

SECTION 5 RECOMMENDATION MEMORANDUM: August 25, 2005

Re: Act No. 53 (H.B. 244)(2005), which amends and provides: definitions of election terms, summaries of proposed constitutional amendments, duties of municipal governing authorities, training requirements for election officials, candidate qualification schedules and procedures, nonpartisan election schedules and procedures, ballot procedures and format, voter registration procedures, polling places and election equipment, voting method and machines for municipalities, absentee voting procedures, poll watchers, electioneering prohibitions, provisional voting requirements and procedures, voter information at polling places, majority vote requirement, special election procedures, penalties for violation of election code, Uniformed and Overseas Citizens Absentee Voting Act changes, and voter identification requirements.

TIME LIMIT

Submission Received:	June 13, 2005
Supplemental Information Received:	July 25, 2005
	July 28, 2005
	August 1, 2005
	August 22, 2005
Interim Letter Sent:	August 2, 2005
Due Out Date:	September 30, 2005

FACTUAL INVESTIGATION AND LEGAL REVIEW

By: Robert Berman, Deputy Chief
Amy Zubrensky, Trial Attorney
Heather Moss, Civil Rights Analyst
Joshua Rogers, Trial Attorney
Toby Moore, Geographer/Social Science Analyst

RECOMMENDATION: Objection to Section 59 (supported by Berman, Zubrensky, Moss, and Moore); no objection to remaining changes;^{1/} no objection to all changes including Section 59 (supported by Rogers).

^{1/} A complete description and analysis of all changes other than Section 59, which amends the state's voter identification requirements, are contained in a separate memorandum, and the proposed letter informs state officials that no objection will be interposed to these changes.

I. BACKGROUND

A. Demographics and statistics

According to the 2000 Census, the State of Georgia has a total population of 8,186,453, of whom 2,348,626 (28.7%) are black and 5,128,661 (62.6%) are white. The state has a total voting age population of 6,017,219, of whom 1,595,631 (26.5%) are black and 3,925,585 (65.2%) are white. On August 11, 2005, the Census Bureau released its 2004 estimates of a total population for the state of 8,829,383, of whom 2,658,068 (30.1%) were black and 5,936,829 were white.

B. Benchmark standard, practice, or procedure

Voters in Georgia may present any one of the following 17 forms of voter identification to establish their eligibility to cast a ballot:

- (1) Valid Georgia driver's license;
- (2) Valid identification card issued by a branch, department, agency, or entity of the State of Georgia, any other state, or the United States authorized by law to issue personal identification;
- (3) Valid United States passport;
- (4) Valid employee identification card containing a photograph of the elector and issued by any branch, department, agency, or entity of the United States government, the State of Georgia, or any county, municipality, board, authority or other entity of Georgia;
- (5) Valid employee identification card containing a photograph of the elector issued by any employer of the elector in the ordinary course of business;
- (6) Valid student identification containing a photograph of the elector from any public or private college, university, or postgraduate technical or professional school located within the State of Georgia;
- (7) Valid Georgia license to carry a pistol or revolver;
- (8) Valid pilot's license;
- (9) Military ID;
- (10) Birth certificate;
- (11) Social security card;
- (12) Naturalization documentation;
- (13) Copy of court records showing adoption, name, or sex change;
- (14) Utility bill;
- (15) Bank statement showing name and address of the elector;
- (16) Government check or payment with name and address of the elector; or
- (17) Other government document showing name and address of the elector.

Ga. Code. Ann. § 21-2-417

An elector who is unable to produce an acceptable form of identification may sign a statement under oath swearing and affirming that he is the person identified on the elector's voter certificate under penalty of law and may vote a regular ballot,^{2/} unless he is a first time registrant by mail in which case he may vote a provisional ballot.

To vote absentee, an elector must qualify according to the following list of enumerated acceptable reasons:

- I am required to be absent from my precinct all day on primary or election day (7:00 a.m. to 7:00 p.m.).
- I am unable to vote in person because of a physical disability.
- I am unable to vote in person because I am required to give constant care to someone who is physically disabled.
- I am an election official who will perform official acts or duties in connection with the primary or election.
- I will be unable to be present at the polls because the date of the primary or election falls on a religious holiday which I observe.
- I will be unable to be present at the polls because I am required to be on duty in my place of employment for the protection of the health, life, or safety of the public during the entire time the polls are open and my place of employment is within my precinct.
- I am 75 years of age or older.
- I am a citizen of the United States permanently residing outside the United States, was last domiciled in Georgia, and am not domiciled or voting in any other state.
- I am a member of the Armed Forces or Merchant Marines of the United States, or a spouse or dependent of the member, residing outside the County.

These are the benchmark standards, practices, and procedures for our analysis.

C. Proposed standard, practice, or procedure

Act No. 53 (H.B. 244)(2005) amends portions of state's election code. The Act contains numerous changes that are not controversial and do not raise retrogression concerns. Controversy centered on Section 59, which amends Ga. Code Ann. § 21-2-417 regarding the state's voter identification requirement.

The proposed practice eliminates twelve forms of identification accepted under the benchmark practice and adds one new form, resulting in the six following forms of acceptable identification:

^{2/} Under the benchmark practice, falsely swearing or affirming such a statement under oath is punishable as a felony. This penalty is distinctly set forth on the face of the statement. Additional penalties may apply (e.g., repeat voting in the same election, a violation of Ga. Code Ann. § 21-2-572, is punishable as a felony).

- (1) Georgia driver's license, which was properly issued by the appropriate state agency;
- (2) Photographic identification card issued a branch, department, agency, or entity of the State of Georgia, any other state, or the United States authorized by law to issue personal identification;
- (3) United States passport;
- (4) A valid employee identification card containing a photograph of the elector and issued by any branch, department, agency, or entity of the United States government, Georgia, or any county, municipality, board, authority or other entity of Georgia;
- (5) United States military photographic identification card; or
- (6) Tribal photographic identification card.

The identification need not contain the elector's address. The affidavit of identity for electors who cannot produce acceptable photo identification is eliminated. As proposed, a voter who cannot produce an acceptable photo identification may vote a provisional ballot, but must thereafter produce a valid photographic identification to the registrar within 48 hours of the election in order for his vote to be counted.

Section 66 of the bill permits indigent persons who do not otherwise have approved photo identification and cannot afford to pay the fees to obtain such identification to receive one free of charge from the Georgia Department of Public Safety. Section 50 broadens the ability of electors to vote absentee without providing a reason. Absentee voters are not subject to the identification requirement, though "advance" voters who vote in person at clerks' offices must present photo ID pursuant to these requirements.

Finally, there is a new provision applicable to first time voters who registered by mail and who have not otherwise verified their identification through government issued photographic identification. Such voters shall present to the poll workers one of the six forms of acceptable photographic identification listed above, or may present a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the elector. If the elector does not have any of the acceptable forms of identification, he may vote a provisional ballot upon swearing or affirming that the elector is the person identified in the elector's voter certificate. Such provisional ballot shall only be counted if the voter is able to produce current and valid identification to the registrar for verification with 48-hours as provided Ga. Code Ann. § 21-2-419.

II. FACTS

A. Information obtained from the submitting authority

The state's initial submission, received on June 13, 2005, consisted of a nine-page cover letter, copies of Act No. 53 including a "redlined" copy of the Act, charts identifying changes to

and the Section 5 history of each affected provision, a list of minority community contacts, newspaper articles regarding the legislative process, and editorials regarding the Act. The cover letter references the legislature's website for the legislative history, including previous versions of the bill, proposed amendments, and roll call votes.

In its initial submission, the state indicated that the Act contains a number of provisions designed to clarify provisions of the Georgia Election Code in order to increase the efficiency of the electoral process, especially as it relates to municipal elections in many instances. The state also indicated that the state enacted the voter identification provisions to address legislative concerns regarding voter fraud.

During a June 25, 2005, telephone conversation with Deputy Attorney General Dennis Dunn (W), we requested information regarding the legislative history of the bill, including expert testimony, witness statements, and transcripts or tapes of hearings. The state provided this information on July 25, 2005. Upon our informal request, the state also provided a spreadsheet containing data from the Georgia Department of Driver's Services ("DDS") regarding persons holding valid driver's licenses and state identification cards. We received these data on July 28, August 1, and August 22, 2005. The data are set forth in part II.C.2.

Additionally, Deputy Attorney General Dunn clarified that with regard to implementation of Subpart (c) of Section 59, first-time voters who had provided identification upon registering would be required to show photo identification at the polls, while those first-time voters who had not previously provided identification upon registration would be permitted to show any of the non-photo IDs listed in Subpart (c) (e.g. current utility bill, bank statement, government check, paycheck, or other government document) or a photo ID.

According to the Georgia General Assembly's website, Representative Sue Burmeister (W) of Augusta sponsored HB 244. Numerous amendments were proposed during the bill's consideration; a majority of the amendments were proposed by members of the Black Caucus who sought to retain some forms of voter identification that were eliminated by the bill. Senator Kasim Reed (B) also proposed an amendment making the identification requirement effective after the state appropriated funds to educate voters about the proposed identification and registration requirements. All of these proposed amendments failed.

The legislation passed the House on March 11, and the Senate on March 29, 2005. The vote on final passage in the House was 91 yea, 7 nay (with 9 abstaining and 5 excused), and in the Senate was 31 yea, 20 nay (with 2 abstaining and 3 excused). All black legislators with the exception of Representative Willie Talton voted against, abstained or were excused from voting on the bill. Of the three Hispanic legislators in the General Assembly, two, Senator Sam Zamarripa and Representative Pedro Martin, joined with the Black Caucus in opposing the bill. The third Hispanic legislator, Representative David Casas, supported the bill.

B. Information obtained from other sources

1. Proponents and Arguments in Favor of Preclearance

We received numerous letters from elected officials, both in the state legislature and in other offices, and private individuals expressing their views that the proposed legislation was not retrogressive either in purpose or effect. Many of the letters presented similar points in support of their position; all are set forth at Tab 6A to this memorandum. We have summarized those of state officials above, as well as a representative sample of letters from other supporters.

Representative Burmeister, the sponsor of the legislation, informed Voting Section staff that September 11 caused her to reflect on the ease with which the terrorists obtained IDs. She stated that voter fraud is serious but hard to prove because fraud, by its nature, is subversive. She is aware of vote buying in certain precincts, and specifically related an incident in which the former mayor of Augusta, Mayor Ed McEntyre, approached her and offered to put her name on a palm card, pick up voters in a van, and pay them to vote for the candidates on the card, in exchange for \$2,000. Rep. Burmeister also read "Stealing Elections" by John Fund and was concerned about how elections could be stolen by such means. Rep. Burmeister said that if there are fewer black voters because of this bill, it will only be because there is less opportunity for fraud. She said that when black voters in her black precincts are not paid to vote, they do not go to the polls. She added the 48-hour provisional ballot allowance so that people who legitimately have identification can vote in response to concerns about voters whose identification is stolen.

Rep. Burmeister also explained the exemption of absentee ballots from the identification requirement. She does not support this but accepted this into the final version because the absentee voting process creates a paper trail which will prevent vote fraud, and will ensure that rural voters can vote even if they cannot make it to a DDS office.^{3/} Senator Cecil Staton (W), who authored the parallel Senate bill, supports preclearance and provided a letter mirroring the arguments made by Rep. Burmeister.

Susan Laccetti Meyers, Chief Policy Advisor to the Georgia House of Representatives, who worked with Rep. Burmeister in developing the legislation, told us that the Legislature did not conduct any statistical analysis of the effect of the photo ID requirement on minority voters. Instead, they relied on the statistic that more citizens had driver's licenses than were registered to

^{3/} Rep. Burmeister stated that the Governor had passed legislation to mandate a DDS office in every county, and that individuals can obtain state IDs in Kroger grocery stores. Neither statement is correct. The Governor's Office has confirmed that the Georgia General Assembly has passed no legislation mandating a DDS office in every county. The latter statement refers to a program that was discontinued in 2003 whereby the state had operated satellite driver's license renewal centers in some Kroger stores.

vote, the John Fund book, and other anecdotal information. Members of the leadership noted that citizens need identification for everything these days, so concluded that the requirement did not seem arduous. In addition, Rep. Talton (B) told her that minorities were more vulnerable to having mail, such as bills and checks, stolen from their mailboxes. She said that private-sector employee and student ID cards were eliminated because members felt insecure about private sector controls, and believed that procedures used by government entities would be more reliable. She said that legislators heard testimony from several county election board members about the potential for vote fraud; and also considered the experience of states such as Florida, Wisconsin, and Indiana with voter ID laws, along with the National Conference of State Legislatures list of state voter ID requirements. Ms. Meyers said that opponents simply denied that there was any fraud of which they were aware, but did not present evidence or witnesses to contradict the evidence that proponents brought forth.

Representative Talton (B), who is Chief Deputy Sheriff in the Houston County Sheriff's Department, supports preclearance. He stated that identity fraud is common, and that officers in Houston County arrest individuals every day with fraudulent driver's licences and IDs. He concludes that the law is color blind, and does not unduly burden any race, class, or ethnic group.

We received several comment letters from members and directors of county boards of registrars, including Gary J. Smith, Director of Registrations and Elections of Forsyth County, and Frank Strickland and Harry MacDougald, members of the Fulton County Board of Registrations and Elections. The registrars emphasized that requiring photo ID would diminish the potential for fraud. Each provided the following additional information.

Mr. Smith reviewed the affidavits of identity that had been used by voters who lacked identification at the November 2004 election. In Forsyth County, 37 voters had signed affidavits of identity in lieu of presenting identification. This constituted 0.08 percent of those voting at precincts (i.e., excluding absentee and early voters) in Forsyth County.

Mr. Strickland stated that 2,456 fraudulent voter registration forms were submitted to the Fulton County elections board prior to November 2004. These have been referred to the FBI. Mr. Strickland also stated that he relied on data from the Secretary of State that showed 6,675,100 driver's licenses and state identification cards issued to Georgians aged 18 or older, and 4,414,663 Georgians registered to vote, as of February 2005. He concluded that these numbers demonstrate that an overwhelming majority of registered voters already have a state-issued ID.

Mr. MacDougald stated that prior to November 2004, Fulton County received 8,112 applications containing "missing or irregular" information. The board sent letters to all 8,112 applicants and received only 55 responses. Mr. MacDougald concluded that all of the remaining applications were "bogus." He also stated that 15,237 of 105,553 precinct cards mailed to registered voters in the county were returned as undeliverable. In addition, 3,071 precinct cards

mailed to 45,907 new registrants were returned as undeliverable. Of these 3,071 returned cards, 921 persons voted. He concludes that 11,128 total registration applications were either "bogus or problematic in a serious way" and that this crisis will be addressed by requiring photo identification for voter registration.

2. Proponents and Arguments in Favor of Objection

As with those who support the legislation, we received many letters from elected officials, organizations and individuals urging the Attorney General to interpose an objection to the proposed changes. Many of the letters presented similar points which are summarized below; the complete set of letters are set forth at Tab 6B. Opponents of the changes argue that the proposed changes are retrogressive in both purpose and effect based on the following factors: (1) the discrepancy between black and white ownership of photo identification; (2) the discrepancy between black and white access to motor vehicles as a proxy for driver's license ownership; (3) the poverty gap between blacks and whites, which both causes blacks to have less ownership of acceptable photo ID, and creates higher barriers for blacks without ID to obtain it; and (4) the ineffectiveness of the mitigating factors (i.e., no-fault absentee voting and free ID for indigent persons) to counteract the potential retrogressive effects on minority voters.

Representative Stan Watson (B), Chairman of the Georgia Legislative Black Caucus, stated that proponents provided no evidence to support the elimination of each form of identification. They spoke only generally about voter fraud and mail being stolen. He responded that mail is stolen for financial gain (credit card fraud, benefit checks, etc.) and that persons are unlikely to risk being caught by using stolen mail to impersonate a voter. Rep. Watson believes that proponents knew they had a majority and thus made little effort to gain support during the legislative process, and that this bill is an attempt to test Section 5.

Senator Ed Harbison (B) can testify that many of his constituents do not drive or have a non-driver's identification card, though they have types of ID that are eliminated. Senator Harbison stated that the majority would not hear the concerns of the Black Caucus during consideration of the bill, so they staged a walk out of the proceedings, which was reported nationally.⁴

⁴ Media accounts reflect that members of the Georgia Legislative Black Caucus expressed outrage at the enactment of the revisions to the photographic identification provisions. African-American and some white Democratic lawmakers staged walkouts in the House and Senate on March 11, 2005, to protest the photo identification requirements that they likened to poll taxes. Nancy Badertscher, Carlos Campos, "ID Debate Gets Heated," *Atlanta Journal-Constitution*, March, 13, 2005. Senator Emmanuel Jones (B) wore shackles to the well of the Senate, and Representative Alisha Thomas Morgan (B) brought shackles to the well of the House to symbolize the bill's potential to repress the black vote. Mike Phillips, "ID Bill Could Make Georgia Unique in Turn Away Voters," *Macon Telegraph*, March 19, 2005; Carlos Campos, "Firebrand 'Standing Up': Legislator Makes No

Senator Emanuel Jones (B), a member of the Senate State and Local Government Committee, attended all meetings regarding the bill, and proposed numerous amendments to retain specific forms of identification because there were no justifiable reasons for their elimination. Senator Jones stated that these amendments were voted down without any debate. Senator Jones stated that the Black Caucus requested postponement of implementation of the ID portions until DDS locations are established in every county. Senator Jones stated that this request was dismissed and that he knows of no plan by the Governor to make such expansions.

Senator Robert Brown (B) stated that proponents never specifically addressed the reasoning behind the elimination of each form of ID or the discrepancies between whites and blacks ownership of driver's licenses and ID cards. Senator Brown can testify that black voters prefer to vote in person rather than absentee. He noted that he has advocated absentee voting within the black community, particularly to the elderly who have always been authorized to vote absentee, but has found that they still prefer to vote in person on election day. Senator Brown asserted that for these reasons, the extended absentee voting period and the addition of "no excuse" absentee voting will not mitigate the retrogression caused by the proposed ID restrictions.

Secretary of State Cathy Cox (W) opposed HB 244 in an April 8, 2005 letter to Governor Perdue, urging him to veto the law, and submitted a letter opposing preclearance. She provided a list of registered voters who lack birth certificates for whom obtaining a photo ID would be particularly difficult. She can also testify to the absence of any complaints of voter fraud via impersonation during her tenure. Secretary Cox stressed that there are DDS offices in only one-third of the counties, none within the City of Atlanta, and that DDS headquarters is not served by any form of public transportation.

The Mayor of Atlanta, Shirley Franklin (B), opposes preclearance, and can testify to the experience of her mother, who recently moved to Atlanta from Philadelphia, in attempting to obtain a Georgia identification card. Her mother went to several DDS offices before finding one that was open. Her expired Pennsylvania identification was rejected as sufficient documentation to obtain a Georgia ID card, and she was told to produce her original birth certificate. Mayor Franklin's mother has never had a birth certificate, but is currently attempting to obtain an analogous document from North Carolina, where she was born. Mayor Franklin noted that this process would be much more arduous for someone without resources or supportive family in the area. Mayor Franklin believes that even if the intent of the legislation is not to disenfranchise minority voters, it will "inarguably have that result."

Apologies for Her Convictions," *Atlanta Journal-Constitution*, March 24, 2005. Representative Morgan then refused to leave the well of the House after her time to speak expired, instead singing the civil rights anthem, "Ain't Gonna Let Nobody Turn Me Around." *Id.*

A coalition of voting rights organizations^{2/} provided a letter urging an objection. The coalition states that the photo identification requirements carry a retrogressive racial impact because blacks in Georgia are six times more likely than whites to live below the poverty level, and five times less likely than whites to have access to a motor vehicle than whites. As 103 counties lack a DDS location, these two factors result in disparately less access by blacks than whites to DDS locations. In addition, the limited transportation alternatives for those who lack access to motor vehicles, particularly in rural Georgia, add to the economic burdens related to obtaining an identification card, and remain unchanged even if an indigent citizen qualifies for the free ID. The coalition states that the legislature failed to investigate the racial impact of Act 53, and took no action to mitigate the potential racial impact of the legislation by, for example, providing funds for voter education about the new requirements. Finally, the letter asserts that the stated purpose of the photo identification requirement is pretextual because the purported justification of preventing fraud is undermined by the exemption of absentee ballots from the photo identification requirement.

The NAACP Legal Defense and Educational Fund opposes preclearance of HB 244. In addition to arguments similar to those above, Director-Counsel Theodore Shaw analogizes the identification requirements to "reregistration" and "reidentification" measures that the Department has objected to in the past.

C. Public Source Data

1. Process & Fees to Obtain Driver's Licenses and Identification Cards

The initial submission provided no information regarding DDS locations, hours, fees, or requirements to obtain a photo ID. Our research shows that the Georgia General Assembly created the Department of Driver Services in House Bill 501 (2005) as a successor to the Department of Motor Vehicles. Effective July 1, 2005, Georgia residents can apply for driver's licences and a state-issued photo identification cards at one of the state's 56 DDS locations, 53 of which are full service centers and 3 part-time sites. The City of Atlanta has not had a DDS location for the past year, although the Governor's August 6, 2005, press release states that negotiations are underway to lease a new site. DDS customer service centers are open to the public Tuesday through Saturday, from 9:00 am to 5:00 pm. Monday hours have been added for select locations for appointment-only road tests. According to the Governor's August 6, 2005, press release, DDS will also begin to issue photo identification cards at certain designated locations on Mondays. According to DDS Commissioner Greg Dozier, the designated sites are all located in the Atlanta area and are as follows: Shannon Mall, North Cobb, Lawrenceville, and Conyers.

^{2/} The groups include the Voting Rights Project of the Lawyers' Committee for Civil Rights Under Law, National Voting Rights Institute, National Voting Rights Project of the ACLU, MALDEF, Georgia Association of Black Elected Officials, Georgia Association of Latino Elected Offices, AARP Georgia, and others.

According to Commissioner Dozier, five DDS locations are accessible via public transportation: the South DeKalb, Shannon Mall, and Sandy Springs sites in the Atlanta area are accessible via the Metropolitan Atlanta Rapid Transit Authority (MARTA); the Marietta location is accessible by Cobb Community Transit; and the Norcross location is accessible via Gwinnett County Transit.^{6/} The remaining 51 sites are accessible only by personal transportation or taxi service.

The Governor recently announced the creation of the Georgia Licensing on Wheels ("GLOW") program. Announced on August 6, 2005, the GLOW program will use a mobile licensing bus to travel the state with the capacity to issue up to 200 photo identification cards per day. The state estimates that if the mobile unit is operational four days per week, the program has the capacity to serve 38,400 persons a year. According to Commissioner Dozier, the bus will be staffed by four DDS employees licensed to operate the ID-issuing equipment. Commissioner Dozier has stated that the GLOW tours will initially run weekly from Tuesday through Saturday, and may eventually also run on Mondays. DDS is currently mapping out routes and schedules, dividing the state into corridors which the GLOW program will visit based on the following factors: (1) the geographical need based on lack of DDS locations, (2) the population's need regardless of the presence of a DDS location; (3) requests from citizen groups; (4) geographic accessibility for groups and citizens; and (5) convenient times for groups and citizens. Dozier reported that community groups have already begun contacting DDS to make GLOW tour requests.

No information about the GLOW program is currently posted on the DDS website, though Dozier anticipates posting tour information when the routes are determined. Dozier has identified the first 36 counties to be visited by the GLOW program, starting on August 30, 2005 in Fulton County. The initial schedule and map of counties anticipated to be served by the program is attached at Tab **B**. DDS will also conduct a public service campaign, focusing on radio announcements and informational pamphlets issued to organizations by request. Dozier states that DDS plans to continue the program indefinitely.

Individuals may also register to vote through the GLOW program while obtaining an ID card. If an individual wants to register to vote, the DDS employee will click "yes" on the computer, and the registration applications will be batched and transmitted to the SOS every night or when the computers are returned to DDS headquarters. Voter registration applications will be transmitted electronically with no additional forms for applicants to complete.

^{6/} Public transportation costs are as follows: Marta round-trip fare is \$3.50. Out-of-District Routes, which are routes that travel to Cobb, Clayton, or Gwinnett Counties are an additional \$1.50. Seniors citizens, disabled riders and Medicare recipients pay \$1.70 round-trip within the district and \$2.50 out-of-district. Gwinnett County Transit is \$3.50 round-trip (\$6 express bus round-trip), \$1.70 round-trip for Senior/Youth/Disabled, \$7 for paratransit round-trip. Transfers to MARTA trains and buses are free. Cobb Community Transit is \$2.50 round-trip for an adult, \$1.60 youth round-trip, \$1.20 for senior citizens and disabled, and \$5 for paratransit round-trip.

According to Commissioner Dozier, 31 DDS customer service centers will offer appointments for those who need an ID for voting purposes beginning in September 2005. Appointments will be reserved for groups, such as senior centers, church groups, and others. It will be the department's intention to schedule individuals and small groups together to ensure that the allocated appointment times are maximized. There will be a minimum of 3,960 slots per month available for appointments, which would provide the opportunity for 47,520 appointments on an annual basis.

According to the DDS website, first-time applicants for a Georgia driver's license, learner's permit, or state identification card must show an acceptable form of identification that indicates the applicant's full name and date of birth. Acceptable items include: original or certified copy of birth certificate issued by an office of vital records; certified copy of birth registration; certified copy of court records (adoption, name change, or sex change); certified naturalization records; immigration ID card; and valid United States passport. Anyone applying for a Georgia driver's license or identification card must provide a Social Security number at the time of issuance. It is not required for an applicant to have his original Social Security card. United States citizens must provide proof of citizenship, in the form of a birth certificate, United States passport, or certificate of citizenship. Non-United States citizens must present proper INS documentation in English or translated into English by an approved translator.

To obtain a certified copy of one's birth certificate in Georgia, a citizen must provide the following information: full name as shown on birth certificate, date of birth, place of birth, current age, sex, full name of mother (including maiden name), and full name of father to the State Vital Records Office. The requester must also provide a photocopy of a valid photo identification card, such as a driver's license, state issued photo ID card, or employer issued photo identification. If a person is requesting a birth certificate in order to obtain a photo ID card, and does not already possess the ID required for the request, he or she may present a signed Social Security card as ID based upon the comparison of the signatures from the card and the application.²⁷ If the requestor has no ID at all, the State Vital Records Office will mail out the certified copy of the birth certificate under the assumption that it will not be delivered by the post office to a location where a person of that name does not live.

According to the Georgia Division of Public Health's Vital Records website, applicants should allow 10 to 12 weeks to process routine requests for certified copies received by regular mail that do not involve any changes or directions and do not require filing of a new certificate. Requests made by overnight delivery are usually processed within three to five business days of receipt.

Georgia law requires non-refundable pre-payment before a record such as a birth

²⁷ Some county offices (e.g. Fulton County) will only accept a photo ID and will refer people who lack ID to the State Office in Atlanta. Dunn told us that vital records offices are independently run in each county so we have been unable to ascertain what the practices are in every county within the state.

certificate can be provided. A \$10 search fee is required in order to receive one certified copy. Additional certifications of the same record ordered at the same time may be acquired for a \$5 fee. A multi-year search requires an additional \$10 fee. Records are sent by overnight for an additional fee of \$16.81. An additional fee of \$9.95 is also charged for credit card payments made through VitalChek.^{8/} There is no additional charge for payment by certified check or money order. All credit card payments must be made through VitalChek.

Some state residents were born outside of hospitals and were never issued birth certificates. According to the United States Department of Health and Human Services, Centers for Disease Control and Prevention, and the National Center for Health Statistics, over 40 percent of live births in the United States occurred outside of a hospital as late as 1940. Midwifery was not certified in Georgia until the late 1940s. The Lay Midwifery Act of 1955 empowered the Georgia Department of Human Resources (DHR) to set educational requirements and certify lay midwives. As a result, some Georgia citizens were delivered at home before this time and were never issued birth certificates because they were not delivered by a certified medical professional. We have been unable to obtain an estimate of the number of persons without birth certificates. According to the 2000 Census, there were 616,935 whites aged 65 and over, and 273,486 whites aged 75 and over; and 154,469 blacks aged 65 and over, and 67,051 aged 75 and over.

Individuals may use expired and suspended driver's licenses as acceptable photo ID for voting. Licenses can be suspended for criminal misconduct such as failure to pay child support. Suspension of a driver's license cannot occur for non-payment of parking tickets. The court is responsible for the collection of a driver's license upon conviction of a crime for which suspension is a punishment. If the court fails to do so, DDS sends the person a letter to collect it. Deputy Attorney General Dunn stated that if the voter has not yet surrendered his license, he could use it as photo ID for voting, even if it is suspended.

Any person old enough to sign his name or make a mark indicating his legal signature can apply for a Georgia photo identification card. A suspended or revoked license does not prohibit a resident from applying for an identification card. A Georgia ID cardholder is not required to surrender his ID card when a driver's license is secured or reinstated. In order to secure a Georgia ID card an applicant must furnish proof of residency in the State of Georgia. The following items showing a valid Georgia address are accepted: utility bill; bank statement; rental contracts and/or receipts; employer verification; or Georgia license issued to parent, guardian, or spouse. The applicant must surrender all previous driver's licenses, identification cards, and permits. A certified Motor Vehicle Report or status letter from a previous state can be used if an applicant had a previous license or ID card, but does not have in his possession a license or identification to surrender.

The cost for an license or identification card is \$20 for 5 years or \$35 for 10 years. For those eligible, licenses can be renewed via the internet, mail, or telephone. According to the

^{8/} The VitalChek Network is a private entity that is not affiliated with the State of Georgia.

Governor's July 1, 2005, press release, almost 1.4 million citizens have renewed a license by one of these means.

2. Driver's License/DDS Card Ownership

Prior to signing HB 244 into law, Governor Perdue estimated that 300,000 Georgians do not have a driver's license or other acceptable photo identification that could be used at the polls, but that 50,000 are incarcerated persons. See Jim Tharpe, Nancy Badertscher, "Voter ID Bill Likely to be Law," *Atlanta Journal-Constitution*, April 2, 2005. The United States Department of Transportation released data that in 2003, the latest available date, Georgia had 5,757,953 licensed drivers and a driving-age population of 6,632,373. This would constitute 86.8% of the voting age population who had driver's licenses.

The Georgia Department of Driver Services has provided data in response to our request. The DDS data contains counts of persons 18 and over with driver's licences and state ID cards.^{2/} According to the DDS database, Georgia currently reports that 6,108,560 voting age persons have unexpired driver's licenses, which include commercial licenses, DUI permits,^{10/} suspended and revoked licenses. Georgia also reports that 690,538 voting age persons have unexpired ID cards, and 288,883 voting age persons have both a driver's license and ID card. This totals 7,087,981 persons of voting age with a photo ID from DDS. Of this group, 1,260,780 are black (17.7%), 2,687,706 (37.9%) are white, and 2,870,984 (40%) are of "unknown" race. The remaining 268,511 are comprised of Asian/Pacific Islander, Hispanic/Latino, Indian, multi-racial, other, and "refused to state."

Of the 4,216,997 voting age persons in the database who are of known racial background or refused to state, 29.8% are black and 65.1 % are white. Discussion of the reliability of this data is contained in Part II. D, *infra*.

3. Access to Vehicles

Data regarding access to vehicles is often used as a reasonable proxy for driver's license ownership, as persons who do not have a vehicle are less likely to have a driver's license. According to the Census Bureau data tabulations (SF-3), a total of 390,414 Georgia voting-age individuals lack access to a vehicle. When examined at the household level, this constitutes 242,929 households without access to a vehicle. The racial breakdown of these households reflects that there are 142,171 black non-Hispanic households without access to a vehicle, and 89,232 white non-Hispanic households without access to a vehicle. This constitutes 17.7 percent

^{2/} Individuals may have both a Georgia driver's licence and a Georgia ID card, or one or the other. For convenience, we sometimes refer to a person who holds either type as having a "DDS card" because for voting purposes, it is access to the card, rather than the type of card, that is significant.

^{10/} DUI permits are driving permits issued to persons whose regular license are revoked for DUI convictions so they can drive to and from work.

of black households and 4.4 percent of white households.

Ms. Meyers provided a 2004 report conducted by Georgians for Better Transportation containing vehicle access data that are consistent with the census numbers. The report, "Blueprint 2030: Affordable Mobility and Access for All of Atlanta and Georgia," notes that 250,000 households in Georgia lack access to a vehicle, and that 140,000 of those are headed by an African-American householder. *Id.* at 22. It also finds that nine counties contain half of the vehicle-less households in the state: Fulton, DeKalb, Chatham, Richmond, Cobb, Muscogee, Gwinnett, Bibb, and Dougherty, and that each of these nine counties have more than 5,000 households with no vehicle. *Id.* at 23. The report also finds that six of these nine counties would be on the list of counties with more than 5,000 African-American households without vehicles. *Id.*

Table 1: No vehicle households in counties with more than 5,000 total population

	All households with no vehicle	Households with no vehicle headed by African-Americans	Percentage of households with no vehicle headed by African-American
Fulton	48,859	36,221	74.1%
DeKalb	22,763	14,458	63.5%
Chatham	10,678	7,309	68.4%
Richmond	8,969	6,207	69.2%
Cobb	8,675	N/A	N/A
Muscogee	8,154	5,715	70%
Gwinnett	6,294	N/A	N/A
Bibb	7,423	5,541	74.6%
Dougherty	4,597	N/A	N/A

The report further notes that Georgia does not have large disparities in shares of households without vehicles between urban and rural areas. *Id.* at 24. It states that across Georgia, levels of African-American households without vehicles are higher in the smaller urbanized areas of the state in than Atlanta, often at levels of 20 percent, yielding on overall statewide rate of 18 percent in no vehicles available for African-American households. *Ibid.* In contrast, the statewide rate for white households with no vehicles available is 4.41 percent.

We also compared access to vehicles by race in counties with DDS offices versus counties without DDS offices. Census data show that five times more black households in counties without DDS offices lack access to a motor vehicle compared to white households. This data can be expressed as follows:

Table 2: Households in counties with no DDS offices with no vehicle, by race

Race of household	Households in counties without DDS offices	Households with no vehicle	Percent
White non-Hispanic	554,971	25,843	4.7%
Black non-Hispanic	140,148	28,085	20.0%
Hispanic households	11,882	1,329	11.2%

4. Other currently acceptable forms of voter identification

United States passport: According to the United States Department of State website, there are approximately 210 passport acceptance facilities in the State of Georgia. The basic fee for obtaining a passport is \$97. To obtain a passport, proof of United States citizenship must be presented with any of the following: previous United States passport, certified birth certificate, consular report of birth abroad, naturalization certificate, or certificate of citizenship. If an applicant does not have a previous United States passport or a certified birth certificate, he must provide a letter of no record issued by the State Vital Statistics office, and as many of the following as possible: baptismal certificate, hospital birth certificate, census record, early school record, family bible record, and doctor's record of post-natal care. Routine passport service takes approximately six weeks.

Fewer than 20 percent of all United States citizens hold a valid passport. We were unable to obtain the total number of Georgia citizens with passports. The United States Passport application, Form DS-11, does not contain a field for self-identification of a racial category, and we were unable to obtain information regarding access to United States passports by race.

Government checks/paychecks/documents: With 620,620 black persons in poverty compared to 564,970 white persons, black persons in Georgia are more likely to fall below the poverty line than are white persons. These census statistics indicate 26 percent of the black population and 11 percent of the white population fall below the poverty line. Median household income in 1999 was \$30,998 for blacks and \$48,002 for whites. Per capita income in 1999 was \$12,576 for blacks and \$25,133 for whites.

Among individuals who lack access to a vehicle in the state, a greater number of blacks are below the poverty line and receive public assistance as compared to whites. The Public Use

Microdata Sample [PUMS]^{11/} of the 2000 Census reflects that among individuals who lack access to a vehicle in the state, 101,522 (46.3%) blacks were beneath the poverty line, compared to 35,605 (28.3%) whites. In addition, approximately 74,912 voting-age blacks without access to a vehicle in the state receive either Social Security, Supplemental Security Income or public assistance, compared to 56,750 whites.

According to the Georgia Department of Human Resources, the total number of persons receiving Temporary Aid to Needy Families ("TANF") subsidies as of February 2000 was 129,822 (99,817 children, 30,005 adults). The racial/ethnic breakdown of TANF recipients was 80.9 percent black, 17 percent white, 1.3 percent Hispanic, and 0.3 percent Asian.

Firearms permit/hunting or fishing license/pilot's license: We were unable to obtain any data regarding the number of persons, by race, who hold permits or licenses for hunting, fishing, piloting aircraft, or carrying firearms.

College and university issued identification: We were unable to obtain data regarding the number of persons, by race, who attend private colleges and universities, and who would therefore hold photo identification from such institutions. According to the Regents of the University of Georgia, there were 56,831 black students enrolled in all state colleges and universities in Georgia, and 154,924 white students, in Spring 2005. This constitutes 3.16 percent of black voting age population and 3.76 percent of white voting age population based on estimated 2005 voting age population. According to the National Center for Education Statistics there were 13,476 students enrolled in degree-granting historically black private colleges and universities in Georgia in 2000.

Employer-issued identification: According to the Bureau of Labor Statistics survey of employment, in 2004, the average unemployment rate for blacks in Georgia was 7.7 percent, for whites 3.5 percent, and for Hispanics 4.6 percent. The most recent workforce numbers are based on the 2000 Census, which indicates that 36.6 percent of blacks, aged 16 and over, were not in the labor force, compared to 33.1 percent of non-Hispanics whites in the same age group.

According to the 2000 Census, 14.3 percent of white and 19.4 percent of black Georgians work for local, state, or federal government, while 78.6 percent of white and 76.9 percent of black Georgians work for private employers. These figures do not include those who are self-employed in unincorporated businesses or are unpaid family workers.

The submitting authority did not provide, and we were unable to obtain, information about the prevalence of photo identification issued by private or public employers. Deputy

^{11/} The Public Use Microdata Samples are a sample (usually 5%) of the individual household or individual records used in the census data. These files contain records for a sample of housing units with information on the characteristics of each unit and each person in it. While preserving confidentiality (by removing identifiers), these microdata files permit users with special data needs to prepare virtually any tabulation.

General Counsel of the Association of County Commissioners Ken Kimbro stated that most counties probably issued photo identification to their employees, but that some of the smaller and more rural counties might not. He provided a list of county managers and administrators. We contacted 30 of the individuals listed in a range of counties of varying size and location. We found that six of the seven largest counties we contacted (pop. 59,000 and over) provide photo identification to their employees, none of the nine smallest counties contacted (pop. 15,000 and under) provide photo identification to their employees, and ten out of sixteen of the mid-size counties (pop. 15,500 to 49,000) provide photo identification to some employees, based on the employee's position (e.g., building inspector) or location of employment (e.g., courthouse).

We were also unable to obtain information about the issuance of photo identification by private employers. We know anecdotally that some Georgia employers such as Delta Airlines and Home Depot issue photo identification, but there is no central source for this type of data.

Certified naturalization documents: According to the 2000 Census, there were 169,232 naturalized citizens residing in the State of Georgia; of whom 29,490 (17.4%) were non-Hispanic black persons and 45,760 (27%) were non-Hispanic white persons. All naturalized citizens are issued an official certificate by Citizenship and Immigration Services at the time of naturalization. Those applying for naturalization are required to provide two photographs that adhere to passport photo standards. Since 1929, all naturalization certificates issued include a photograph of the new citizen. Copies of certified naturalization documents can be obtained from the Bureau of Citizenship and Immigration Services and requires payment of a fee of \$210.

Although naturalization certificates were specifically repealed by Section 59 of HB 244 as acceptable voter ID, the statute allows a voter to show any valid identification card issued by a branch, department, agency or entity of the United States provided that the card contains the elector's picture. Deputy Attorney General Dunn was unsure whether naturalization certificates contained a photograph of the elector, but stated that if they did, they would be considered acceptable photo ID for voting.^{12/}

Tribal Identification: The 2000 Census reports that 21,737 persons in Georgia who identified themselves as American Indian or Alaska Native. Of these, 16,104 persons, or 0.3 percent of the total population, were voting age. Of the 8,036 households headed by an American Indian/Alaska Native, 671 (8.3%) had no vehicle available.

There are no federally recognized Native American tribes in Georgia. The state code does recognize the following tribes as legitimate American Indian tribes pursuant to Ga. Code Ann. § 44-12-300: Georgia Tribe of Eastern Cherokee, the Lower Muscogee Creek Tribe, and the

^{12/} Because specific reference to naturalization certificates as valid voter ID is removed under the proposed statute and as such documents are valid indefinitely, we anticipate that, in certain circumstances, such as a citizen who naturalized as a child, election officials may require additional confirmation of the voter's identity with a current photo.

Cherokee of Georgia Tribal Council. Only the Lower Muscogee Creek Tribe has a reservation in the state. The census reports that this reservation, the Tama Reservation, had a population of 57 persons (45 persons of voting age) in 2000. The Lower Muscogee Creek Tribe does not issue tribal photo identification to its members according to Principal Chief Vonnie McCormick. Additionally, the Bureau of Indian Affairs does not issue identification to non-federally recognized tribes.

To the best of our knowledge, each tribe has its own practice with respect to issuance of identification, including whether ID is issued and whether it contains a photograph of the member. Anecdotal evidence suggests that most tribal IDs do not contain photographs.

Affidavit alternative: Under the benchmark statute, voters who are unable to produce any of the 17 forms of identification may sign a statement swearing or affirming to their identity. For the purpose of determining the number of people who lack appropriate identification, an analysis of the number of affidavits used in recent elections by county would be informative. In addition, because voter registration records are kept by race, the proportion of black and white persons who lack identification could have been tabulated and analyzed. The submitting authority did not provide any analysis of these records, which remain in the custody of county officials after an election.

D. Factual analysis

Georgia's voter ID law was enacted in 1997 with the following forms of acceptable identification for voting: valid driver's license or state ID card, U.S. Passport; U.S. military ID; photo identification from any employer; student photo identification from any private or public college, university, or technical school; valid pilot's license; Social Security card; certified naturalization documents; certified copy of birth certificate; certified copy of specified court records; valid hunting or fishing license; or valid permit to carry a pistol or revolver. Any voter who was unable to produce one of these forms was allowed to sign a statement under oath, swearing or affirming that he is the person identified on the voter's certificate under penalty of law. The voter was then permitted to vote a regular ballot without delay.

We precleared the benchmark procedure based on two main factors: (1) the fail-safe procedure ensured that voters were not turned away for lack of authorized identification, and (2) minority contacts did not urge an objection, primarily because no voters would be turned away if they did not have proper identification.

The current voter identification requirement was modified in 2003 when the legislature added the acceptable forms of identification specified in the Help America Vote Act. Added forms of identification included: utility bills, bank statements, government checks or paychecks, and government documents that show the name and address of the elector. We precleared this change because it added, rather than subtracted, acceptable forms of ID for voting.

The appropriate analysis of the restriction of the voter ID requirement first identifies whether there are individuals who are permitted to vote under the benchmark procedure who will now be precluded from casting a ballot at the polls under the current procedure, and if so, ascertains whether minorities are disproportionately represented in that group.

The submitting authority provided almost no information regarding the availability of the seventeen forms of identification that are acceptable under the benchmark, the method to obtain them, or any discrepancies in ownership of these forms of identification by race. As it is the jurisdiction's burden to demonstrate that the proposed voting change is not retrogressive, it has failed to do so. However, we have made significant efforts to obtain as much information as possible about each form of identification to conduct a thorough analysis. We were somewhat hampered by the lack of data on the availability and distribution of many forms of identification, but draw the best conclusions we can given the data limitations.

Driver's Licenses & DDS Cards: Governor Perdue estimated that approximately 300,000 voting age Georgians do not have a driver's license or ID card. Legislators did not acknowledge whether this fact was correct, nor seek any data regarding the racial composition of the group of individuals without ID during debates over HB 244. Proponents stated that more persons had a valid driver's license or ID card than there were registered voters. Ms. Meyers stated that the legislature's intention was "color-blind," but acknowledged that they did not investigate or consider any data regarding racial disparities among persons who held driver's licenses or DDS cards. She stated that in terms of statistical analysis, the legislature relied on the numbers showing that more Georgia residents overall had DDS cards than were registered to vote.

(i) Statewide Totals

We requested data from the Georgia Department of Driver Services regarding persons who hold valid driver's licenses and/or ID cards to attempt to estimate any potential shortfall and the racial makeup of such a group. In examining the data provided by DDS, we have determined that it is not reliable for purposes of estimating the number of people with and without DDS-issued identification.^{13/} This is due to an apparently unknowable number of records that are no longer valid due to death, persons moving out of the state, and other reasons. The data received from the state showed a total of 7,087,981 people of voting age with either a DDS drivers license, a photo ID issued by DDS, or both, on August 16, 2005. This total is broken down in the following table. Note that each category is mutually exclusive.

Table 1. Numbers of DDS-issued cards in Georgia, Aug. 16, 2005

^{13/} The statistical analysis contained in this section was conducted internally by Dr. Toby Moore, Geographer/Social Science Analyst.

Total	License only	ID Card only	Both license and ID card
7,087,981	6,108,560	690,538	288,883

The voting-age population of Georgia in 2005 is available only as an estimate or as a projection. In April 2005, the Census Bureau projected the VAP of Georgia to be 6,565,095 on July 1, 2005. However, the latest estimate for county-level totals, necessary for the analysis below and released in January 2005, had Georgia with a VAP of 6,496,816 in 2004. Extending that estimate to July 1, 2005 based on each county's 2003-2004 growth rate yielded a 2005 VAP estimate of 6,621,137.

The data from the state, then, suggests 466,844 more persons with a DDS card than the higher of the two estimates of current VAP, or 7 percent. The state has been unable to quantify this discrepancy. When pressed to explain the difference, DDS Data Manager Loraine Piro stated to Voting Section staff that unexpired licenses remain in the database until they expire, so they could belong to persons who have died, moved out of the state without cancelling their licenses, or had their licenses suspended or revoked (including persons who are incarcerated). As licenses issued prior to July 1, 2005 have a four-year expiration, we can assume that these records contain no more than four years' worth of individuals who died, moved, or had licenses revoked or suspended within that time frame.

There is no way to reliably estimate this number. The death rate in Georgia is approximately 66,016 per year, which could result in an extra 264,064 records in the database over four years. The Census Bureau's 2003 American Community Survey estimated that 243,100 Georgia residents had moved into the state in the past year.^{14/} Given a net migration of around 40,000, on average, it would appear that another 200,000 or so people are leaving the state each year. In a four year period, persons who move into Georgia may obtain a DDS card, and persons who move out of Georgia may leave an unexpired DDS card behind, thus creating additional bad records. The American Community Survey also found that another 335,734 people had moved from a different county within the state; these in-state migrants also complicate the DDS database if they change county of residence without submitting a change of address with the DDS. Prison population numbers would be unhelpful without information regarding length of sentences being served by such population to determine whether their licenses might still be unexpired in the database.

This unavoidable "churn" is associated with a live data base that was not designed to be used for statistical analysis or predictive purposes. Deaths, people moving from county to county, in and out of the state, and in and out of license status all create disruptions in the data, particularly in quickly growing counties, of which Georgia has a significant number. As a result of these factors, the "overage" in the DDS database is of no use in estimating the total number of

^{14/} This refers only to persons who moved into the state from another state, not international migration.

persons with a DDS card, or whether a shortfall exists of state residents who lack DDS cards.

A second cause for concern regarding the reliability of the data for predictive purposes is that it appears to show many more "bad records" than in two previous sets of data provided by the state. This third set of spreadsheets, which was supposed to eliminate 16 and 17 year olds who were included in the prior query, resulted in an increase in the number of DDS card holders by approximately 393,000, eliminating what had previously appeared to be a shortfall statewide and creating the impossible statistic of an "overage." The state has provided no explanation of why the numbers diverged so significantly from the first two submissions, although Ms. Piro suggested that commercial licenses and DUI permits may have been added and could explain some of the increase, however, she was not certain that these categories of licenses were not present in the first data sets. Given the difference between this data and data submitted earlier by the state, as detailed at Tab 3, there is reason to doubt its accuracy. Combined with unavoidable error in estimating current VAP, it appears that the quality of the DDS dataset is not sufficient to estimate the size or even the existence of the voting-age population of Georgia that lacks a DDS card.

(ii) County-Level Totals

To the extent that one wanted to compare the data provided by the state at the county level with estimated VAP, projections for 2005 VAP were produced by repeating the 2003-2004 growth rate. Clearly this estimate is inexact and the source of additional unavoidable error. Nevertheless, these two variables, people of voting age with a DDS-issued card and people of voting-age, represent the key variables for further analysis. These two variables were compared in a ratio to determine the number of licenses per 100 residents of voting age. The full results are given in the table attached to this memo at Tab 3.

The county-level ratios of licenses to 100 population ranged from 41.7 in Chattahoochee County to 117.7 in Bartow County.^{15/} The Chattahoochee County ratio was a clear outlier caused by the large military base in the county. The next lowest county was Wheeler County, with 76.2 cards per 100 population. In all, 47 counties had fewer people with cards than voting-age population, while the remaining 112 counties had more people with cards than voting-age population.

Ten of the 47 counties with few cards had a DDS office, or 21.3 percent. Forty-three of the other 112 counties had DDS offices, or 38.4 percent. However, the average size of counties with more cards was about 52,000, compared to only 16,000 in those counties with few cards. It

^{15/} Note that these figures do not take group quarters populations or other elements that might skew the population figures into account. It is also important to note that the reliability at the county level is low; that is, our ability to use individual counties as illustrations or evidence is far less reliable than aggregate measures. It appears that much of the overage at the county level stems from the "churn" generated by population growth in dynamic counties.

is assumed that DDS locations are located in or near population centers.

(iii) Correlations between Race and ID Card Ownership

For a number of reasons, not the least of which is the apparently poor quality of the DDS data, it is a difficult enterprise to examine the data for correlations between race and card ownership. The data on both population and licensing is of poor quality for these purposes and thus prevent a conclusive finding of a clear correlation between race and identification ownership.

Nevertheless, some evidence supports the Census data suggesting that blacks have fewer drivers licenses than whites. For example, the 10 counties (not including Chattahoochee) with the lowest rates of card ownership had a black 20-and-over population of 29.4 percent, while the 10 counties with the highest rates had a black population of 18.3 percent. On the other hand, the number of licenses per 100 people in the 10 blackest and 10 whitest counties were nearly identical.

Correlations across the 158 counties were inconclusive. The following table shows the results of Pearson's correlation between percent non-white and the ratio of card ownership. The correlation coefficient is the measure of the strength of the relationship between two variables. Correlation scores vary between 1 and -1, with 0 meaning no correlation. Unlike regression, it does not provide a means of predicting one variable from the other, but only gives an indication of how closely the two variables are associated. In the current instance, a negative correlation would mean that as counties increase in minority population, they decrease in card ownership.

Table 2. Correlations between race and card ownership

correlation between race and:	correlation across 158 counties
ID:VAP	-0.15
ID:VAP minus correctional population	0.03
ID:VAP minus all group quarters population	0.13

The correlations in each case were weak, but notice that the trend reversed when the group quarters population is subtracted. The group quarters population is a difficult issue for two reasons, and appears to be key to gleaning what evidence is in the data:

1. It includes people who may or may not have cards, and whose cards may or may not be issued from the county in which they reside. College students, prisoners and military personnel all pollute the database at the county level. One solution would be to subtract all or part of the group quarters population, but doing so

would remove people whom we know have cards from the population figures without removing them from the license figures.

2. A greater problem is that concentrations of group quarters populations are themselves correlated with race. That is, counties with higher black populations tend to have a higher percentage of their population in group quarters, particularly prisons. Subtracting group quarters populations, while intuitively defensible, skews the resulting data by taking population out of non-white counties and eliminating evidence of any shortfall of licenses.

In fact, a curious correlation between race and the degree of license ownership emerges when counties with large group quarters populations begin to be removed from the data set. The following table summarizes a set of correlations performed on successive subsets of Georgia counties, as counties with large (and skewing) populations of students, prisoners and military personnel are removed from the correlation.

Table 3. Correlations between race and card ownership as group quarters is controlled

	number of counties	population	correlation
counties with less than 10% GQ VAP	138	6,266,518	-0.02
all counties with less than 5% GQ VAP	108	4,658,445	-0.08
all counties with less than 2% GQ VAP	62	2,873,075	-0.19
all counties with less than 1% GQ VAP	23	592,531	-0.35

Dr. Moore stated that while there might be other explanations for the emergence of this correlation, his professional opinion at this point is that group quarters populations, along with “noise” in the data, obscures the modest correlation between race and card ownership that surfaces when counties with significant group quarters populations are removed from the study. Removing those counties from the sample appears to uncover a relationship that is otherwise hidden. On the other hand, the final correlation, while statistically significant, is based on less than 10 percent of the state’s VAP and 14 percent of its counties. It is possible that further work in refining the query of the DDS data would result in a more convincing set of correlations.

The bottom line is that the DDS data provided by the state is not sufficient to answer the question of whether race correlates with lack of DDS card ownership in Georgia. The poor quality of the DDS data; the unavoidable error in the estimation of VAP for 2005 (particularly at the county level); the inter-correlations between race and poverty, educational attainment, county growth, group quarters population, and so on; and the other hypothesized correlations with card ownership (e.g., age), make it extremely difficult to derive meaningful patterns from the DDS

data.

(iv) Racial Identifications in the DDS Database

The DDS data base contains racial identifications for approximately 4.2 million Georgians who have a DDS card, or approximately 59 percent of the people for in the data set. The database contains records for approximately 2.88 million people without racial IDs, or 41 percent of the records. Roughly half of the records with racial ID these come from voter registrations submitted at DDS offices since April 1, 2001. The other half are left over from previous Georgia policies of collecting racial information during the license (or ID card) application process. That practice ended at some point in the past, but exactly when is unclear, as is how that information was originally collected. Individuals who renewed their licenses or cards had their racial identifications preserved in their records. "Motor voter" registrants constitute approximately 29 percent of the records in the database, and "old records" constitute approximately 28 percent of the records in the database. Racial identity information regarding persons who register to vote at motor vehicles agencies compared to other locations is not available in the EAC Report to Congress, the Georgia 2005 Voter Registration Report to the EAC,^{16/} nor other available sources. Therefore, we cannot draw conclusions about the representativeness of the records that have race identification other than to say they are a non-random sample of the total number of records.

Accordingly, Dr. Moore stated his strong belief that these racial identifications are not useful for determining the race of people in Georgia who do not have DDS cards. This based on two reasons:

1) No reputable statistician would infer characteristics of a population by analyzing the characteristics of a non-random sample. The people for whom we have racial identifications are undeniably a non-random sample of the entire data set. The state has provided no evidence of the old practice of obtaining racial identifications, so we have no way of knowing how representative that is, or of knowing whether blacks or whites fail to renew these old licenses at the same rate. Similarly with the "motor voter" registrations: it reflects not people who come into DDS locations for cards, but those people who a) come in for cards; b) have not registered to vote; c) choose to register to vote; and d) give their racial identity. Each step in that process makes the end group less and less representative of the total pool of ID card holders.

2) Even if the motor voter registrations were reliable indicators of who has obtained a DDS card since 2001, that rate in comparison to black voting-age population does not tell

^{16/} Approximately 57.5 % of all new voter registration applications in Georgia between the close of registration for the November 2002 general election and the November 2004 general election were received from Georgia motor vehicle offices, according to Georgia's response to the EAC Voter Registration Survey. Available at: http://www.epic.org/foia_docs/eac/georgia.pdf. However, this report does not discuss the racial identity of persons who register to vote at DDS.

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 unsupportable.

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

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 over representation 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 alternative 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 procedures 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.^{18/} 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).

^{18/} 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 Burnmeister 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. Burnmeister'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.

Many states also permit fail-safe mechanisms for voters who lack any of the above forms of identification. Examples of these fail-safe mechanisms are a sworn affidavit of identity (e.g., Connecticut, Delaware, Florida,^{22/} Kentucky, Louisiana, Tennessee, and Virginia) or personal recognition by poll workers (e.g., Alabama, Alaska, Missouri, and North Dakota). For example, North Dakota law permits an elector to vote a regular (i.e. non-challenged, non-provisional ballot) if he or she completes an affidavit of identity, or if a poll worker knows the voter and is willing to vouch for the voter and his or her eligibility to vote in the precinct. Alabama law permits an elector to vote a regular ballot if two poll workers identify him or her as an eligible voter in the poll book and sign by the voter's name. Ala. Code § 17-11A-1.

Although Arkansas law requires presentation of identification, it does not bar electors who are unable to present identification from voting. Arkansas law states that if a voter is unable to provide identification, the election official shall indicate on the precinct list that the voter did not provide identification, and the elector is then permitted to vote a regular ballot. Ark. Code Ann. § 7-5-305(a)(8).

Arizona's newly adopted statute allows voters to present either a photo identification card, or two forms of non-photo identification. Az. Rev. Stat. § 16-579. Additional details regarding implementation of this requirement are pending.

3. Photo Identification Provisions

The following six states request photo identification from all voters: Florida, Hawaii, Indiana, Louisiana, South Carolina, and South Dakota. Although not yet implemented, Indiana is the only state that prohibits voters from casting a valid ballot without possessing photo identification.^{23/}

In Florida, all voters must show a current valid photo identification with the voter's signature. Approved forms of photo identification include a driver's licence, U.S. passport, any student ID, any employee badge, buyer's club card, credit card, retirement center ID, neighborhood association ID, entertainment ID, or public assistance ID. If the identification does not contain the voter's signature, he or she will be asked for an additional form of ID containing the voter's signature. A voter who lacks an approved photo identification may sign an affidavit of his or her identity, unless he or she is a first-time by-mail registrant. The voter may then vote a regular ballot. Fl. Stat. Ann. § 97.0535(3)(a); § 101.043. The Florida legislature has recently

^{22/} Chapters 2005-277 and 2005-278, Laws of Florida, approved by the Governor on June 20, 2005, eliminates an entertainment card as an acceptable form of voter ID and discontinues the use of an affidavit for affirmation of a voter's identity. This law is not yet legally enforceable and is currently under Section 5 review in Submission No. 2005-2390.

^{23/} The law was enacted in April 27, 2005, and has an effective date of January 1, 2006. It is currently being challenged in a lawsuit by the Indiana Civil Liberties Union, Indianapolis NAACP, United Senior Action of Indiana and other organizations, as well as in a separate lawsuit filed by the Indiana Democratic Party.

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 license 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	2,796,551	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: