photo identification will apply primarily to residents of large counties in urban centers.

For those individuals working for the private sector, any such persons with an employer-issued photo identification would now be unable to use that ID for voting. This will affect employees of the state's largest employers, including Delta Airlines, Wal-Mart, Home Depot, Brown & Williamson Tobacco, and others. However, outside of limited anecdotal information, we have no information regarding the issuance of photo identification by private employers, it is difficult to draw conclusions about whether any voters who previously had acceptable employer identification will now be excluded.

Among all persons employed in either the public or private sector, all are more likely to have access to other photo identification compared to those who are unemployed. The Department of Labor statistics reveals that the unemployment rate for blacks in Georgia is double the rate of unemployment for whites. Unemployed individuals have no access to any employer-issued identification, and are likely to fall below the poverty line.

College and university ID: Analysis of college and university-issued identification also points to no demonstrable conclusions. Without data regarding the number of white and black students who attend private colleges, universities, community colleges and technical schools in Georgia, we cannot compare the rates of acceptable student ID ownership between public and private schools among whites and blacks.

As a general matter, students are less likely than other segments of the adult population to have acceptable photo identification aside from their college identification. Since students move frequently during their school years, they often retain their parents' address on driver's licenses or bank accounts. Contemporary student photo identification cards usually have a magnetic stripe and bar code containing students' personal information, which they use to gain access to libraries, gyms, and dining halls, cash checks, access health care, purchase tickets to university events, and even use as a debit or credit card on campus and at nearby businesses. Opponents of the legislation point to students at historically black colleges and universities as particularly

burdened by the elimination of private school identifications. However, because we do not have data regarding private school ID ownership among students, or financial status by race by type of institution, we cannot draw meaningful conclusions about the potential retrogressive effect of retaining public school identification while eliminating private school identification.

Non-Photo ID/Government documents: The higher rates of poverty and participation in government benefit programs among African-Americans suggest that the elimination of government documents as acceptable ID for voting will disproportionately affect African-American voters. Black citizens in Georgia receive government benefits such as TANF, food stamps, and unemployment insurance, in higher proportions than whites due to their overrepresentation in poverty and unemployment status. Neither the submitting authority nor any of the proponents addressed the potential for retrogression that is likely from repealing the use of government documents as identification for voting.

Ms. Meyers noted that mail can be stolen, suggesting that a utility bill would be unreliable as proof of identity because it could be presented by an individual who had stolen it. However, as Rep. Watson responded, persons who steal mail, such as benefits checks, do so for economic gain and would be unlikely to risk getting caught by presenting such documents to commit voter fraud. Additionally, as noted earlier, there have been no reported instances of voter fraud involving stolen non-photo identification.

For certain low-income populations, individual citizens may have one form of ID but not another, such as a TANF check but not a bank statement if they receive government benefits but do not have sufficient assets to open a bank account. Another citizen may have a Social Security card, but not a driver's license if they do not own a car. The ability to present any of the seventeen forms of photo or non-photo identification gives low income individuals a wider range of acceptable options and may be the only key to such persons' ability to vote.

Tribal ID: The addition of tribal identification containing a photo as a form of acceptable identification could potentially offset the retrogressive effect of the photo ID requirement for those tribal members who lack other forms of ID. This would be the case if the tribal ID contained the voter's photograph, which is currently unknown, but anecdotal evidence suggests that for Native Americans in Georgia it is doubtful. We conclude that the addition of this form of identification is not retrogressive because it adds, rather than removes, an option for voters.

Firearms permit/hunting or fishing license/pilot's license: In the absence of any data in this area, we can draw no conclusions about the potential retrogressive effect of the elimination of firearm permits, hunting and fishing licenses, or pilot's licenses, as acceptable voter identification.

Affidavits: As the data above show that blacks have disproportionately fewer driver's licenses and DDS cards compared to whites, and lack access to a motor vehicles at higher rates than whites, it is reasonable to assume that blacks and low income persons might have a higher

use of affidavits in lieu of identification particularly under the proposed voter ID restrictions. The information concerning the use of this "fail-safe" procedure during the November 2004 election is maintained by the individual counties within the state. The state did not collect and present an analysis of these data by race, nor did it submit the raw data to the Department for our analysis. The only data we have was provided by Forsyth County finding that .08 percent of residents used an affidavit in lieu of identification. However, Forsyth County is in the bottom tenth of Georgia counties ranked by black population, with a BVAP of 9.7 percent, so it is not particularly representative of how elimination of the affidavit will affect black citizens. Additionally, this figure reflects those voters utilizing affidavits under the current procedure, which provides for 17 forms of acceptable voter identification, and cannot be used to predict the usage rate under the proposed restrictions.

Even those individuals who are indigent^{17/} and, therefore, eligible for the waiver of the ID card fee would be required to pay various other fees to purchase the documents necessary to obtain a photo ID if they did not already possess such documents. These fees would be incurred for purchasing certified copies of a birth certificate or naturalization document, which are not waived by the indigence clause. These costs can range from \$10 for the basic birth certificate, to \$46 if additional services such as rush delivery are necessary, to \$210 if a naturalization document is needed. For someone earning the median income for African-American individuals, \$12,576, or someone who is below the poverty line of \$9,570, these fees are significant. This supports the argument made by opponents of preclearance that the fees constitute a poll tax.

In addition, transportation costs to the DDS to obtain a free photo ID for voting can be relatively burdensome. There are DDS locations in less than one-third of all Georgia counties. Three of the four locations within metropolitan Atlanta are accessible by public transportation. There are no offices, however, within the city limits. As a result, most Georgians must travel significant distances to reach a DDS office. Only five DDS locations are accessible by any form of public transportation. Therefore, most are only accessible via personal transportation, taxi service, or a combination of public transportation and taxi service resulting in potentially prohibitive transportation costs for those who lack access to a vehicle. Such cost for round-trip travel can be significant for a person with a median income or poverty level subsistence. The

^{17/} Persons who sign an affidavit of indigence can obtain a state ID card for voting purposes at no cost. The statute contains no definition of indigence, nor does the law contain income tables or formulas whereby indigence is determined. Rather, it appears to be a self-certifying determination made under oath or affidavit. The Affidavit of Eligibility for the voting identification card contains the following language:

1. I am indigent and cannot pay the fee for an identification card;
2. I desire an identification card in order to vote in a primary or election in Georgia;
3. I do not have any other form of identification that is acceptable under O.C.G.A. § 21-2-417 for identification at the polls in order to vote;
4. I am registered in Georgia or I am applying to register to vote as part of my application for an identification card;
5. I do not have a valid driver's license issued by the State of Georgia.

Affidavit of Eligibility, Georgia Identification Card for Voting Purposes *available at*
<http://www.dds.ga.gov/drivers/dldata.aspx?con=1749371755&ty=dl>.

lower level of vehicle access among African-Americans, combined with the lack of public transportation accessibility of DDS offices, will contribute to the disproportionate effect of the proposed voter ID restrictions on African-American voters.

To the extent that the GLOW program goes into effect and becomes a mobile photo ID distribution center that reaches underserved areas, this may mitigate the barriers to obtaining ID for some voters. Of the counties on the state's initial schedule through November, 12 have black populations of 50 percent or higher (2004 estimate of persons age 20 and over), 11 have black populations between 35 percent and 49.9 percent, and 12 have black populations between 23.8 percent and 34.9 percent. This demonstrates that the program is planning to visit counties with higher than average BVAP, and may serve to assist minority voters in those counties, assuming that the program is adequately advertised and fully operational.

While no single piece of data confirms that blacks will disparately impacted compared to whites, the totality of the evidence points to that conclusion. Governor Perdue estimated that 300,000 Georgia residents were without an acceptable DDS-issued identification card. Census data reflects that blacks lack access to vehicles at roughly four to five times the rate of whites. Other publicly available data reflects that blacks are less likely to have passports, employer ID, and other forms of acceptable photo identification compared to whites, and greater access to some of the forms of non-photo identification that are repealed. Blacks' over-representation in the lowest socioeconomic classes hampers the ability of many individuals to obtain photo IDs. Finally, it appears that neither the legislature nor the submitting authority conducted any analysis or presented any data regarding these racial disparities in access to various forms of photo identification. This leads us to conclude that the state has failed to meet its burden of demonstrating that the change is not retrogressive.

III. LEGAL ANALYSIS

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5 of the Voting Rights Act, 28 C.F.R. 51.52.

A voting change may not be implemented unless and until the submitting authority establishes that, when compared to that jurisdiction's benchmark standard, practice, and procedure, the proposed change does not diminish the ability of minority voters to participate in the political process and that it was not adopted with such an intent. Beer v. United States, 425 U.S. 130, 141 (1976). Georgia v. Ashcroft, 539 U.S. 461 (2003). The Court has emphasized that "§ 5* * * is designed to combat only those effects that are retrogressive," i.e., those that will "worsen the position of minority voters" The voting change at issue must be measured against the benchmark practice to determine whether the opportunities of minority voters will be "augmented, diminished, or not affected by the change affecting voting." Beer, 425 U.S. at 141.

A. Retrogressive effect

Under the benchmark procedure, Georgia voters may meet the state's voter identification requirement either by presenting one of 17 enumerated forms of identification before voting, or by signing an affidavit of identity under penalty of perjury. Thus, the retrogression analysis focuses not on whether Georgia may require voters to present identification, but whether the reduction in the number of acceptable forms of acceptable identification, combined with the elimination of the fail-safe procedure, is retrogressive for minority voters. In our standard Section 5 analysis, we consider whether the state could have achieved its stated purpose while avoiding retrogression. We would consider retrogression to be "unavoidable" in certain contexts such as redistricting or annexation when, for example, it results from either a numerical or constitutional impossibility, such as population growth. However, retrogression is not considered unavoidable when it results from the mere failure or an unwillingness to enact a method that is not retrogressive.

Moreover, in the redistricting context, if a jurisdiction submits a plan that is retrogressive, it will ordinarily occasion an objection if the jurisdiction could have drawn a reasonable alternative that could ameliorate or prevent that retrogression. See Procedures for the Administration of Section 5 of the Voting Rights Act, 28 C.F.R. 51.52. Accordingly, if we determine that Georgia could have fulfilled its stated purpose of preventing election fraud, while preventing or ameliorating the retrogression, an objection is appropriate.

Proponents of preclearance identify two cases in which federal district courts upheld voter identification requirements. See Colorado Common Cause v. Davidson, 2004 WL 2360485 (D. Col. Oct. 18, 2004); and Bay Co. Democratic Party v. Land, 347 F. Supp. 2d 404 (D. Mich. 2004). In both cases, plaintiffs challenged the constitutionality of voter identification requirements that were enacted after HAVA to conform state law to the federal law requirements, but such challenges were rejected by the courts. Both holdings are inapposite to the instant retrogression analysis, however, because neither state is subject to Section 5 review, so retrogression was not an issue. Moreover, both voter ID laws allowed numerous types of photo and non-photo ID, and both states retained fail-safe options for voters who lacked ID, so any discriminatory effect would have been lesser than the impact on black voters stemming from the restriction on acceptable ID under the Georgia law.

Here, we have not uncovered, nor has the state presented, any information or evidence to overcome the inferences drawn from the data discussed at length above that blacks are more likely than whites to lack acceptable photo identification. The most that can be concluded from the legislative history and discussions with proponents is that legislators failed to consider statistical evidence of whether blacks were more likely than whites to lack acceptable ID. Moreover, Section 59 of Act 53 also fails the retrogression analysis set forth in Georgia v. Ashcroft of whether minority representatives believe that the proposed change will decrease minority voters' effective exercise of the electoral franchise. See Georgia, 539 U.S. at 484. In this instance, all black members of the Georgia legislature save one opposed the photo ID

provisions of Act 53. Senator Jones emphasized that the Senate received no evidence addressing the racial effect of the photo identification provisions on Georgia citizens, and that the only data presented were general numbers regarding valid driver's license and ID card ownership, which were never broken down by race. Senator Brown stated that proponents never tried to prove that minorities have proportionate numbers of the proposed forms of ID nor did they substantially address allegations of retrogression. Rep. Watson concurred that there was no response to allegations of the potentially retrogressive effect of the photo identification provisions offered in the House.

Senator Harbison believes that a narrowing of the acceptable types of identification will harm black voters because many of his constituents have voter identification currently accepted by the state, but do not drive or have a non-driver's identification card, and as a result, will not have an acceptable photo ID for voting purposes if the change is implemented. Senator Reed, who has served two terms in the Georgia House and was recently re-elected to the Senate, stated that "this is the most aggressive bill and attack on the rights of minorities and African-Americans that I have seen in my tenure in the House and Senate." Sonji Jacobs, Carlos Campos, "Voter ID Bill Stirs Furor," *Atlanta Journal-Constitution*, March 30, 2005.

The sole black representative who supported these provisions, Willie Talton, understood that his opinion would be scrutinized more closely than that of other proponents because he was a minority. Rep. Talton stated that he "kept an eye on this legislation to make sure it did not disenfranchise voters of any race or class." He based his conclusion that the law was "color blind" on the fact that more Georgians of voting age had a driver's license or ID card than were registered to vote. However, even Rep. Talton did not seek an analysis of potential disparities among black and white ownership of acceptable ID.

In light of the overwhelming objections voiced by black legislators, including the 47 members of the Georgia Legislative Black Caucus as well as U.S. House of Representatives John Lewis who do not support the bill, compared to the one black representative who supports the bill, the weight of the minority legislators clearly falls on the side opposing the proposed voter ID restrictions.

Non-Retrogressive Alternative

The jurisdiction has failed to demonstrate that it could not satisfy its stated goal of combating voter fraud while avoiding retrogression. As we determined with the state's original adoption of a voter identification requirement, states have the authority to adopt measures to ensure the security of elections and such measures are not inherently retrogressive. However, in light of the apparent retrogressive effect of the proposed restriction on acceptable IDs, the availability of non-retrogressive alternatives raises substantial concerns regarding the manner in which the state amended its current voter identification requirements.

The state could have avoided retrogression by retaining various forms of currently

accepted voter ID for which no substantiated security concerns were raised. Supporters of the ID restriction suggested that the risk of mail being stolen compromised the security of bank statements and government checks as acceptable ID. Even though no evidence was raised to support these claims, if true, the state could have addressed this issue by removing these specific forms of ID but retained other forms of non-photo ID such as birth certificates, Social Security cards, and other government documents, which were not described as likely to be stolen from voters' mailboxes. Retention of these items as acceptable ID would have had a greater likelihood of accommodating the low income black population that is least likely to have a photo ID.

Moreover, there was no evidence presented to demonstrate that any of the existing forms of non-photo ID were unreliable or that their retention would not have reasonably allowed the state to prevent voter fraud. First-time voters who register to vote by mail without providing ID are still permitted to show any of the non-photo IDs set forth in HAVA, including government checks and bank statements, so the reliability of this type of ID for all other voters should not be in question.

Ms. Meyers and other proponents also expressed doubts about the controls over private sector ID, but presented no evidence to support these doubts. Photo identification issued by private colleges and universities are accepted for financial transactions by businesses not affiliated with the universities. Private sector employee IDs allow individuals access to highly restricted areas such as airports, factory floors, office buildings containing confidential information, and other restricted spaces, which suggests that businesses have an incentive to use reliable, non-duplicable ID cards. It is likely that the retention of these forms of identification would have, at minimum, lessened the impact of the restrictions for minority voters.

Although individuals may counterfeit non-photo identification, they usually do so for financial gain or to obtain permanent resident status. As the holder is desirous of not being caught, it is less plausible that the individual will attempt to use the counterfeit document for voting purposes. If anything, requiring a driver's license for voting does not preclude the possibility that a voter may present a counterfeit ID with his current photo. Rep. Talton, stated that in his capacity as Deputy Sheriff, he encounters numerous counterfeit driver's licenses weekly. Even the 9/11 hijackers obtained official driver's licenses at state DMV offices by bribing motor vehicle employees.

Another non retrogressive alterative would have been to retain the affidavit alternative so that no voters would be barred from voting at the polls if they lacked photo ID. Proponents of the bill presented no evidence that the penalty of law is an insufficient deterrent to falsely signing an affidavit of identity, and the affidavit document itself reflects that falsifying or making a fraudulent statement or representation in connection with signing is a felony. If legislators were concerned that an affidavit is not verified before the vote is cast electronically, they could have amended the current affidavit proccdures to allow an affidavit voter to cast a provisional ballot, to be counted after the affidavit is verified by the registrar, similar to the current procedure for first-time registrants by mail who use an affidavit of identity. Under such a change, qualified

voters who lacked the requisite identification would still be allowed to vote and that vote would still be counted without requiring further action by the voter, thus obviating any retrogression concerns.

Other alternatives that the state could have explored would have been the addition of additional forms of photo identification allowed by other states with voter ID laws. These forms of ID could include store club cards, credit and debit cards, association cards, or any other identification card with the voter's name and photo, which would have broadened the available forms of acceptable ID. This is a practice allowed by many other states, as discussed below in Part IV.A.

The failure of the state to adopt any of these non- or less-retrogressive alternatives to satisfy its goal of preventing voter fraud weighs strongly in favor of interposing an objection.

No-Excuse Absentee Voting

Proponents of preclearance have suggested that the proposed changes are not retrogressive because the restriction of voter ID and the elimination of the affidavit procedure are balanced by the expansion of absentee voting to anyone who requests an absentee ballot. Under this analysis, anyone who is barred from voting at the polls is not disenfranchised because they may vote an absentee ballot.

Although the expansion to no-excuse absentee voting is a positive step, it does not obviate the retrogressive effect on black voters who lack the necessary identification, as data shows that blacks are only half as likely as whites to vote by absentee ballot. According to the 2000 U.S. Census, one in nine white voters nationally voted by absentee ballot, compared to only one in 21 black voters. This data is a national composite, so does not distinguish between states where absentee voting is restricted and those where it is available to all.

The Task Force Report, "To Assure Pride and Confidence in the Electoral Process," (Aug. 2001), part of the Carter-Baker National Commission on Election Reform, concurs with the Census data on absentee voting data, finding that blacks are half as likely as whites to vote absentee. See Chp. 5, p.3. The report accounts for this by noting that absentee ballots are used more by people with better educations, higher incomes, and more prestigious jobs; to wit, voters "who have the resources to know to arrange to vote in advance." *Id.* The highest rates of absentee voting are among holders of graduate and professional degrees and people in managerial and professional occupations. *Id.* Again, it appears that the lowest income voters, who are the least likely to have acceptable photo ID, are also the least likely to participate in absentee voting.

Even states that change their absentee voting rules to adopt no-excuse absentee voting generally do not experience an increase in voter turnout. According to a 50-state study by the Committee for the Study of the American Electorate (CSAE), those states that adopted early voting or no-fault absentee voting "performed worse in terms of either greater average turnout

declines” in years when turnout went down such as 1996 and 1998, and experienced “lesser average turnout increases” in years when turnout increased such as 1992 and 1994, compared to states that did not adopt either of these voting procedures. See Report released Feb. 8, 1999, by the Committee for the Study of the American Electorate. In a recent update analyzing the November 2004 election, CSAE found that in the 24 states with no-excuse absentee voting, turnout was at virtually the same levels as in states without that provision. See Report released Jan. 14, 2005, by the Committee for the Study of the American Electorate. The Carter-Baker Task Force report concurs that absentee voting rules appear to have very little effect on voter turnout. See id. at 6.

This disparity in absentee ballot usage between white and black voters is confirmed by those with experience in the voting patterns of minority citizens in Georgia. Senator Brown told us that many older black voters prefer to vote in person on election day to celebrate their civil rights victory. The significance of publically voting is heightened for these voters because of their personal struggle to obtain the electoral franchise. Importantly, the change to no-excuse absentee voting was not proposed nor supported by Black Caucus members as a mitigating factor to potential retrogression, according to Senator Jones.

The material presented by the Lawyers Committee for Civil Rights includes testimony from an African-American voter that others in his community fear that their votes may be excluded if submitted by absentee ballot, a concern that is alleviated by casting one’s vote at the polls. When they vote in person, no one handles the ballot but the voter, who places it personally into the ballot box. As voters over age 75 have always been permitted to vote absentee under Georgia law, there is little reason to believe that they would change their behavior under the state’s liberalized no-excuse absentee voting rules.

Finally, absentee voting requires the voter to obtain an application for an absentee ballot, receive the application through the mail, fill out and mail the request, receive the ballot through the mail, and finally mail the ballot back to the registrar before the close of polls. This requires four instances of mailing documents back and forth. Allowing two to three days per mailing, this can add up to twelve extra days, not including weekends, to the voting process. As a result, voters must begin the process at least two weeks before every election, and make their decision long before the campaigning ends. Complying with these requirements also requires knowledge of the deadlines and the application process, which may be harder for illiterate and less well-educated voters, who are disproportionately black.^{15/} In addition, many individuals are reluctant to rely on the mail to deliver ballots to and from absentee voters on time and without error. See, e.g., Associated Press, “Florida Republicans, Democrats Trade Accusations,” Oct. 29, 2004 (reporting 58,000 missing absentee ballots in Broward County, FL in 2004 general election).

^{15/} According to the 2000 Census, there were 109,729 illiterate people age 25 and over, defined as persons with no schooling or who had completed the 4th grade or less. Of those, 37,204 were white non-Hispanics and 42,274 were black non-Hispanics.

From both the statistical and anecdotal evidence we have obtained, it appears that the expanded availability of absentee voting, although a positive measure, is unlikely to change voters' behavior and will not ameliorate the retrogressive effect caused by the reduced number of acceptable forms of identification and the elimination of the affidavit of identity. The state has not provided any evidence to show that voters will behave any differently under the proposed "no-excuse" absentee ballot rules, and therefore has not met its burden of showing that the concomitant change to no-excuse absentee voting will remedy any potential retrogression caused by the restricted ID requirements.

GLOW Program

One positive effect of our numerous contacts with state officials appears to have been the development of the GLOW program. If this program goes into effect as described, it may well have beneficial effects in providing DDS cards in underserved areas to the most impoverished and isolated residents. However, the program has not yet gone into effect, and has designated only 36 counties on its tentative schedule to be visited through the end of November 2005. Most of these counties have black populations that are at least comparable to the statewide average or higher, which reflects targeting that may help to serve African-American voters. We cannot evaluate the effectiveness of the program's publicity measures, however, its responsiveness to citizen groups who call for its service to be directed to their counties and/or organizations, or quantify its actual output of photo ID cards compared to its projected maximum capacity of ID card distribution. Moreover, the GLOW program will not help those voters who do not have birth certificates or other documents necessary to obtain an ID card, nor the means to obtain them.

As a result, we conclude that the GLOW program may enhance the ability of some voters to access photo ID cards. Finally, even if we could measure the enhanced access that this program will provide, we cannot rely upon such measures to remedy the potential retrogression, as the program may be subject to Section 5 review, and without preclearance, may be subject to change or elimination at any time.

B. Retrogressive purpose

A voting change adopted with the intent to retrogress black voting strength, whether in the present or in the future, does not meet the standards of Section 5. Reno v. Bossier Parish School Board, 528 U.S. 320, 321 (2000). The Supreme Court has emphasized that the "purpose must be retrogressive" because "§ 5 prevents nothing but backsliding." Id. at 335, 340. The purpose inquiry under Section 5 should be guided by the Arlington Heights standard. See Reno v. Bossier Parish School Board, 520 U.S. 471, 488 (1997), quoting Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 266 (1977) ("assessing a jurisdiction's motivation in enacting voting changes is a complex task requiring a "sensitive inquiry into such circumstantial and direct evidence as may be available"). The relevant factors in such a "purpose" inquiry are: the impact of the change on black voters; the historical

background of the decision; the specific sequence of events that led up to the challenged decision; procedural and substantive departures from normal considerations; and the legislative or administrative history -- especially where there are contemporary statements by members of the decision making body, minutes of its meetings or reports. Arlington Heights, 429 U.S. at 266.

Opponents of Act 53 have alleged that the state acted with retrogressive intent. The Lawyers' Committee letter in particular asserts that justification for the state's action is not found in the legislative history, points to the exclusion of absentee ballots from the revised identification requirements as evidence that fraud prevention is a pretextual justification, and notes that less retrogressive alternatives to the fraud problem were not debated. Opponents also note that there was no discussion in the legislative history regarding the reliability of IDs issued by private colleges and universities, or private employers. Proponents such as Representative Talton, who identified his specific motivation for tightening voter IDs to those with photographs, did not directly address the potential use of fake IDs themselves for voting purposes.

On the one hand, legislative proponents have been unable to provide examples of fraud in voting, with Representative Burmeister stated that this information is unavailable because fraud is, by its nature, subversive. Secretary Cox stated that she is unaware of any cases of voter impersonation during her tenure as Secretary of State. The state's recitation of United States v. McCranie, 169 F.3d 723 (11th Cir. 1999), which upheld convictions for voter fraud in Dodge County, Georgia, does not support the stated purpose of Act 53 in that the fraud in McCranie was vote buying and selling, not impersonation or voting under a false identity. In fact, the vote buying and selling activities were performed openly, by county officials, and with the knowledge of the county clerk. Voters' identities were well known to county officials. As such, the case does not support the need for reducing the types of acceptable IDs or the elimination of the affidavit procedure as a means of reducing criminal activity.

However, there is no direct evidence that proponents intended to restrict the types of acceptable voter ID and eliminate the affidavit procedure for the specific purpose of retrogressing minority voting strength. It appears that proponents did not analyze the potential gaps in access to acceptable identification amongst blacks and whites, or seek out data regarding the racial distribution of persons who lack such identification. Several Georgia legislators stated that their intent was to combat voter fraud, and that their approach was considered and color-blind, relying on several sources for the approach it eventually adopted. Save for Rep. Burmeister's inflammatory statement that blacks in her district vote only because they are paid, we have found no evidence to suggest that proponents had data pointing to the retrogressive effect of the legislation and nevertheless intentionally adopted the voter identification restrictions for the purpose of disenfranchising black voters.

IV. OTHER POLICY CONSIDERATIONS

A. Voter Identification Laws of Other States

According to Electionline.org, 22 states currently require all voters to present some form of identification before voting.^{19/} See Tab 8. In 16 of these states, the identification need not be photo identification. In five of the six states that request photo ID, other procedure allow voters to cast a valid ballot without possessing photo identification, thereby providing a "fail-safe" mechanism, which allows individuals who are, in fact, validly registered voters an opportunity to vote at the polls.

1. Non-Photo Identification Provisions

In addition to Georgia's benchmark practice, the following 15 states allow various forms of non-photo identification: Alabama, Alaska, Arizona,^{20/} Arkansas, Colorado, Connecticut, Delaware, Kentucky, Missouri, New Mexico, Montana, North Dakota, Tennessee, Virginia, and Washington.^{21/} Examples of non-photo identification accepted by these states are:

- Voter registration card;
- Social Security card;
- Bank statement;
- Utility bill;
- Government check;
- Paycheck;
- Gun permit;
- Hunting/fishing license;
- Pilot's license;
- Birth certificate;
- Medicare/Medicaid card;
- Credit card;
- Entertainment/ buyer's club card;
- Change of address verification letter from U.S. Postal Service;
- Any government document that shows the voter's name and address.

2. Fail-safe Provisions

^{19/} Electionline.org, "Voter ID requirements," (viewed August 9, 2005), available at www.electionline.org/Default.aspx?tabid=364; see also National Conference of State Legislatures, "State Requirements for Voter Identification," available at www.ncsl.org/programs/legman/elect/taskfc/voteridreq.htm (updated May 10, 2005). These two documents along with an comparison chart attachments to this memorandum. The time constraints imposed on our analysis of the submission precluded an independent 50-state survey of voter identification laws.

^{20/} Not yet implemented.

^{21/} South Carolina is classified by the NCSL report as "requesting photo identification" but seems mis-categorized because a voter registration card is considered acceptable identification.

amended the law to eliminate the affidavit provision and require voters without acceptable identification to vote a provisional ballot. See Florida HB 1589; SB 2176. This change is currently pending before us on Section 5 review.

In Hawaii, a voter has to provide picture identification with the voter's signature on it. Acceptable forms of identification are not specified by law. If the voter has no identification, the voter will be asked to recite his or her date of birth and residence address to corroborate the information provided in the poll book. Haw. Rev. Stat. § 11-136. The voter can then vote a regular ballot.

In Louisiana, voters must show a picture identification card to vote at the polling place. This can include a Louisiana driver's license, a Louisiana Special ID card, or other "generally recognized" picture identification card. Voters who lack a photo identification may sign an affidavit of their identity and then can vote a regular ballot. La. Rev. Stat. Ann. § 18:562. The law requires the voter to sign an affidavit and provide either a current voter registration certificate or other information stated in the precinct register requested by the commissioners. Id.

In South Carolina, a voter is required to present identification before voting a regular ballot. The voter may present a driver's licence or state ID card, but may also use his or her voter registration card as identification. A voter who has lost his or her voter registration card may obtain a duplicate copy at no cost, including on election day. A voter who cannot present either photo identification or a voter registration card may cast a provisional ballot. The provisional ballot will be counted if the Board of Voter Registration is able to certify that the voter is a qualified elector of the precinct in which he voted his provisional ballot. S.C. Code Ann. § 7-13-830. The voter is not required to bring his or her identification or voter registration card to the registrar for his or her ballot to be counted.

In South Dakota, all voters are to provide photo identification before voting or obtaining an absentee ballot. The personal identification that may be presented shall either be: (1) a South Dakota driver's license or nondriver identification card; (2) a passport or an identification card, including a picture, issued by an agency of the United States government; (3) a tribal identification card, including a picture; or (4) an identification card, including a picture, issued by a high school or an accredited institution of higher education, including a university, college, or technical school, located within the State of South Dakota. If a voter is not able to present personal identification, the voter may complete an affidavit in lieu of the personal identification. S.D. Codified Laws § 12-18-6.1, 12-18-6.2.

In Indiana, a voter who desires to vote an official ballot at an election shall provide proof of identification. Ind. Stat. § 3-5-2-40.5. Identification must be issued by the State of Indiana or the United States and must show the name and photo of the individual. Ind. Stat. § 3-10-1-7.2. Specific forms of identification are not listed. Voters who are unable or decline to produce proof of identification may vote a provisional ballot. The ballot is counted only if (1) the voter returns

to the election board by noon on the Monday after the election and: (A) produces proof of identification; or (B) executes an affidavit stating that the voter cannot obtain proof of identification, because the voter: (i) is indigent; or (ii) has a religious objection to being photographed; and (2) the voter has not been challenged or required to vote a provisional ballot for any other reason. Ind. Stat. § 3-11-8-25.

Compared to the voter ID laws of other states, Georgia is the only state (aside from Indiana) in which voters must present photo identification as a prerequisite for voting with no fail-safe alternative. All other states allow voters to present a voter registration card or other non-photo identification as proof of identity, sign an affidavit of identity, be recognized by poll workers, or verify their personal information as proof of identity before voting. Only one other state (aside from Indiana) requires an elector who votes a provisional ballot to return to the registrar's office with ID before such ballot will be counted, thus placing the burden on the voter to bring ID, rather than on the registrar to confirm the elector's registration. Voters may not have a method of transportation to return to the clerk's office, as they do on election day when rides to the polls are widely provided, or may not have time off from work to do so. These features make Georgia's voter ID law, along with Indiana's, the most restrictive in the nation.

B. Past Section 5 Determinations on Voter Identification Laws

1. South Carolina

South Carolina's voter identification requirement predates Section 5 coverage. Under the original statute, a voter was required to produce his registration certificate in order to vote. Act No. R623 (1984) was the first post-coverage amendment to this provision. (Submission No. 1984-4081). The Act added a driver's license and a Highway Department identification card as acceptable forms of voter identification. The Act provided that any person who registered "prior to the effective date of this act who does not possess a driver's license or other form of identification containing a photograph [to] vote upon production of a valid registration certificate." We sent a written request for additional information on September 11, 1984, indicating that requiring a voter to pay for identification may constitute a poll tax and asking the state to clarify the provision regarding the acceptability of a registration certificate as voter ID.

South Carolina's response stated that voter registration certificates would continue to be accepted as identification for all voters and that at the time of registration, a voter would be advised that he could show any of the three forms of acceptable identification to vote. Additionally, the state assured us that those who lose their notification may obtain a duplicate. Our preclearance letter noted these assurances, quoting the state's letter which maintained that "[t]he purpose of [the] act was to allow voters to have an additional means to provide identification in order to vote."

South Carolina further amended its voter identification requirement in 1988. (Submission No. 1988-4769). Act No. R571 (1988) reinstated a statutory provision requiring

registration boards to issue certificates of registration to all voters as well duplicates to those who had lost their original notification. According to the state, although the practice had been maintained, the State Election Commission felt that reinstating the statutory provision was preferable. The Act also amended the state's voter identification requirement to clarify that any voters who lacked photo identification could present a voter registration card in lieu of a photo ID. As we determined that the changes largely reflected procedures already in place for the state, we again interposed no objection.

2. Alabama

In 2002, Alabama enacted a requirement that all voters present identification before voting. (Submission No. 2003-2245). The law applies to both in-person as well as absentee voters. The law authorizes numerous forms of identification to be shown in order to vote, as follows:

- Alabama driver's license or state ID card;
- Valid identification card from another state or U.S. government entity;
- Employee card (public or private employer);
- Student identification (public or private school);
- Utility bill;
- Bank statement;
- Social Security card;
- Social Security check;
- Veterans check;
- Paycheck;
- Medicare/Medicaid card;
- Hunting/fishing license;
- Gun permit;
- FAA pilot's license;
- Electronic Benefits Transfer (EBT) card;
- U.S. Passport;
- Military ID;
- Birth certificate;
- Naturalization document;
- Adoption record;
- Name change record;
- Other government document showing the voter's name and address.

The law also provided two interim fail-safe methods for voting in the election scheduled for the month following the state's submission of the requirement: the elector could vote a challenged ballot or vote a regular ballot if identified by two election officials. The legislature has also enacted a separate law that provides a permanent fail-safe method for future elections, which utilizes a provisional ballot fail-safe procedure similar to that required by HAVA. The

provisional ballot is counted if the voter provides the registrar with an acceptable form of identification by 5 pm on the Monday following the election. The voter identification requirement was supported by eight out of 27 black caucus members, and opposed by 17, with two voting present or excused.

As in other Section 5 analyses of voter identification provisions, our conclusion that the Alabama voter identification requirement was not retrogressive in purpose or effect focused on two factors, the inclusion of a fail-safe procedure and the numerous forms of identification accepted. The inclusion of a fail-safe procedure allowing voters who do not possess the required identification, or who neglect to bring it to the polls, to fill out an affidavit attesting to their identity assures that no voters are barred from voting for not possessing an approved identification. The numerous forms of identification accepted by the state also ensured that most voters would possess at least one acceptable form. Primarily because of these factors, we determined that any potential retrogressive effect would be ameliorated.

3. Louisiana

In 1994, the Attorney General interposed an objection to a voter identification requirement proposed by the State of Louisiana. (Submission No. 1994-2922). The state would have required first-time voters who had registered by mail to show a driver's license or other photo identification at the polls. The submitting authority represented that the statute did not limit the type of photo identification that would have been acceptable, and listed employer identification issued by public and private employers, as well as college and university identification from public and private institutions, as acceptable. The use of non-photo identification, such as a current voter registration card, Social Security card, or utility bill, would not have been acceptable for first-time voters, and there was no fail-safe procedure for voters who did not possess such identification. Additionally, there was no provision for a identification card fee waiver for indigent voters.

Our objection was based upon the conclusion that the photo identification provision would have a retrogressive effect. The objection memorandum noted that "minority persons are far less likely to possess the most common forms of picture identification specified by the statute - driver's license, employee identification cards and college and high school identification cards." See Tab 7. The memorandum noted that 97.6 percent of voting age whites had a valid driver's license, compared to 70.6 percent of voting age blacks. The memorandum also noted that a greater proportion of voting age whites were in the labor force, and therefore more likely to have employee identification, compared to blacks. It also noted that whites comprised 68 percent of the total university population, and were disproportionately more likely to have a student identification compared to blacks. The memorandum finally noted that 12.7 percent of voting age whites and 39 percent of voting age blacks earned a salary below the poverty line, which made it reasonable to assume that more blacks would have trouble affording the \$15 fee for a photo identification card.

The memorandum concluded that because blacks were more likely to live below the poverty line, and were less likely to possess an acceptable form of photo ID, the law was more burdensome than existing law and thus retrogressive. This finding was made even though the form of photo identification card was not restricted by law, and allowed college and employer identification from any public or private entity. The analyst's memorandum and reviewers' memoranda are attached. See Tab 7.

As an objection was interposed, the law did not take effect. See Tab 7 (Letter from Deval L. Patrick to Sheri Marcus Morris, Nov. 21, 2004; and Letter from Loretta King to Sheri Marcus Morris, Feb. 22, 1995). Our letter noted that the state had not met its burden of proof to demonstrate that the change was not retrogressive in purpose or effect. It stated that socio-economic data showed that black persons were "four to five times less likely than white persons in the state to possess a driver's license or other picture identification card . . ." and therefore the provision would have a disproportionately adverse impact on black voters in the state, thereby lessening their opportunities for political participation. See Tab 7. The state requested reconsideration, but the objection was continued as no new factual information or legal argument was presented to support our withdrawal of the objection. See Tab 7.

In 1997, the state submitted a modified version of the requirement which overcame the concerns that led to our earlier objection. (Submission No. 1997-2338). The 1997 law permitted voters to sign an affidavit and provide a current voter registration certificate or information in the precinct register in lieu of a photo ID. It also included a waiver of the fee for obtaining a special identification card from the State. See Tab 7. The 1997 law did not enjoy minority support, and was opposed by black legislators, including New Orleans Mayor Marc Morial, as well as several voting rights organizations and the Louisiana ACLU.

However, our analysis of the revised procedure found that it contained several safeguards that would diminish any potential adverse impact on minority voters. The most important was the affidavit provision, which removed the bar to voting for electors who did not possess photo identification. The second key factor was that the list of acceptable identifications included "other generally recognized picture identification cards" in addition to a driver's license. These other identification cards are not defined by statute, and presumably could include a credit card, school or employer identification issued by any public or private entity, buyers club card, or other photo identification. Based upon these two factors, as in Alabama, we concluded that the law was not retrogressive and informed the state that the Attorney General interposed no objection.

4. Arizona

Earlier this year, the State of Arizona submitted for Section 5 review, Sections 3, 4 and 5 of the Arizona Taxpayer and Citizen Protection Act (Proposition 200). The Act appeared as a statewide ballot initiative on November 2, 2004, at which time it was passed by a majority of Arizona voters. The proposition requires that voter registration applicants submit evidence of U.S. citizenship and that county recorders shall reject the application if no evidence of

citizenship is attached. Satisfactory evidence of citizenship includes the following forms of identification:

- (1) AZ Department of Transportation-issued license or ID card, or equivalent out of state agency-issued license or ID;
- (2) birth certificate or legible photocopy to the satisfaction of county recorder;
- (3) U.S. passport or legible photocopy;
- (4) U.S. naturalization documents or number of certificate (if only the number is provided, completed registration is contingent upon INS verification of number);
- (5) other proof pursuant to the Immigration Reform and Control Act of 1986;
- (6) U.S. Bureau of Indian Affairs (BIA) card number, tribal treaty number or tribal enrollment number.

The proposition also amended the procedure by which an elector obtains a ballot to require photo identification or two forms of non-photo identification bearing the elector's name and address to be produced at the polls.

Native American and Hispanic state legislators as well as numerous organizations submitted comments opposing the changes. Many commenters were concerned that voter registration rates among Hispanics and Native Americans would decrease, that the law would retrogress minority voting strength, and would constitute an illegal poll tax. Commenters contended that Native Americans were disproportionately less likely to have satisfactory evidence of citizenship. MALDEF also raised concerns regarding the potential "chilling" effect on Hispanic voter registration drives, which often register voters on the spot and typically lack fixed offices with photocopiers and fax machines. Concerns were also raised that the voter registration requirements did not include clear procedural guidelines for implementation and that the voter identification requirements would be applied in a racially discriminatory manner.

Our analysis found that while younger Native Americans tended to possess birth certificates, many Native Americans over the age of 55 did not have a birth certificate. However, the Arizona Indian Health Service reported that most Native Americans relied on documents issued by tribal governments and the BIA to receive health benefits, which were acceptable for voter registration purposes. Moreover, any Native American citizen could register by stating their tribal ID number without presenting the document. As such, most Native Americans would have sufficient tribal identification to satisfy proof of citizenship for registration, thus obviating retrogression concerns.

Our analysis nevertheless raised concerns regarding the state's plan for implementation, and Voting Section staff recommended requesting more information. The proposed letter also requested the racial composition of the approximately seven percent of Arizonans without an driver's license or state-issued ID, in part because the submission lacked sufficient information to determine the potential impact of these changes on Hispanics. The state asserted implementation procedures would be submitted at a later date. On January 24, 2005, no objection was

interposed.

The preclearance of Arizona Proposition 200 is not analogous to the review of the instant restrictions on Georgia's voter ID requirement and does not weigh in favor of preclearance here. The Arizona statute permits any identification with the elector's name and address, thus allowing for numerous forms of photo identification and non-photo identification (e.g. utility bill, bank statement, government check, or government document) to be accepted.

Moreover, little comparison can also be drawn between Arizona's voter registration requirements and Georgia's proposed restriction of its voter identification requirements. The forms of acceptable identification to prove citizenship in Arizona are distinctly different from the proposed photo identification required in Georgia, and were specifically designed to provide a method of verification of citizenship that avoided retrogression among Native Americans and Hispanics, who were thought to be least likely to have driver's licenses or birth certificates. Finally, our preclearance reflects only a determination that Arizona's voter registration requirements did not retrogress Hispanic and Native American voting strength in that state, where such populations possess different demographic characteristics than African-Americans in Georgia.

The closest analogy in past Section 5 determinations of voter ID laws is to Louisiana's 1994 enactment, due to the similarity of population characteristics and the effect on minority voters of a restrictive voter identification requirement without a fail-safe alternative. Such comparisons weigh in favor of an objection here.

C. Identification Laws & Effect on Voter Turnout

We have calculated voter turnout in Georgia, Louisiana, Florida, South Carolina, and Alabama to consider the effect of these states' voter identification laws. This information is set forth below.

1. Georgia (ID requirement enacted in 1997, expanded in 2003)

Year	Pct. total VAP registered	Pct. black VAP registered	Pct. white VAP registered	Pct. total VAP turnout	Pct. black VAP turnout	Pct. white VAP turnout
2004	62.3%	64.2%	68.0%	52.6%	54.4%	57.4%
2002	61.5%	61.1%	65.3%	40.0%	38.6%	43.0%
2000	61.1%	67.0%	61.0%	49.0%	49.6%	52.2%
1998	62.1%	60.9%	67.9%	41.9%	40.0%	46.5%
1996	66.1%	64.6%	67.8%	49.6%	45.6%	52.3%
1994	55.2%	57.6%	55.4%	35.7%	30.9%	38.3%
1992	62.0%	53.9%	67.3%	54.1%	47.1%	58.7%
1990	57.4%	57.0%	58.1%	42.3%	42.3%	42.6%

1988	61.4%	56.8%	62.9%	49.6%	42.4%	53.2%
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Georgia's voter identification requirement was first effective for the presidential election in 2000. There was little change in Georgia's overall voter turnout rates between the presidential elections of 1996 and 2000, although black turnout showed a four percent increase. The adoption of the 1997 voter identification requirement does not appear to have depressed black turnout in the state. Importantly, however, the voter ID law allowed persons without acceptable identification to sign an affidavit of identity, so we would not expect to see reduced turnout because no one would have been turned away for lack of ID. The expansion of the acceptable forms of voter ID in 2003 also appears to have no impact on black turnout, as both the overall turnout rate and the black turnout rate increased between the 2000 and 2004 presidential elections.

2. Louisiana (state statistics) (ID requirement enacted in 1997)

	registered	black reg.	black reg. as pct. of total	white reg	total voted	black voted	blk. voted as pct. of reg.	white voted	wht. voted as pct. of reg.
2004	2,923,395	870,201	29.8%	1,936,724	1,956,673	531,744	61.1%	1,363,396	70.4%
2002	2,806,202	820,628	29.2%	1,885,530	1,267,225	328,443	40.0%	913,259	48.4%
2000	2,796,351	809,203	28.9%	1,894,957	1,776,133	472,211	58.4%	1,261,905	66.6%
1998	2,686,560	773,935	28.8%	1,836,840	990,239	296,509	38.3%	680,093	37.0%

Louisiana's post-election reports prior to 1998 have been removed from the state's website. The only data we have from prior to 1998 is the total statewide turnout as a percent of voting age population. This information is as follows:

<u>Year</u>	<u>LA Turnout</u>	<u>National Turnout</u>
1996	54.2%	49.08%
1992	56.98%	55.09%
1988	51.28%	50.11%
1984	54.55%	53.11%

Because we have no data regarding the percentage of black registration and turnout, we cannot draw significant conclusions about the effect of the voter identification law enacted in 1997. However, we would not expect to see any significant effect on turnout caused by imposition of the identification requirement because Louisiana permits voters who lack identification to sign an affidavit of their identity. Therefore, any voter who does not have a photo identification is not barred from voting at the polls. The resulting effect on turnout should be negligible. The table shows that black turnout was highest in 2004 and 2000, which is consistent with high national turnout due to the presidential elections.

3. South Carolina (state statistics) (1962) (ID requirement last modified 1988)

	tot. reg.	non-white reg.	pct.	white reg.	total voted	non-white voted	non-white turnout as pct. of reg.	white voted	white turnout as pct. of reg.
2004	2,315,187	659,366	28.5%	1,655,816	1,631,148	433,732	65.8%	1,197,416	72.3%
2002	2,047,368	557,342	27.2%	1,490,026	1,116,936	284,354	51.0%	832,582	55.9%
2000	2,266,199	622,244	27.5%	1,643,955	1,433,533	350,749	56.4%	1,082,784	65.9%
1998	2,021,763	552,066	27.3%	1,469,697	1,098,484	281,289	51.0%	817,195	55.6%
1996	1,814,777	489,850	27.0%	1,324,927	1,203,486	294,983	60.2%	908,503	68.6%
1994	1,499,589	376,981	25.1%	1,122,608	953,120	203,243	53.9%	749,877	66.8%
1992	1,537,140	387,624	25.2%	1,149,516	1,237,467	286,911	74.0%	950,556	82.7%
1990	1,354,402	358,469	26.5%	995,933	793,614	184,743	51.5%	608,871	61.1%
1988	1,435,977	388,255	27.0%	1,047,722	1,041,846	245,304	63.2%	796,542	76.0%
1986	1,297,721	368,954	28.4%	928,767	770,556	197,746	53.6%	572,810	61.7%
1984	1,394,675	392,845	28.2%	1,001,830	1,018,701	264,546	67.3%	754,155	75.3%

The South Carolina requirement that electors show their voter registration certificate before voting was present in the 1962 code, prior to the coverage date of the Voting Rights Act. The law was modified in 1984 to add driver's licenses and photo ID cards as acceptable proof of identity before voting. The law was further amended in 1988 to clarify that any voters who lacked photo identification could present a voter registration card in lieu of a photo ID and to require county election registration boards to issue duplicate voter registration certificates upon request to any voter who lost his or her original certificate.

As the state's requirement that voters show their certificates of registration as proof of identity predated the 1984 amendment, which added photo IDs rather than requiring that only photo IDs be used as proof of identity, voters had additional forms of acceptable identification beginning in 1984. Additionally, because all voters were issued certificates of registration and any voter could obtain a copy of his or her registration certificate on election day, no significant change in turnout in South Carolina in 1984 is expected as a result of changes in the voter identification law.

4. Florida (Census self-reported) (ID requirement enacted 1998)

	total reg.	black reg.	pct.	white reg.	total voted	black voted	blk. turnout as pct. of reg.	white voted	white turnout as pct. of reg.
2004	8,219,000	994,000	12.1%	6,251,000	7,372,000	841,000	84.6%	5,656,000	90.5%

				0	0	0		0	
2002	7,290,000	846,000	11.6%	5,488,000	5,334,000	583,000	68.9%	4,073,000	74.2%
				0	0	0		0	
2000	7,043,000	773,000	11.0%	5,391,000	6,006,000	620,000	80.2%	4,658,000	86.4%
				0	0	0		0	
1998	6,653,000	714,000	10.7%	5,183,000	4,403,000	473,000	66.2%	3,468,000	66.9%
				0	0	0		0	
1996	6,727,000	754,000	11.2%	5,927,000	5,516,000	575,000	76.3%	4,901,000	82.7%
				0	0	0		0	
1994	6,002,000	633,000	10.5%	5,298,000	4,601,000	398,000	62.9%	4,160,000	78.5%
				0	0	0		0	
1992	6,486,000	772,000	11.9%	5,643,000	5,772,000	652,000	84.5%	5,062,000	89.7%
				0	0	0		0	

Florida's photo ID requirement was enacted in 1998. Because Florida allows a wide range of identification to be used, including all photo ID cards including store cards, credit cards, public assistance identification, and retirement center ID cards, it is more likely that all voters would have one acceptable form of identification. More importantly, like Louisiana, Florida permits voters who are unable to present identification at the polls to execute an affirmation of his or her identity. Fla. Stat. § 101.49. As a result, we would expect to see a negligible effect on turnout because no voter is barred from voting on the ground that he or she lacks acceptable identification. The main trend evident in the Florida data is the high turnout rates in 2004, 1992, and 2000, which is consistent with national turnout.

5. Alabama (Census self-reported) (ID requirement enacted 2002)

	total reg.	black reg.	pct. of tot.	white reg.	total voted	black voted	blk turnout as pct. of reg.	white voted	white turnout as pct. of reg.
2004	2,418,000	590,000	24.4%	1,822,000	2,060,000	517,000	87.6%	1,537,000	84.4%
								0	
2002	2,347,000	524,000	22.3%	1,798,000	1,585,000	336,000	64.1%	1,242,000	69.1%
								0	
2000	2,411,000	619,000	25.7%	1,776,000	1,953,000	491,000	79.3%	1,448,000	81.5%
								0	
1998	2,398,000	621,000	25.9%	1,755,000	1,665,000	431,000	69.4%	1,223,000	69.7%
								0	
1996	2,318,000	532,000	23.0%	1,783,000	1,744,000	417,000	78.4%	1,324,000	74.3%
								0	
1994	2,212,000	557,000	25.2%	1,654,000	1,436,000	328,000	58.9%	1,106,000	66.9%
								0	
1992	2,317,000	775,000	33.4%	1,753,000	1,913,000	450,000	58.1%	1,456,000	83.1%
								0	

The Alabama identification requirement was passed in 2002, and took effect in that year. Turnout in Alabama among African-Americans was high in 2000, lower in 2002, and rose again in 2004. One could argue that the decrease in 2002 was attributable to the imposition of the identification requirement, but it is far more likely attributable to the fact that 2002 was not a presidential election year. The subsequent spike in 2004 occurred due to the high interest in the national election. In addition, because Alabama's identification law allows a wide range of

photo and non-photo identification to be used, including Medicaid/Medicare cards, utility bills, bank statements, government checks, sporting permits, or any government document with a voter's name and address, the expected effect on voter turnout would be minimal since most voters would likely have at least one acceptable form.

In conclusion, it is difficult to estimate the effect that these voter identification laws have had on turnout or to use the experience of other states in an attempt to predict the effect in Georgia of the proposed restrictions to the acceptable forms of voter identification. With the exception of Indiana, each of the laws discussed above is materially different than the requirement proposed in Georgia. Overall such laws permit a wider range of acceptable forms of identification and provide crucial fail-safe options for voters. Additionally, differences in turnout in the four states discussed are attributable to many other social factors, particularly spiking in presidential years when the national turnout was also highest, in 2004, 2000, and 1992. Persons who fail to vote or are turned away because they lack identification are also not counted in the same way as persons who sign in at the polls. As a result, their impact on the turnout percentage cannot be calculated.

V. CONCLUSION

For all the reasons set forth above, we recommend that an objection be interposed to Section 59 of Act No. 53 (2005) on the ground that the state has failed to meet its burden of proof to demonstrate that it does not have the effect of retrogressing minority voting strength. The attached letter also informs state officials of the determination not to interpose an objection to the remaining changes contained in the legislation.

AGREE:

DISAGREE:

COMMENTS:

APPROVE:

DISAPPROVE:

COMMENTS: