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**Analysis of Alleged Fraud
in Briefs Supporting *Crawford* Respondents**

In briefing filed with the Supreme Court in the *Crawford v. Marion County Election Board* case, the State of Indiana and several of its allied amici again fail to justify Indiana's photo ID law. They recite various examples of problems that the challenged law would *not* solve. They fail, however, to provide any evidence that in-person impersonation fraud — the only misconduct that photo ID rules could possibly prevent — is a problem, let alone one justifying the burdens of a restrictive photo ID rule.

In these submissions, it is easy to get distracted by noise. The briefs — submitted by the State of Indiana, the U.S. Department of Justice, the Attorney Generals of nine states, a national political party, members of Congress, various election officials, and several nonprofit organizations — contain more than 250 citations to reports of election problems.

But **not one** of the sources cited shows proof of a vote that Indiana's law could prevent. That is, **not one** of the citations offered by Indiana or its allies refers to a proven example of a single vote cast at the polls in someone else's name that could be stopped by a pollsite photo ID rule.

Even including *suspected* but unproven reports of fraud, the State and its allies have uncovered remarkably little evidence of any misconduct that Indiana's law could prevent. Out of almost 400 million votes cast in general elections alone since 2000,² the briefs cite one attempt at impersonation that was thwarted without a photo ID requirement, and nine unresolved cases where impersonation fraud at the polls was suspected but not proven.³ Nine possible examples out of hundreds of millions — and these nine cases might just as well have been due to clerical error. Not one of these cited reports occurred in Indiana.

This analysis was compiled with the substantial assistance of Margaret Chen of the Brennan Center for Justice, and Sidney Rosdeitcher and Demian Ordway of Paul, Weiss, Rifkind, Wharton & Garrison LLP.

¹ See U.S. Elections Project, Turnout 1980-2006, <http://elections.gmu.edu/Turnout%201980-2006.xls>.

² See State Example #2; American Unity Example #1, Evergreen Example #22, RNC Example #45. These and other references in this analysis indicate particular citations in briefs submitted to the Supreme Court; "State Example #2" refers to the second purported example of fraud in Indiana's brief. All examples are analyzed in more detail below.

With remarkably few reports, and next to no evidence, of pollsite impersonation fraud, the State and its allied amici instead recite hundreds of examples of election problems that could not possibly be solved by Indiana's law requiring photo ID at the polls. These include allegations of ballot tampering by election officials, erroneous vote tallying, vote buying, voting by citizens rendered ineligible by conviction, registration by noncitizens, multiple voting in the voter's own name, and absentee ballot fraud and mishandling. Often, when these allegations are investigated, they reveal not fraud, but rather mistake or administrative error. But even when these reports are accurate, the misconduct they describe could not possibly be prevented by the challenged law.

A little closer to the mark are the reports of votes allegedly cast in the name of deceased persons. These may sound on first blush like the sort of wrongdoing addressed by Indiana's ID law. Several of these reports, however, have been repeatedly debunked. These include a relatively notorious Atlanta Journal-Constitution article in 2000, revealing an ostensible "dead voter" whose vote was later attributed to a clerical error; in New York in 2006 and Missouri in 2007, similar "dead voter" allegations completely dissolved upon further research.³ Other reports of votes in the name of others do not indicate whether the votes were cast in person or absentee. Absentee fraud is not only easier to accomplish and therefore more likely, but could not possibly be prevented by the challenged Indiana law, which specifically exempts absentee votes.⁴

All of the citations by the State and its allies therefore boil down to this: nine possible votes within the past half-century that could possibly have been prevented by Indiana's law, where impersonation fraud at the polls was suspected but not proven. Two involved allegedly "deceased" votes at the polls, but there is no indication that these claims were investigated for clerical error, like the debunked articles above.⁵ Seven others involved claims of impersonation at the polls, but there is again no indication for any of these claims that the cause was fraud and not clerical error.⁶ Two cases have been confirmed, but would not have been prevented by Indiana's law: one involved a fraudulent vote by a pollworker (who would not have required photo ID of herself), and the other involved a fraudulent photo ID.⁷ One additional citation involved an attempt to vote at the polls that was thwarted — without a photo ID requirement.⁸

Given this lack of relevant evidence, the State and its allies fall back on rhetoric. They conclude that the irrelevant allegations reflect a "culture of election fraud," State Br. at 49, "where political bosses resort to fraud to sway elections," State Br. at 4, and might hypothetically do so using impersonators at the polls in the future. The Carter-Baker Commission displayed similar analytical rigor in declaring that "there is no doubt that [impersonation fraud] occurs," State Br.

³ Justin Levitt, Truth About Voter Fraud 14-15 (2007).

⁴ A wrongdoer attempting to vote in someone else's name risks exposure or capture by showing up in person and presenting a signature that can be compared to the signature of the legitimate registered voter. There is no such risk for a wrongdoer who mails in a fraudulent absentee ballot.

⁵ See State Example #2, Evergreen Example #22.

⁶ See American Unity Example #1, Evergreen Example #22.

⁷ See AG Example #19, RNC Example #52.

⁸ See RNC Example #45.

at 5, citing to anecdotes that do not allege in-person impersonation fraud or have been debunked.⁹ But even the Carter-Baker Commission, supporting a uniform national photo ID law to avoid discrimination coupled with an affirmative and aggressive campaign by the states to put that photo ID in the hands of poor voters, would not have approved of the challenged Indiana statute, which has none of the outreach that the Commission thought necessary and all of the discriminatory problems that the Commission predicted in one state acting alone.

Moreover, the State and its allies rely on familiar but false canards to exaggerate the perceived prevalence of the photo ID they require. Like the trial and appellate courts below, they simply assert that photo ID is necessary for a great many activities, like renting a video or purchasing cigarettes, most of which are not constitutional rights guaranteed to every American citizen. In truth, the fact is that photo ID is *not* required for most of the cited activities. Photo ID helps a great many Americans navigate modern society, yes, but a great many eligible American citizens also get by without photo ID. Until 2005, these eligible Americans could exercise their constitutional right to vote in Indiana. Now, without undertaking an unnecessary and burdensome quest for the right documentation, they cannot.

In sum, the State and its allies have presented no evidence that impersonation fraud at the polls is a problem in Indiana or anywhere else, or that the protections in place at the polls in Indiana before 2005 and elsewhere around the country are inadequate to prevent it. Given the demonstrated impact on the significant number of eligible citizens who lack the required documentation, there is simply no evidence justifying Indiana's photo ID requirement.

The amicus brief filed in *Crawford* by the Brennan Center and others thoroughly analyzes each of the allegations of fraud relied on by the Court of Appeals and the District Court, and demonstrates that the record fails to contain any evidence that polling place impersonation fraud is a problem not only in Indiana, but anywhere in the United States.¹⁰

Below, we address the hundreds of irrelevant allegations of fraud cited by the State Respondents and its allied amici. We catalog each allegation, and determine whether the alleged problem could have been solved by requiring photo ID at the polls. As mentioned above, we find not one proven instance of an invalid vote that would have been prevented by a pollsite photo ID requirement, and — despite an immense outpouring of effort to catalog wrongdoing — only a tiny handful of unproven allegations of such fraud.

We also examine the oft-repeated but seldom-challenged assertion that photo identification is necessary for various activities, both common and less common, in modern society. We find that the claims simply do not hold up: photo ID may well be a convenience, but for the vast majority of the activities mentioned, photo ID is *not* a necessity.

⁹ See Brief of The Brennan Center for Justice et al. as Amici Curiae Supporting Petitioners, *Crawford v. Marion County Election Board* (No. 07-21 & 07-25) (November 13, 2007) (“Brennan Center Brief”), at 23; see also Brennan Center for Justice & Spencer Overton, Response to the Report of the 2005 Commission on Federal Election Reform (2005), at http://www.brennancenter.org/dynamic/subpages/download_file_47903.pdf.

¹⁰ Brennan Center Brief at 11-27.

BRIEF OF STATE RESPONDENTS**State Example #1:**

“Since October 2002, the U.S. Department of Justice has launched more than 180 investigations into election fraud, some of which have resulted in charges for multiple voting. State S.J.Br. Ex. 2, at 2.” (p. 2)

There is **no** allegation that any of these instances involved fraud that could be prevented by a law requiring photo ID at the polls.¹¹ Of the cases based on multiple voting, for example, three were dismissed or acquitted, and there is no allegation that the remainder involved votes in a false name at the polls. Even if true, photo ID requirements could not have prevented these incidents.

Exhibit 2, dated 8/2/05, describes 120 investigations, yielding 89 charges and 52 convictions for various election fraud offenses. By September 2005, the DOJ had charged 95 cases: 47 for alleged vote buying, 21 for alleged noncitizen registration and/or voting, 11 for voting by people allegedly rendered ineligible because of conviction, 8 for alleged double votes, 3 for an attempt to jam phone lines of GOTV operations, 2 for allegedly fraudulent registrations, and 1 for ballot-box stuffing by an election judge.¹² There are no allegations that any of these incidents involved in-person impersonation fraud.

State Example #2:

“Reports of decedent votes emanate from many States. State S.J.Br. Exs. 4, 11-15.” (p. 2)

Five of these reports contain **no** allegations of in-person impersonation fraud. In Washington, it is alleged – but not proven – that **one** of the cited votes was cast in the name of a decedent at the polls. See Exhibit 15, *infra*.

Exhibit 4 reflects a preliminary report from an investigation in Wisconsin in 2004. The report cites voting in the name of deceased persons, votes cast in the name of persons who claim they did not vote, and voting in names believed to be fake, in addition to other problems (voting by ineligible felons, administrative errors) that could not be solved by requiring photo ID at the polls.¹³ The report does not allege that any of these votes were cast *at the polls* in someone else’s name. More detailed reports of the election reveal that 4 votes cast in the name of the deceased were absentee ballots (moreover, it is not clear whether the ballots were cast before the voters died).¹⁴ The single vote publicly identified as cast in the name of a voter who did not vote

¹¹ See Brennan Center Brief at 20.

¹² Levitt, Truth About Voter Fraud 41 n.146; U.S. Dept. of Justice, Criminal Division, Public Integrity Section, Election Fraud Prosecutions & Convictions, Ballot Access & Voting Integrity Initiative, October 2002 — September 2005, at <http://www.truthaboutfraud.org/pdf/doj%20election%20fraud%20prosecutions.pdf>.

¹³ See Brennan Center Brief at 21. Most of the problems in Wisconsin in 2004 have been attributed to administrative or clerical error, rather than fraud. *Id.*

¹⁴ See Levitt, Truth About Voter Fraud 30-31.

was revealed to be a clerical error.¹⁵ The cited source does not reveal any further information about the votes with “identities and addresses that cannot in any way be linked to a real person.”¹⁶

Exhibit 11 is an article from Maryland describing (and debunking) a student research project relying on computer matching for evidence that 63 deceased voters voted in elections from the late 1980s through 2004. These exercises are notoriously inaccurate, and neither prove that votes were cast by deceased individuals nor indicate whether the votes – if in fact cast by deceased individuals -- were cast in person.¹⁷ Indeed, the same article found that several of the allegedly dead voters were alive, and identified other “voters” who were likely confused with relatives.¹⁸

Exhibit 12 is an article from Georgia that involved “dead voters” identified by computer matching. The article has been repeatedly debunked. A follow-up investigation found substantiation for only one allegedly dead voter, and that turned out to have been based on a clerical error.¹⁹ Federal court proceedings involving a challenge to Georgia’s original photo ID law noted the absence of any evidence of polling place impersonation fraud in Georgia.²⁰

Exhibit 13 is an article from Illinois alleging absentee ballot fraud, ghost voting, and ballot tampering in 1982. Nothing in the article suggests that the “ghost votes” – the only ones that could conceivably be stopped by photo ID – were cast at the polls, and nothing suggests that the allegations were ever substantiated.²¹

Exhibit 14 is an article from Philadelphia. Most of the scenarios presented involved hypothetical possibilities. The only allegations of actual fraud involved absentee or registration fraud, neither of which could be prevented by requiring photo ID at the polls.

Exhibit 15 is an article from Washington State about 8 cases of voting by deceased individuals in 2004. Of the 8, one was alleged to have voted at the polls. There is no indication in the cited article, however, that the pollbook was examined to rule out clerical error.²²

¹⁵ See Levitt, Truth About Voter Fraud 30-31; Greg Borowski, *Loopholes in Voting System a Symptom of its Openness*, Milwaukee J.-Sentinel, Jan. 26, 2005.

¹⁶ Further research reveals two votes allegedly cast at the polls in the name of “Marquis F. Murff.” See Greg Borowski & Tom Kertscher, *Double Trouble in Voter Inquiry*, Milwaukee J.-Sentinel, Feb. 9, 2005; Levitt, Truth About Voter Fraud 30-31. A reporter could not confirm the voter’s identity. *Id.* It is not clear whether the report of the preliminary investigation is referring to this allegation, if at all, as an alleged double vote, or an alleged vote in a name that could not be linked to a real person — and if the latter, what further basis exists for this conclusion.

¹⁷ See Levitt, Truth About Voter Fraud 14-15.

¹⁸ See also Brennan Center Brief at 14.

¹⁹ See Brennan Center Brief at 14-15 n.11; Secretary of State Cathy Cox, The 2000 Election: A Wake-Up Call for Reform and Change 11 n.3 (Jan. 2001), http://www.sos.state.ga.us/acrobat/elections/2000_election_report.pdf; Levitt, Truth About Voter Fraud 14.

²⁰ *Common Cause/Georgia v. Billups*, 406 F. Supp. 2d 1326, 1366 (N.D. Ga. 2005).

²¹ See also Brennan Center Brief at 13.

²² See Brennan Center Brief at 17-18. See also State Example #5, *infra*.

State Example #3:

“In November 2000, the Atlanta Journal-Constitution reported that since 1980, 5,412 votes had been cast in the name of decedents in Georgia. State S.J.Br. Ex. 12, at 1.” (p. 2)

See State Example #2, Exhibit 12. As described above, this report has been discredited.

State Example #4:

“In St. Louis, 14 dead people reportedly voted in 2000. John Fund, Stealing Elections: How Voter Fraud Threatens Our Democracy 64 (2004).” (p. 2)

There is **no** allegation that any of these votes were cast at the polls.²³

The allegation stems from a report finding that 14 people listed on the voter rolls matched health records of deceased individuals.²⁴ Reports do not indicate whether these 14 people died *before* the election. There is also no indication that clerical error was ruled out.²⁵

State Example #5:

“In Washington’s 2004 gubernatorial elections, where the margin of victory was 129 votes, the tally included more than 1,600 fraudulently cast ballots, including 19 decedent votes, six double votes, and 77 votes unaccounted for on the registration rolls. State S.J.Br. Ex. 3, at 4-5, 19.” (p. 2-3)

The cited exhibit contains **no** allegation of in-person impersonation fraud.²⁶

Exhibit 3 is the court decision resolving the hotly contested Washington State gubernatorial election. Of the 19 decedent votes mentioned, there is no indication in the source cited that any were cast in person, or that if so, any such votes were reviewed for clerical error.²⁷ The double votes involved individuals voting twice in their own names, and could not have been remedied by photo ID requirements. The votes that could not be connected to registered voters were either provisional ballots that were improperly tallied by election officials or other tallying errors that, again, could not be prevented by laws requiring photo identification.

²³ See Brennan Center Brief at 15-17, 21-22.

²⁴ Other allegations of potential fraud in this report have since been proven untrue. See Brennan Center Brief at 15-17.

²⁵ See Levitt, Truth About Voter Fraud 25; Secretary of State Matt Blunt, Mandate for Reform: Election Turmoil in St. Louis 9, 26, July 24, 2001, at <http://bond.senate.gov/mandate.pdf>.

²⁶ See Brennan Center Brief at 17-18.

²⁷ See Brennan Center Brief at 17-18.

State Example #6:

“In Wisconsin, a multi-jurisdictional investigation after the 2004 elections documented more than 100 double votes under fake names and addresses [...] and [found that] ballots cast exceeded registrations by 4,608, nearly 2% of the total votes. State S.J.Br. Ex. 4, at 2.” (p. 3)

The first allegation is simply false, and the second is irrelevant. The underlying document states that the preliminary investigation “has developed evidence of more than 100 individual instances of suspected double-voting, voting in names of persons who likely did not vote, and/or voting in names believed to be fake. Those investigations continue.” State S.J.Br. Ex. 4, at 2. There is no allegation that the alleged double votes were under fake names, and in any event were, upon further investigation, mostly attributed to error.²⁸ See State Example #2, Exhibit 4 for the remaining allegations, **none** of which involve any allegation of impersonation fraud at the polls.

As for the ballots exceeding registrations, the discrepancy was attributed to administrative error and poor record keeping rather than fraud, and in any event, could not possibly be prevented by laws requiring photo ID at the polls.²⁹

State Example #7:

“300 Missouri voters may have voted twice in the 2000 and 2002 elections. An official investigation of only two Missouri counties following the 2000 election revealed over 1,000 fraudulent ballots, including at least 68 multiple votes, 14 decedent votes, and 79 vacant-lot votes. State S.J.Br. Ex. 8, at 1.” (p. 3)

See State Example #4 for the 14 decedent voters.

For the remainder, there is no allegation that the alleged crimes were caused by voter impersonation and could be prevented by requiring photo ID at the polls.³⁰ Many of the alleged multiple votes were later found to result from clerical error; even for the remaining few documented cases, there is no allegation that the votes were cast through impersonation. Similarly, the allegations of vacant-lot votes were later largely discredited, and could not in any event be prevented by photo ID requirements.³¹

State Example #8:

“Residents near the Missouri-Kansas border have voted in both States. United States v. Jones, No. 05-CR-00257 (W.D. Mo. 2005); United States v. Martin, No. 05-CR-00258 (W.D. Mo. 2005); United States v. Scherzer, No. 04-CR-00401 (W.D. Mo. 2004); United States v. Goodrich, No. 04-CR-00402 (W.D. Mo. 2004); United States v. McIntosh, No. 04-CR-20142 (D. Kan. 2004).” (p. 3)

²⁸ Levitt, Truth About Voter Fraud 30.

²⁹ See Brennan Center Brief at 20-21.

³⁰ See Brennan Center Brief at 15-17; Levitt, Truth About Voter Fraud 24-25.

³¹ *Id.*

One filing indicates that one woman voted as both Tammy J. Martin and Tammy Burcaw; there is **no** allegation that she voted at the polls, and it is not clear whether the latter was a maiden name (and that she might therefore have had legitimate identification in that name). The other voters voted twice in the same name, which would not have been prevented by an in-person photo ID requirement.

State Example #9:

“In 2004, 235 ballots were cast in the names of decedents in Missouri. Matt Wynn, Deceased Still on State’s Voting Rolls, Columbia Missourian, Nov. 2, 2006.” (p. 3)

The article presents **no** allegation of any in-person impersonation fraud.

The article does not divulge the methodology for its conclusions. But of the six specific votes examined, every single one was due to clerical error, not fraud. For the other voters, there is no allegation that the votes were cast in person, at the polls — and no indication that there was any further examination for clerical error.

State Example #10:

“In Indiana, the Supreme Court invalidated the 2003 East Chicago mayoral primary based on evidence of rampant absentee-ballot fraud. The Lake County Vote Fraud Task Force has notched 37 convictions for various types of fraud, including voting in the wrong precinct and mishandling absentee ballots. Vote Fraud Task Force Claims Three More, Merrillville Post-Trib., Nov. 9, 2007, at A6.” (p. 3-4)

The sources present **no** allegations of in-person impersonation fraud. Neither absentee ballot fraud nor voting in the wrong precinct could possibly be prevented by a law requiring photo ID at the polls.

State Example #11:

“Reports of vote fraud have arisen elsewhere in the State as well. U.S. Election Assistance Comm’n, EAC Voting Fraud—Voter Intimidation Preliminary Research—Absentee, at 82 (reporting accusations of vote fraud in Marion, Porter, and Madison counties); Machine Problems, Ballot Probe Mar Voting in Indiana Counties, AP Alert, Nov. 8, 2006 (discussing FBI investigation of possible ballot tampering in Monroe County). While these investigations have not yet yielded convictions for impostor voting, they evidence a political culture where political bosses resort to fraud to sway elections.” (p. 4)

The sources presents **no** allegations of fraud that could be prevented by requiring photo ID at the polls. Both sources concern — exclusively — unproven allegations of absentee ballot fraud. And if “political bosses” resort to fraud using insider election officials to sway elections, those insiders would pay no greater heed to a photo ID requirement than to any other laws.

State Example #12:

“[The Carter Baker] Commission also addressed in-person voter fraud, emphasizing that there is no doubt that it occurs. J.A. 138. The Commission recommended requiring photo identification at the polls to deter fraud. J.A. 138-40.” (p. 5; see also p. 49)

The Carter-Baker Commission did no direct investigation of voter fraud, and cited only reports that do not allege in-person impersonation fraud or that have been debunked in support of its assertion that “there is no doubt” that in-person fraud occurs.³² Moreover, Carter Baker recognized the burdens on and dangers of discrimination against voters inherent in state-law photo ID requirements. It supported a uniform federal photo ID to remedy the discriminatory effect of different state-law requirements, and only if accompanied by an affirmative and aggressive effort by the states to register poor voters and provide them with a free photo ID. Indiana’s approach, striking out as an outlier among states and without the affirmative government outreach recommended by the Commission, would not have met the Commission’s standards.³³

State Example #13:

“There is ample evidence from across the nation that in-person voter fraud exists in contemporary society. Instances of deceased voters, double voters, and voters using fake names and addresses are all too common in American elections. State S.J. Br. Ex. 3 at 18-24, Ex. 4 at 2-7.” (p. 50)

The cited sources contain **no** allegations of in-person impersonation fraud. See State Examples #5 and #6.

State Example #14:

“Even Congress is convinced it happens. 148 Cong. Rec. S104489 (Oct. 16, 2002) (statement of Sen. Bond) (“By passage of this legislation, Congress has made a statement that voter fraud exists in this country”.)” (p. 50)

Though individual Members of Congress appear convinced that in-person voter fraud exists, Congress has never made such a finding. Indeed, because of uncertainty about voter fraud, the legislation cited by Senator Bond (the Help America Vote Act of 2002) empowered the Election Assistance Commission to investigate the extent of fraud; the original draft of the resulting study, by bipartisan researchers, concluded that “there is widespread but not unanimous agreement that there is little polling place fraud.”³⁴

³² See Brennan Center Brief at 23; compare Carter-Baker Report at 2-4, 18, with Brennan Center Brief at 17-18, 20-21.

³³ See Brennan Center Brief at 23-24.

³⁴ Ian Urbina, *Panel Said to Alter Finding on Voter Fraud*, N.Y. Times, Apr. 11, 2007.

State Assertion about ubiquitous photo ID:

“The record is replete with examples of other circumstances—some involving the exercise of constitutional rights—where citizens cannot function on a daily basis without government-issued photo identification. Pet.App. 3 (entering federal courthouses and traveling by airplane); Pet.App. 134 (cashing checks and renting movies); State S.J.Br. Exs. 33-36 (obtaining marriage licenses and entering federal courthouses).” (p. 29-30)

“Photo identification is already required for many routine activities, such as flying, driving, cashing a check, staying in a hotel, purchasing alcohol, and renting a video. Pet.App. 3, 134; State S.J.Br. Exs. 31, 33-36. Even exercising some fundamental constitutional rights, such as getting married or entering courthouses, often requires photo identification. State S.J.Br. Exs. 33-36.” (p. 56)

It is simply not true that citizens “cannot function on a daily basis” in the specified areas without government-issued photo identification, or that photo ID is required for these activities. *See also* State AG assertions about ubiquitous photo ID, *infra*.

Enter federal courthouse: mostly but not entirely true. Though some courthouses may indeed require photo identification, not all do. Repeated calls to the Supreme Court, for example, have confirmed that photo identification is not necessary to enter the Supreme Court building.

Travel by airplane: not true. *See Gilmore v. Gonzales*, 435 F.3d 1125, 1129-30, 1133 (9th Cir. 2006) (“The identification policy requires airline passengers to present identification to airline personnel before boarding or be subjected to a search that is more exacting than the routine search that passengers who present identification encounter.”); FAA Security Directive 96-05(1)(C).

Cash checks: not true. Check-cashing services will allow individuals to cash checks without photo ID, but may charge more for the service.³⁵ Moreover, some automated ATMs allow customers to cash checks without photo ID.³⁶

Rent movies: not true. Several chains offer DVD rental at unmanned kiosks, where no photo identification is required.³⁷

Marriage license: not true. Several states — including Indiana — will issue a marriage license without requiring photo ID.³⁸

Drive a car: not true. Several states authorize driver’s licenses without a photograph for reasons including a religious objection, see, e.g., Ark. Code § 27-16-801(b)(2); Minn. Stat. § 171.071.

³⁵ See Tonya Jameson, *Check-Cash Service Fees on Rise*, San Jose Mercury-News, Aug. 22, 1997, at 1C; Jonathan Nelson, *Banks Set Sights on the “Unbanked”*, The Columbian, Sept. 12, 2007, at E1.

³⁶ Eric Torbenson, *Kiosk Cashes Checks, and Also Takes its Cut*, St. Petersburg Times, July 7, 1997, at 9.

³⁷ Blockbuster Tries Out Video Rental Kiosks, L.A. Times, Nov. 22, 2007.

³⁸ See, e.g., Ind. Code § 31-11-4-6.

Indiana's law is actually even broader, authorizing a license without a photograph for any "good cause." Ind. Code § 9-24-11-5.

Stay in a hotel: not true. Many hotels will rent a room using only a credit card.

Buy alcohol: not true. In fact, at least as of July 2007, only one state (Tennessee) requires every customer, no matter how old, to show ID to purchase alcohol.³⁹

³⁹ Marissa DeCuir, States Get Creative in Fight Against Underage Drinking, USA Today, July 19, 2007, at 1A; see also, e.g., Texas Alcoholic Beverage Commission, Age Verification, <http://www.tabc.state.tx.us/leginfo/ageVerify.htm>.

BRIEF OF THE UNITED STATES

US Example #1:

“In 2004, the Indiana Supreme Court invalidated the 2003 East Chicago mayoral primary based on evidence of rampant absentee-ballot fraud, which included the use of vacant lot or former addresses and casting ballots by nonresidents. The Indiana Supreme Court found that the widespread fraud had rendered the election results ‘inherently deceptive and unreliable.’” (p. 3)

The sources — all concerning absentee ballot fraud — present **no** allegations of wrongdoing that could be prevented by a law requiring photo ID at the polls. See State Example #10.

US Example #2:

“At the same time, the State was experiencing highly inflated voter registration rolls, thus creating a risk of further voter fraud. Indeed, a report shows that more than 35,000 deceased individuals were on the rolls Statewide, and that, in 2004, the list of registered voters was inflated by some 41%, including well over 200,000 duplicate voter registrations.” (p. 3-4)

The sources present **no** allegations of in-person impersonation fraud. Moreover, *adequate* maintenance of the voter registration rolls, as required by federal law, is the appropriate solution to *inadequate* maintenance of the voter registration rolls.

US Example #3:

“The East Chicago mayoral primary in Indiana proves the point. Although the plaintiff was only able to show 155 invalid absentee votes, the court found that the ‘[w]idespread corruption’ had left the putative winner’s 278-vote victory ‘inherently deceptive and unreliable,’ and the court invalidated the entire election.” (p. 29-30)

Again, this incident of absentee ballot fraud presents **no** allegations of in-person impersonation fraud. See State Example #10.

US Example #4:

“In any event, as the Carter-Baker Commission found, there is “no doubt” that in-person voter fraud occurs. J.A. 138.” (p. 30)

The Carter-Baker Commission did no direct investigation of voter fraud, and cited largely irrelevant or debunked reports in support of its assertion that “there is no doubt” that in-person fraud occurs. See State Example #12.

US Example #5:

“Moreover, the record includes reported incidents of in-person voting fraud in nine states, *Pet. App. 109*, and there is no reason to believe that Indiana is immune from such fraud.” (p. 30)

The record may include incidents of in-person voting irregularities, but it does *not* include reported incidents of in-person *impersonation* fraud in nine states, as the Brennan Center Brief demonstrates at length. This citation merely cites the district court, which cites exhibits in the record that *do not* allege in-person impersonation fraud. Indeed, of the 16 exhibits cited by the district court, only one contains any allegations of in-person impersonation fraud, and that amounts to one single unproven instance. See Brennan Center Brief 11-25; State Example #2.

US Assertion about ubiquitous photo ID:

“Indeed, as the district court noted, “presentation of photo identification is routinely required for a multitude of everyday activities—from boarding a plane, entering a federal building, to cashing a check.” . . . Federal law likewise requires any employee to show identification at the time of hire for purposes of Form I-9. See 8 C.F.R. 1274a.2(b)(1)(i), (v).” (p. 23)⁴⁰

Presentation of photo identification may be routinely “requested,” but it is not “required” for most of the activities mentioned. See also State AG assertions about ubiquitous photo ID, *infra*.

Enter federal building: often but not always true. Though many federal buildings may indeed require photo identification, not all do. Repeated calls to the Supreme Court, for example, have confirmed that photo identification is not necessary to enter the Supreme Court building.

Travel by airplane: not true. See *Gilmore v. Gonzales*, 435 F.3d 1125, 1129-30, 1133 (9th Cir. 2006) (“The identification policy requires airline passengers to present identification to airline personnel before boarding *or* be subjected to a search that is more exacting than the routine search that passengers who present identification encounter.”) (emphasis added); FAA Security Directive 96-05(1)(C).

Cash checks: often but not always true. Check-cashing services will allow individuals to cash checks without photo ID, but may charge more for the service.⁴¹ Moreover, some automated ATMs allow customers to cash checks without photo ID.⁴²

I-9 employment eligibility: true, but the brief no longer claims that *photo* ID is necessary here. Federal law provides individuals without photo identification the opportunity to show several non-photo-ID documents to prove identity.⁴³

⁴⁰ Under Ninth Circuit Rules, *Foti v. McHugh* has been designated unpublished, and may be cited, but is not intended to represent a binding precedent. Ninth Circuit R. 36-3(a) (2007).

⁴¹ See Tonya Jameson, *Check-Cash Service Fees on Rise*, San Jose Mercury-News, Aug. 22, 1997, at 1C; Jonathan Nelson, *Banks Set Sights on the “Unbanked”*, The Columbian, Sept. 12, 2007, at E1.

⁴² Eric Torbenson, *Kiosk Cashes Checks, and Also Takes its Cut*, St. Petersburg Times, July 7, 1997, at 9.

⁴³ See 8 C.F.R. 1274a.2(b)(1)(v).

BRIEF OF MEMBERS OF CONGRESS

Members' Example #1:

“During the floor debate on HAVA, Senator Bond urged Congress to consider the experience of his ‘home State of Missouri, [where] there is abundant evidence of [mail registration] cards being used for the purpose of getting phony names, the names of the deceased and even the names of pets on voter rolls. Someone even registered the deceased mother of the prosecuting attorney of the City of St. Louis. Names have been registered to drop-houses, businesses, union halls, Mailbox Etc. and vacant lots.’” (p. 15-16)

This cited “experience” presents **no** allegations that any of the alleged registration fraud, even if proven, led to any ballots cast in the names of fraudulent registrations, or any illegal votes that could otherwise be prevented by in-person photo ID requirements.⁴⁴

Members' Example #2:

“‘For instance, in Michigan, they discovered one million duplicate registrations when they audited their voter rolls.’” (p. 16)

This incident presents **no** allegations of fraud at all, much less any illegal votes that could otherwise be prevented by in-person photo ID requirements.⁴⁵

Members' Example #3:

“‘It has been reported that Philadelphia has the same number of registered voters as there are voting age people living in the city.’” (p. 16)

Even if true, this presents **no** allegations of fraud at all, much less any illegal votes that could otherwise be prevented by in-person photo ID requirements.⁴⁶

Members' Example #4:

“‘And in Los Angeles County, it is estimated that 25% of all voter registrations have problems or incorrect information.’” (p. 16)

Even if true, this presents **no** allegations of fraud at all, much less any illegal votes that could otherwise be prevented by in-person photo ID requirements.⁴⁷

⁴⁴ See also Levitt, Truth About Voter Fraud 26.

⁴⁵ See generally Levitt, Truth About Voter Fraud 20-21.

⁴⁶ See generally Levitt, Truth About Voter Fraud 20-21.

⁴⁷ See generally Levitt, Truth About Voter Fraud 20-21.

Members' Example #5:

"[...] Senator Bond listed the names of a select few voters who had registered via mail-in card: 'Barnabas Miller of California, Parker Carroll of North Carolina, Packie Lamont of Washington, D.C., Cocoa Fernandez of Florida, Holly Briscoe of Maryland, Maria Princess Salas of Texas and Ritzy Mekler of Missouri. They are a new breed of American voter. Barnabas and Cocoa are poodles. Parker is a Labrador. Maria Princess is a Chihuahua, Holly is a Jack Russell Terrier, and Ritzy is a Springer-Spaniel.'" (p. 16)

At least four of the seven dogs were placed on the list intentionally by individuals seeking to make a point; "if people no longer registered dogs to show that dogs are on the rolls, dogs would no longer be on the rolls."⁴⁸ There is **no** allegation of any attempt to cast a ballot in the name of any of the seven, much less an attempt to do so at the polls, in person.

⁴⁸ Levitt, Truth About Voter Fraud 21.

BRIEF OF STATE ATTORNEYS GENERAL

AG Example #1:

“From New York’s Tammany Hall to the Kansas City Pendergast machine, from Alice, Texas and the 1948 Senate race between Lyndon B. Johnson and Coke Stevenson to Mayor Richard Daley’s Chicago machine in the 1960 presidential race, the specter of voter fraud has threatened the integrity of the electoral process for the entire history of our Nation.” (p. 3)

The well-known incidents described involved fraud by insiders, bribery, vote-buying, and other efforts by those running the elections to manipulate the elections. To the extent that officials are complicit in fraud at the polling place, the fraud cannot be prevented by laws (unenforced by the insiders) requiring voters to present a photo ID to vote.⁴⁹

AG Example #2:

“Recent notorious instances of alleged voting fraud include the 1996 Dornan-Sanchez congressional race for California’s 46th District, in which investigators turned up evidence of at least 784 illegal votes cast by noncitizens, see Hearing on Non-Citizen Voting Before the Comm. On House Admin., 109th Cong. 2 (2006) (testimony of Dan Stein);” (p. 4)

This allegation is not only false, but involves **no** allegation of in-person impersonation fraud.

First, the brief repeats an error in the notoriously inaccurate law review article supporting ID by “Publius” – later revealed to be Hans von Spakovsky: the number of allegedly illegal votes cited by the House Task Force is 748, not 784, and 124 of those ballots were absentee ballots improperly delivered, not votes cast by noncitizens.⁵⁰ Of the remaining 624 voters identified through a flawed method of matching immigration lists to voter rolls, only 71 voters were reliably “matched,” and there is no indication in the source cited that **any** of these voted in person, or in someone else’s name.⁵¹

AG Example #3:

“Recent notorious instances of alleged voting fraud include . . . the 2000 Miami mayor’s race between Joe Carollo and Xavier Suarez involving tainted absentee ballots. CAMPBELL, ELECTION FRAUD, at 286-91.” (p. 4)

⁴⁹ See generally Levitt, Truth About Voter Fraud 22.

⁵⁰ Report of the Committee on House Oversight on H.R. 355, Dismissing the Election Contest Against Loretta Sanchez, February 12, 1998, at 15, 35-39, 1032-38; Publius, *Securing the Integrity of American Elections*, 9 Tex. Rev. L. & Pol. 277, 294 (2005).

⁵¹ Levitt, Truth About Voter Fraud 19-20.

The year is wrong — the mayor’s race was in 1997, not 2000. In any event, as the source indicates, the election involved absentee ballot fraud, **not** allegations of in-person impersonation fraud.⁵²

AG Example #4:

“Recent notorious instances of alleged voting fraud include . . . the 2004 Washington gubernatorial race, where a state judge determined that 1,678 votes had been illegally cast, see CARTER-BAKER COMM’N REP., at 4.” (p. 4)

It has been alleged – but not proven – that one vote in this race was cast in person in the name of a decedent. None of the other examples in the source cited allege any fraud that could be prevented by laws requiring photo ID at the polls. See State Example #2 and #5.

AG Example #5:

“[S]ince October 2002 the U.S. Department of Justice has launched more than 180 investigations into election fraud that have resulted in charges against 89 individuals and 52 convictions. Id., at 45” (p. 4)

None of the charged instances of election fraud involves an allegation that a voter attempted to impersonate someone else at the polls. See State Example #1.

AG Example #6:

“For example, for decades, the State of Texas has grappled with the challenges of voting fraud. Lyndon B. Johnson’s 1946 Senate campaign is only the most infamous instance, but serious allegations of voter fraud have persisted, especially in South Texas, for more than a century.” (p. 4)

Again, the year is wrong: the Senate race was 1948, not 1946. Moreover, the alleged fraud involved stuffing of ballot boxes by insiders, which could not be prevented by any law requiring photo ID at the polls.

AG Example #7:

“In one case [in Texas], a city councilwoman was convicted and sentenced to five years in prison for registering noncitizens to vote and then facilitating noncitizen voting by tampering with government documents. See Former Port Lavaca Councilwoman Briseno to Serve Five Years in Prison for Voter Fraud, June 25, 2007, <http://www.freerepublic.com/focus/news/1856131/posts>.” (p. 4-5)

⁵² Lorraine Minnite, *An Analysis of Voter Fraud in the U.S.* 11-13 (2007).

The cited article (originally from the Houston Chronicle) contains **no** allegations of in-person impersonation fraud. Instead, an insider fraudulently completed others' registration forms, using the correct names of the applicants but falsely checking the box indicating citizenship. This could not have been prevented by requiring photo ID at the polls.⁵³

AG Example #8:

“Another instance of voter fraud involved allegations that a woman escorted voters into polling sites and illegally marked ballots without their consent. See Mary Ann Cavazos, Robstown Woman Indicted and Jailed in Voter-Fraud Case, CALLER-TIMES, June 16, 2006, http://www.caller.com/ccct/local_news/article/0,1641,CCCT_811_4779588,00.html.” (p. 5)

The cited article contains **no** allegations of in-person impersonation fraud. The incident involved alleged coercion of elderly voters, by a woman who helped them into the polls and marked electronic ballots for them, apparently without their consent.⁵⁴ This could not have been prevented by requiring photo ID at the polls.

AG Example #9:

“In yet another case, a man was indicted for double voting in the November 2006 general election. See Five Rio Grande Valley Residents Indicted for Voter Fraud Allegedly from 2006 Election Cycle, June 1, 2007, <http://www.edinburgpolitics.com/?p=82>.” (p. 5)

The cited article contains **no** allegations of in-person impersonation fraud. Not only is there no indication that the man involved voted at the polls, but he apparently used his own name when voting. This would not have been prevented by requiring photo ID at the polls.⁵⁵

AG Example #10:

“There was also a Refugio County Commissioner who pled guilty to the felony of tampering with government documents during a primary election, . . . See, e.g., Refugio County Commissioner Pleads Guilty to Election Fraud Scheme, Oct. 9, 2007, <http://www.setexasrecord.com/news/202316-refugio-county-commissioner-pleads-guilty-to-election-fraud-scheme>” (p. 5)

The cited article contains **no** allegations of in-person impersonation fraud. This incident involved absentee ballot fraud and would not have been prevented by requiring photo ID at the polls.⁵⁶

⁵³ *Former Port Lavaca Official Gets Prison for Voter Fraud*, Houston Chronicle, June 25, 2007.

⁵⁴ Mary Ann Cavazos & David Kassabian, *Woman Is Sentenced in Voting-Fraud Case*, Corpus Christi Caller-Times, Aug. 9, 2006.

⁵⁵ See also Laura B. Martinez, *Potential For Fraud*, Brownsville Herald (Tex.), July 22, 2007.

⁵⁶ See also *Refugio County Commissioner Resigns, Admits to Voter Fraud*, Dallas Morning News, Oct. 10, 2007.

AG Example #11:

“There was also . . . an East Texas former State Senator who was indicted for official oppression in trying to keep two candidates for a water board off the ballot,” (p. 5)

There was no article cited, but other sources reveal that this incident is based entirely on an election official’s abuse of power in qualifying candidates for the ballot, and involves **no** allegations of in-person impersonation fraud.⁵⁷ These allegations would not have been prevented by requiring photo ID at the polls.

AG Example #12:

“There was also . . . a Beeville, Texas resident who pleaded guilty to casting ballots for her deceased mother. . . .” (p. 5)

Again, there was no article cited, but other sources indicate that only one ballot — an absentee ballot — was cast. The incident would not have been prevented by requiring photo ID at the polls.⁵⁸

AG Example #13:

“And many more instances of voting fraud relating to the illegal possession, handling, and transport of mail-in ballots have occurred. . . . Nueces County Indictment in Voter Fraud Investigation, ASSOC. PRESS, Jan. 19, 2007, <http://www.kristv.com/global/story.asp?s=4263338>; Reeves County Woman Convicted for Voter Fraud, June 28, 2006, <http://www.brackettville.info/modules/news/article.php?storyid=1186>; Commissioner Given Probation for Voting Fraud, Nov. 10, 2005, ASSOC. PRESS, <http://abclocal.go.com/ktrk/story?section=state&id=3622674>.” (p. 5-6)

These allegations involved six individuals indicted (at least two of whom were convicted) for transporting absentee ballots of elderly voters to the post office. There were **no** allegations of in-person impersonation fraud, and the activity would not have been prevented by requiring photo ID at the polls.

AG Example #14:

“Although the precise magnitude of voter-impersonation fraud has been disputed, “there is no doubt that it occurs.” See Carter-Baker Comm’n Rep., at 18.” (p. 6; see also p. 10, 32)

The Carter-Baker Commission did no direct investigation of voter fraud, and cited largely irrelevant or debunked reports in support of its assertion that “there is no doubt” that in-person fraud occurs. Moreover, Indiana’s law would not have met the Commission’s standards. See State Example #12.

⁵⁷ *Former East Texas Senator Indicted*, KTRC.com, July 5, 2007, <http://www.ktre.com/Global/story.asp?S=6751375>.

⁵⁸ Attorney General Greg Abbott, Press Release, Attorney General Abbott Obtains Voter Fraud Indictments In Two Counties, June 3, 2005.

AG Example #15:

“[W]itnesses who testified during the last Regular Session of the Texas Legislature on proposed photo-ID legislation reported that voter impersonation, in which people’s IDs or voter-registration cards have been stolen and false votes had been cast in those persons’ names, is not uncommon. See A Bill Relating to Requiring a Voter to Present Proof of Identification: Hearing on Tex. H.B. 218 Before the House Comm. on Elections, 80th Leg., R.S. (Feb. 28, 2007), <http://www.house.state.tx.us/committees/broadcasts.php?session=80&committeeCode=240> (testimony of Ed Johnson of the Harris County Tax Office); . . . [¶] In Harris County, for example, there was an instance in which one candidate in a primary election registered hundreds of voters, changed their addresses, and then voted for them on election day. See A Bill Relating to Requiring a Voter to Present Proof of Identification: Hearing on Tex. H.B. 218 Before the House Comm. on Elections, 80th Leg., R.S. (Feb. 28, 2007), <http://www.house.state.tx.us/committees/broadcasts.php?session80&committeeCode=240> (testimony of Ed Johnson).” (p. 6-7)

None of the allegations related by Mr. Johnson included an allegation that a vote had been cast in someone else’s name at the polls.⁵⁹ For the particular incident of the candidate filling out the false voter registration applications, the easiest way to perpetrate this fraud would have been through absentee ballots, but Mr. Johnson did not specify how the ballots were cast.

AG Example #16:

[W]itnesses who testified during the last Regular Session of the Texas Legislature on proposed photo-ID legislation reported that voter impersonation, in which people’s IDs or voter-registration cards have been stolen and false votes had been cast in those persons’ names, is not uncommon. . . . Hearing on Tex. H.B. 218 Before S. Comm. on State Affairs, 80th Leg., R.S. (Apr. 30, 2007), <http://www.senate.state.tx.us/avarchive/?yr=2007&lim=200> (testimony of Skipper Wallace, State Legislative Chairman for the Republican County Chairmans Association) . . . [¶]. . . There have also been reports of stolen voter registration cards, see [A Bill Relating to Requiring a Voter to Present Proof of Identification: Hearing on Tex. H.B. 218 Before the House Comm. on Elections, 80th Leg., R.S. (Feb. 28, 2007), <http://www.house.state.tx.us/committees/broadcasts.php?session80&committeeCode=240>] (testimony of Skipper Wallace), a crime that makes sense only if one is intending to impersonate legal voters.” (p. 6-7)

⁵⁹ Mr. Johnson’s testimony runs from 2:41 – 2:59 in the proceedings of the cited committee hearing. He testified that he had seen “numerous cases” of people having their identity stolen, including one incident of one candidate filling out false voter registration applications for hundreds of voters who actually lived outside of his district, and then voting for them on election day (the easiest way to perpetrate this fraud would have been through absentee ballots, but Mr. Johnson did not specify how the ballots were cast). Mr. Johnson had also seen false voter registration cards for real voters submitted by registration drives, which effectively changes these voters’ real address. He also testified that he had found 35 noncitizens on the rolls, identified from their response to a jury summons, along with other additional noncitizens who have registered and voted. He did not mention any specific information that would allow for follow-up of these allegations.

Mr. Wallace mentioned that he had heard from election officials about “horror stories,” including stolen voter ID cards.⁶⁰ He presented no further specific information that would allow for follow-up of these allegations. He did **not** make any specific allegations of in-person impersonation fraud.

AG Example #17:

“Consider the case of Michael Zore who voted twice in 2006 by going to the polling stations of two Milwaukee, Wisconsin suburbs in the space of six hours. His excuse: ‘I forgot.’ The evidence against him, however showed that he signed up to vote using a false address from one precinct when he already voted in another precinct. Derrick Nunnally, Man Covicted [sic] of Double Voting: “I Forgot” Doesn’t Get Toas Resident Off Hook, MILWAUKEE J. SENTINEL, Aug. 22, 2007, <http://www.jsonline.com/story/index.aspx?id=651215>.” (p. 7)

The cited article states that Mr. Zore used a false address, but contains **no** allegations of in-person impersonation fraud. This would not have been prevented by requiring photo ID at the polls.

AG Example #18:

“Another double voter was James Scherzer, an attorney, who cast two ballots in the same election several times in 2000 and 2002; he did this by voting in Kansas and then crossing the state line and voting again in Missouri. Mr. Scherzer acknowledged, ‘I was wrong in what I did.’ Greg Reeves, One Person, One Vote? Not Always, KANSAS CITY STAR, Sept. 5, 2004, <http://www.angelfire.com/pa/sergeman/issues/elections/onevote.html>.” (p. 7-8)

Mr. Scherzer voted twice in the same name, which would not have been prevented by an in-person photo ID requirement. See State Example #8.

AG Example #19:

“[I]n the 2000 election, André Alismé, who died of cancer in 1997, had a ballot cast in his name in the presidential election. Manny Garcia & Tom Dubucq, Unregistered Voters Cast Ballots in Dade: Dead Man’s Vote, Scores of Others Were Allowed Illegally, Herald Finds, MIAMI HERALD, Dec. 24, 2000, <http://www.englishfirst.org/ballots/deadvote.htm>.” (p. 8)

The article cited indicates that a vote was cast at the polling place in the name of Mr. Alismé, but it also states that “the voter presented [the precinct supervisor] with photo identification -- either a passport or a driver's license -- as well as a voter registration card identifying him as Alismé.” Although it appears from the news account that the voter was impersonating Mr. Alismé, because he seems to have produced photo ID, a law requiring in-person photo ID would not have prevented him from voting.

⁶⁰ The reference to stolen voter ID cards appears at 4:16 of the cited committee hearing. Mr. Wallace’s testimony runs from 4:15 – 4:24 in the proceedings of the cited committee hearing.

AG Example #20:

“A November 2000 Atlanta Journal-Constitution report showed that between 1980 and 2000, there were more than 5,000 documented cases of people voting in Georgia after their deaths. Frank B. Strickland & Anne W. Lewis, It’s About Fraud, Not Jim Crow, WASH. POST, Aug. 30, 2005, at A17.” (p. 8)

The report has been repeatedly debunked. See State Example #3.

AG Example #21:

“And in South Texas, as one local government watchdog stated, it is well known that ‘[d]own here, we have dead people vote,’ referring to the fraudulent practice of using dead voters’ registration cards to cast extra ballots. Moreover, voter registration cards have been issued to imaginary voters and then distributed to real people who were not registered. Sarah Perkins, Valley Officials, Observers at Odds Over Need for new Voter ID Laws, THE MONITOR, Apr. 24, 2007, <http://www.themonitor.com/common/printer/view.php?db=monitortx&id=1855>.” (p. 8)

The cited article contains **no** allegations of in-person impersonation fraud. Even these general statements — which do not allege votes cast in someone else’s name at the polls — are not supported in the record by any allegation of any particular case susceptible to follow-up.⁶¹

AG Assertion about ubiquitous photo ID:

“In our modern age, photo IDs are required for the most mundane activities, from driving a car to entering a government building to renting a DVD.” (p. 1)

“[T]he requirement of a photo ID is becoming all but ubiquitous in the modern age. Photo IDs are required to drive a car; to board an airplane; to travel abroad; to enter many state and federal government buildings; to buy alcohol or cigarettes; to purchase firearms; to obtain a hunting or fishing license; to open a bank account; to purchase medical prescriptions; to obtain most health care or dental care; to rent a hotel room, a car or DVD from Blockbuster; and even to watch an R-rated movie at the cinema.” (p. 25)

Driving a car: not true. Several states authorize driver’s licenses without a photograph for reasons including a religious objection, see, e.g., Ark. Code § 27-16-801(b)(2); Minn. Stat. § 171.071. Indiana’s law is actually even broader, authorizing a license without a photograph for any “good cause.” Ind. Code § 9-24-11-5.

Entering a government building: not true. Although there are many federal buildings that require photo ID (though not necessarily a driver’s license or state ID card), there are also many government buildings, including the Supreme Court, for which photo ID is not required.

⁶¹ In the same article, the same “watchdog” who asserted that dead people vote also “acknowledged that many more problems emerge through the mail-in ballot system, rather than through in-person voting.” Sarah Perkins, *Valley Officials, Observers at Odds Over Need for new Voter ID Laws*, THE MONITOR, Apr. 24, 2007.

Renting a DVD: not true. For example, Blockbuster has begun offering DVDs at unmanned kiosks, where no photo identification is required.⁶²

Board an airplane: not true. See *Gilmore v. Gonzales*, 435 F.3d 1125, 1129-30, 1133 (9th Cir. 2006) (“The identification policy requires airline passengers to present identification to airline personnel before boarding or be subjected to a search that is more exacting than the routine search that passengers who present identification encounter.”); FAA Security Directive 96-05(1)(C).

Travel abroad: true.

Buy alcohol: not true. In fact, at least as of July 2007, only one state (Tennessee) requires every customer, no matter how old, to show ID to purchase alcohol.⁶³

Buy cigarettes: not true. Federal regulations used to require identification of all purchasers under age 27⁶⁴, but that regulation was struck down.⁶⁵ There is no state of which we are aware that requires photo ID of every individual before purchasing a cigarette; indeed, cigarette vending machines (with no means to check ID) are still available in several states.⁶⁶

Purchase firearms: true if purchasing from a dealer, but it appears to be legal in many states to purchase from another individual within the same state without any documentation.⁶⁷

Obtain a hunting or fishing license: not true. Indiana, for example, requires a Social Security number and “physical description”, but does not apparently require a photo ID.⁶⁸

Bank account: not true. Federal regulations require that banks verify the identity of individuals opening a new account, but provide many different options for banks to do so.⁶⁹ Banks primarily operating online, like ING Direct, for example, requires a Social Security number but not a photo ID.⁷⁰

⁶² Blockbuster Tries Out Video Rental Kiosks, L.A. Times, Nov. 22, 2007.

⁶³ Marissa DeCuir, States Get Creative in Fight Against Underage Drinking, USA Today, July 19, 2007, at 1A; see also, e.g., Texas Alcoholic Beverage Commission, Age Verification, <http://www.tabc.state.tx.us/leginfo/ageVerify.htm>.

⁶⁴ See 61 Fed Reg. 44616, establishing 21 C.F.R. 897.14(b).

⁶⁵ See *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000).

⁶⁶ See, e.g., Campaign for Tobacco-Free Kids, Where Do Youth Smokers Get Their Cigarettes? (2007), <http://www.tobaccofreekids.org/research/factsheets/pdf/0073.pdf>.

⁶⁷ See, e.g., Bureau of Alcohol, Tobacco & Firearms, Questions & Answers, B16, <http://www.atf.treas.gov/firearms/faq/faq2.htm#b16>.

⁶⁸ See Indiana Outdoor Online Licensing, <http://www.in.gov/ai/appfiles/dnr-license/index.html>.

⁶⁹ 31 C.F.R. § 103.121(b)(2)(ii)-(iii).

⁷⁰ See ING Direct, Open An Account, <https://banking.ingdirect.com/printandmail/printandmail.asp?type=OSA>.

Medical prescriptions: unlikely to be true. We know of no national requirement (whether in federal law or uniformly in state law) requiring photo identification to purchase prescriptions, and none was cited in the brief.

Health care or dental care: not true. Federal law requires that individuals be treated by hospitals, at least in emergency circumstances, whether or not they have a photo ID.⁷¹

Rent a hotel room: not true. Many hotels will rent a room using only a credit card.

Rent a car: only true to the extent that car rental companies require a driver's license – and not all driver's licenses require photos. See "Drive a car" above.

Watch an R-rated movie: not true. There was no citation supporting this point in the brief, but it is common experience that no photo ID is required to attend a movie at several major movie chains.

⁷¹ 42 U.S.C. § 1395dd.

BRIEF OF CURRENT AND FORMER ELECTION OFFICIALS
Election Officials Example #1:

“When reasonable measures to confirm eligibility [sic] are not conducted before a name is added to the roll, it fosters fraudulent registrations. See Keith Erwin [sic], Potential Fraud Feared In Drive To Sign Up Voters, Seattle Times, Feb. 23, 2007, at B1; Brad Shannon, Fraud Alleged in 2004 Washington Voter-Registration Drive, The Olympian, June 23, 2007, at 1C; Keith Erwin [sic], Three Plead Guilty in Fake Voter Scheme, Seattle Times, Oct. 30, 2007, at B5 (chronicling discovery of “the biggest voter-registration fraud scheme in Washington history” in which three persons plead guilty to submitting more than 1,800 fictitious voter-registration cards during a 2006 registration drive); Questions Abound in Voter Push, Kansas City Star, Oct. 12, 2006, at B1.” (p. 11 n.7)

The sources allege that fraudulent registration forms were submitted by voter registration drive workers, but present no allegations of any in-person impersonation fraud. As one of the sources acknowledges, such forms may be submitted by workers attempting to defraud the organization that has hired them, in order to get paid without actually registering voters.⁷² None of the sources cited contains any allegation that any ballots were cast in the names of the fraudulent registrations; indeed, that same Washington State article expressly states that “No votes were cast in the names of the phony voters.”⁷³ And none of the cited incidents could have been prevented by a requirement to show photo ID at the polls.

Election Officials Example #2:

“Maintaining a current and accurate voter roll is a constant challenge for election officials. This is due to . . . a voter’s death . . . Matt Wynn, Deceased Still On State’s Voting Rolls, Columbia Missourian, Nov. 2, 2006, at 1A (finding 10,520 deceased citizens remained registered in Missouri during 2004 election); Lisa M. Collins, In Michigan Even the Dead Vote, Detroit News, Feb. 26, 2006, at 1A.” (p. 11-12 & n.8)

The first article presents **no** allegation of any in-person impersonation fraud; indeed, though the article mentions alleged votes in the name of deceased voters, of the six specific votes examined, every single one was due to clerical error, not fraud. See State Example #9.

The second article has been repeatedly debunked as inaccurate. See Kelly Chesney, *Special Letter: Claims That the “Dead” Voted Were Wrong*, Detroit News, Mar. 5, 2006.⁷⁴

⁷² See Keith Erwin, *Three Plead Guilty in Fake Voter Scheme*, Seattle Times, Oct. 30, 2007, at B5; see also Levitt, *Truth About Voter Fraud* 20-21.

⁷³ Keith Erwin, *Three Plead Guilty in Fake Voter Scheme*, Seattle Times, Oct. 30, 2007, at B5.

⁷⁴ See also Brennan Center Brief at 13-14.

Election Officials Example #3:

“Maintaining a current and accurate voter roll is a constant challenge for election officials. This is due to . . . a voter becoming ineligible to vote based on a criminal conviction . . . [See] United States v. Prude, 489 F.3d 873 (7th Cir. 2007) (upholding conviction of defendant for fraudulently claiming eligibility to vote despite disqualifying felony conviction).” (p. 11-12 & n.9)

The cited case concerns a person rendered ineligible by a conviction, who voted in her own name. This could not have been prevented by any law requiring photo ID at the polls.

Election Officials Example #4:

“Ineligible persons on voter rolls include those not citizens. A congressional task force found, for example, that there was “clear and convincing evidence that 748 invalid votes” by aliens were cast in a 1996 California congressional election. H.R. 105-416, 105th Cong. at 12 (1998), see also John Fund, Wall Street Jour., OpinionJournal, May 21 [sic], 2006 . . . (noting that “[s]everal California counties report that an increasing number of registered voters called up for jury duty write back saying they are ineligible because they aren’t citizens”).” (p. 12 & n.10)

The allegation concerning the congressional task force is, again, inaccurate. 124 of the ballots cited were absentee ballots improperly delivered, not votes cast by noncitizens.⁷⁵ There is no indication that the remaining votes were cast in person or in someone else’s name. See AG Example #2.

The second source cited above not only contains no allegation of any ballot cast in the name of another at the polls, but explicitly states that “[m]uch of the voter fraud taking place today occurs not at polling places but through absentee ballots.”⁷⁶

Election Officials Example #5:

“A Utah study found at least 129 registered voters who were deportable or “likely to be illegal aliens” . . . See Letter from John M. Schaff, Utah Auditor General, to John L. Valentine, Utah State Senate President (Feb. 8, 2005) . . .” (p. 12-13 & n.11)

This examination was conducted by comparing the name and birthdate of voters to the name and birthdate of individuals with a taxpayer ID number investigated by immigration authorities, but this method has been proven to yield errors: the voters in question may not be the noncitizens identified.⁷⁷ Moreover, the source stated that 14 of these individuals had actually voted; even if

⁷⁵ Report of the Committee on House Oversight on H.R. 355, Dismissing the Election Contest Against Loretta Sanchez, February 12, 1998, at 15, 35-39, 1032-38.

⁷⁶ John Fund, *Jimmy Carter is Right*, OpinionJournal.com, May 22, 2006, at <http://www.opinionjournal.com/diary/?id=110008411>.

⁷⁷ See Michael McDonald & Justin Levitt, *Seeing Double Voting* (2007), at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=997888.

the 14 were in fact noncitizens, there is **no** allegation in the cited source that any of the individuals voted at the polls or in the name of another.⁷⁸

Election Officials Example #6:

“The New York Times recently noted that voting rolls in Arizona “include[] people who are ineligible to vote, like illegal immigrants and felons.” . . . Randal C. Archibald [sic], Arizona Ballot Could Become Lottery Ticket, N.Y. Times, July 17, 2006, at A1.” (p. 13 & n.12)

The cited source contains **no** allegation of in-person impersonation fraud.⁷⁹ This would not be prevented by a law requiring photo ID at the polls.

Election Officials Example #7:

“Following the 2004 general election, several people in Florida were charged and/or convicted of illegally voting and making false citizenship claims.” (p. 13 & n.13)

The charges may have been issued after the 2004 election, but they concerned elections in 1996, 1998, 2000, or 2002 — before the Help America Vote Act. Several of the charges were dismissed; at least one charged individual was acquitted. And **no** case presented any allegation of voting at the polls in the name of another. None of these cases would have been prevented by a law requiring photo ID at the polls.

Election Officials Example #8:

“Indiana’s population of illegal aliens was estimated in 2000 to be 45,000 – a 300% increase from 1990. U.S. Immigration and Naturalization Service, Office of Policy and Planning, Estimates of the Unauthorized Immigrant Population Residing in the United States: 1990 to 2000, at 15, Table 1 (Jan. 2003).” (p. 13 & n.14)

The cited source contains **no** allegation of any election-related activity, much less impersonation fraud at the polls. The brief goes on to state that “Indiana’s Photo ID requirement addresses this problem, since Indiana requires proof of legal status before it will issue such documentation.”⁸⁰ This claim is doubly false: Not only will a requirement to show photo ID before voting at the polls do absolutely nothing to address illegal immigration, but Indiana’s photo ID requirement does not require that the ID establish citizenship, whether the document in question is a state driver’s license, or a state student ID, or a federal military ID.

⁷⁸ Letter from John M. Schaff, Utah Auditor General, to John L. Valentine, Utah State Senate President (Feb. 8, 2005), at http://le.utah.gov/audit/05_01ilr.pdf.

⁷⁹ Randal C. Archibald, *Arizona Ballot Could Become Lottery Ticket*, N.Y. Times, July 17, 2006, at A1.

⁸⁰ Brief of Democrat and Republican Election Officials as *Amici Curiae* In Support of Affirmance at 13-14, *Crawford v. Marion County Election Board* (No. 07-21 & 07-25) (December 10, 2007)

Election Officials Example #9:

“Besides these sources of inaccuracies, recent elections have witnessed a substantial increase in voter registration fraud, which occurs when someone seeks to register a real person who is not eligible, an eligible voter multiple times in different jurisdictions, or a fictional person. In the 2004 Presidential election, Chad Staton was convicted in Ohio of submitting almost 100 fraudulent voter registration forms for, among others, Dick Tracy, Mary Poppins and Michael Jordan, for which he was reportedly paid in crack cocaine. State of Ohio v. Chad Staton, No. 04-CR009020 [sic] (Defiance County, Ohio Oct. 22, 2004); Man Arrested After Voter Forms Turned in For Mary Poppins, Michael Jordan, Ohio Officials Say, THE ASSOCIATED PRESS, Oct. 19, 2004” (p. 14 & n.15)

The sources allege that fraudulent registration forms were submitted by a voter registration drive worker, but present no allegations of any ballots cast in the names of these fraudulent registrations. The cited incident could not have been prevented by a requirement to show photo ID at the polls.

Election Officials Example #10:

“King County, Washington recently settled civil and criminal vote fraud charges against an organization for submitting a large number of fake or fraudulent voter registration cards. See Settlement & Compliance Agreement (July 27, 2007)” (p. 14 & n.16)

The settlement arose out of allegations that fraudulent registration forms were submitted by voter registration drive workers, but involved no allegations of any ballots cast in the names of these fraudulent registrations, at the polls or otherwise. See Election Officials Example #1.

Election Officials Example #11:

The Senate debate on HAVA described the registration of a number of dogs as voters in States across the country. See 148 Cong. Rec. S10489 (Oct. 16, 2004) (statement of Sen. Bond); see also Keith Erwin [sic], Woman Registers Her Dog to Vote; Prosecutors Growl, Seattle Times, June 22, 2007, at B1.” (p. 14 & n.17)

At least five of the dogs mentioned were placed on the list intentionally by individuals seeking to make a point; “if people no longer registered dogs to show that dogs are on the rolls, dogs would no longer be on the rolls.”⁸¹ There is no allegation that any ballot was cast at the polls in the name of any of these dogs.⁸² See Members’ Example #4.

⁸¹ Levitt, Truth About Voter Fraud 21.

⁸² Jane Balogh, in Seattle, cast an absentee ballot in her dog’s name, signed with a paw print and with “Void” written across the face of the ballot. Keith Erwin, *Woman Registers Her Dog to Vote; Prosecutors Growl*, Seattle Times, June 22, 2007, at B1.

Election Officials Example #12:

“Reports from across the country suggest the magnitude of such inaccurate and fraudulent registrations. Thus, it has been reported that Detroit’s voter rolls contain “as many as 20,000 dead people and roughly 100,000 wrong addresses”[.] Lisa M. Collins, In Michigan, Even Dead Vote, Detroit News, Feb. 26, 2006, at 1A.” (p. 15 & n.18)

Reports from across the country are themselves inaccurate. This article has been repeatedly debunked. See Election Officials Example #2. Moreover, all of the examples given in support of this assertion of “inaccurate and fraudulent registrations” predate the 2006 effective date of the Help America Vote Act’s mandate to cross-reference the voter rolls against death records to cleanse the voter rolls of deceased registrants.⁸³

Election Officials Example #13:

“Thus, it has been reported . . . that Florida had more than 64,000 dead people on its voter rolls in December 2004[.] Geoff Dougherty, Dead Voters on Rolls, Other Glitches Found in 6 Key States, Chicago Tribune, Dec. 4, 2004, at C13.” (p. 15 & n.19)

The source article did not disclose its methodology, but it appears to have involved an attempt to match voter rolls to death lists; such matching efforts are notoriously inaccurate.⁸⁴ Even if accurate, however, the source mentions **no** allegations of any voting in the name of another, at the polls or otherwise.

Election Officials Example #14:

“Thus, it has been reported . . . that 46,000 were illegally registered to vote in both Florida and New York City, and 27,000 in both Florida and Ohio. . . . Russ Buettner, Exposed: Scandal of Double Voters, N.Y. Daily News, Aug. 22, 2004, at 4 . . . Scott Hiaasen, Dave Davis and Julie Carr Smyth, Voters Double-Dip in Ohio, Fla., Cleveland Plain Dealer, Oct. 31, 2004.” (p. 15 & n.20-21)

The source articles attempted to match voter rolls to each other, which likely yielded significant errors.⁸⁵ Even if accurate, however, the sources mention **no** allegations of any voting in the name of another, at the polls or otherwise. Indeed, the Ohio article asserts that “gaps in the system are most easily exploited by absentee voting. . . .”⁸⁶

⁸³ See 42 U.S.C. § 15483(a)(2)(A)(ii)(II).

⁸⁴ See Levitt, Truth About Voter Fraud 8, 14-15.

⁸⁵ See Levitt, Truth About Voter Fraud 8, 12-13; Michael McDonald & Justin Levitt, Seeing Double Voting (2007), at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=997888.

⁸⁶ Scott Hiaasen et al., *Voters Double-Dip in Ohio, Fla.*, Cleveland Plain Dealer, Oct. 31, 2004.

Election Officials Example #15:

“Thus, it has been reported . . . [that] an audit found that “nearly 10 percent, or 24,000 of [St. Louis’] registered voters, are either dead, [have] been convicted of a felony, [are] registered in another jurisdiction or [are] otherwise questionable.” Doug Moore, Auditor Criticizes [sic] Election Board, St. Louis Post-Dispatch, May 26, 2004, at C4.” (p. 15 & n.22)

The source article does not reveal how the audit was conducted.⁸⁷ Even if accurate, however, the article mentions **no** allegations of any voting in the name of another, at the polls or otherwise; indeed, it expressly states that the “audit reported no votes cast by dead people. . . .”⁸⁸ The problems found by the audit could not have been solved by requiring photo ID at the polls.

Election Officials Example #16:

“Regrettably, vote fraud is not a myth. The bipartisan Carter-Baker Commission concluded that “there is no doubt” that in-person voting fraud occurs” (p. 16)

The Carter-Baker Commission did no direct investigation of voter fraud, and cited irrelevant or debunked reports in support of its assertion that “there is no doubt” that in-person fraud occurs. See State Example #12.

Election Officials Example #17:

“President Carter’s book Turning Point (1995) recounts the massive vote fraud he experienced in his first run for the Georgia State Senate; Carter was declared the victor only following litigation and a recount revealing this substantial fraud.” (p. 17 n.24)

Carter’s 1962 Georgia State Senate race was marred by ballot-box stuffing, intimidation, and fraudulent voting by local political bosses who apparently also controlled the local election officials.⁸⁹ To the extent that officials are complicit in polling place fraud, the fraud cannot be prevented by laws (unenforced by the insiders) requiring voters to present a photo ID.⁹⁰

Election Officials Example #18:

“Professor Robert Pastor, a Carter-Baker Commission member and former Carter Administration official, has testified to his own disenfranchisement when he was informed someone had voted in his name before he appeared at the polls. Hearing before the U.S. Comm’n on Civil Rights, 111-18 (Oct. 13, 2006).” (p. 17 n.24)

⁸⁷ See Levitt, Truth About Voter Fraud 8, 12-13; Michael McDonald & Justin Levitt, Seeing Double Voting (2007), at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=997888.

⁸⁸ Doug Moore, *Auditor Criticizes City Election Board*, St. Louis Post-Dispatch, May 26, 2004, at C4.

⁸⁹ Keith Henderson, *Carter’s First Stand for Political Integrity*, Christian Science Monitor, Jan. 22, 1993, at 14.

⁹⁰ See Levitt, Truth About Voter Fraud 22.

The anecdote is not on the cited pages, which assert that a photo ID requirement would “actually become the problem” without extensive affirmative outreach by the state.⁹¹ The anecdote is, instead, on page 185, and does not list whether the individual allegedly taking Dr. Pastor’s spot voted in person or absentee. It also states that there was no means to find out “whether there was some error or whatever else, and the polling station itself didn’t keep any record of it,” and gives no further details of the incident, including date or location.⁹²

Election Officials Example #19:

*“Voter impersonation was a device favored by Boss Tweed’s machine: “[r]epeaters,” often felons, were “given five dollars, as much liquor as they could hold, and a list of the recently deceased whose names they were to use to cast as many ballots as possible. ‘Vote early and often’ was Tammany’s much vaunted maxim, and that was exactly what these men intended to do.” [Andrew Gumbel, *Steal This Vote: Dirty Elections and the Rotten History of Democracy in America* 74-75 (2005)].” (p. 17 n.26)*

Boss Tweed’s reach extended far beyond the “repeaters.”⁹³ To the extent that officials are complicit in polling place fraud, the fraud cannot be prevented by laws (unenforced by the insiders) requiring voters to present a photo ID.⁹⁴

Election Officials Example #20:

“As far back as the 1880s, Indiana was known for election fraud. See [Tracy] Campbell, [Deliver the Vote: A History of Election Fraud, an American Political Tradition — 1742-2004, (2005)], at 95 (describing the use of “floaters” – people voting multiple times – in Indiana in the 1888 presidential election; “[b]y the late 1880s, Indiana had acquired a notorious reputation in the annals of electoral corruption. . . .”.)” (p. 18 n.27)

The source seems to show vote buying and voting by nonresidents, but does not mention either voting multiple times in the same precinct or votes cast in anyone else’s name.⁹⁵

Election Officials Example #21:

“In a nationally prominent scandal in 1914, federal authorities prosecuted 114 people for an election fraud scheme in Terre Haute that included fraudulent voter registrations that allowed

⁹¹ Hearing before the U.S. Comm’n on Civil Rights at 112, 116-17 (Oct. 13, 2006) (statement of Dr. Pastor).

⁹² *Id.* at 185.

⁹³ ANDREW GUMBEL, *STEAL THIS VOTE* 73-74 (2005).

⁹⁴ Moreover, with machine resources invested in and willing to go to such lengths to steal an election, it would surely be possible to manufacture fake ID.

⁹⁵ See TRACY CAMPBELL, *DELIVER THE VOTE* 94-95 (2005); see also *Hearing before the Election Assistance Comm’n*, Sept. 30, 2004 (statement of Todd Rokita, Ind. Sec’y of State), at <http://www.in.gov/sos/press/old/09302004.html>; *Hearing on Oversight of HAVA Implementation: Hearing Before the Comm. on H. Admin.*, 109th Cong. 209 (2005) (statement of Todd Rokita, Ind. Sec’y of State).

some individuals to vote as many as 22 times. See [Campbell, Deliver the Vote] at 147-49.” (p. 18 n.27)

This incident also concerns machine politics, with city officials willing to break the law to steal an election. To the extent that officials are complicit in polling place fraud, the fraud cannot be prevented by laws (unenforced by the insiders) requiring voters to present a photo ID.⁹⁶

Election Officials Example #22:

“More recently, the Indiana Supreme Court invalidated the 2003 mayoral primary in East Chicago because of an absentee-ballot fraud scheme. See Pabey v. Pastrick, 816 N.E.2d 1138 (Ind. 2004)” (p. 18 n.27)

This incident involved **no** allegations of in-person impersonation fraud. Absentee ballot fraud cannot possibly be prevented by a law requiring photo ID at the polls. See State Example #10.

Election Officials Example #23:

“Richard A. Posner, Breaking the Deadlock: The 2000 Election, the Constitution, and the Courts 39-40 (2001). “Because of extensive vote fraud by Democrats as well as Republicans, it is uncertain whether Tilden really did win the popular vote [in the 1876 presidential election].” Id. at 39. In other elections the suspected vote fraud may not have been sufficient to change the outcome, but nevertheless undermined public confidence in the honesty of the election process. Id. at 40 (noting that “[t]here were serious allegations of fraud by Democrat election officials in Illinois and Texas” in John F. Kennedy’s 1960 election)” (p. 18 n.28)

The citations yield **no** allegations of in-person impersonation fraud. Moreover, to the extent that election officials are involved in fraud, a law requiring photo ID at the polls cannot possibly prevent the damage.

Election Officials Example #24:

“The November 2004 elections [] showed that irregularities and fraud still occur. In Washington, for example, where Christine Gregoire was elected governor by a 129-vote margin, the elections superintendent of King County testified during a subsequent unsuccessful election challenge that ineligible ex-felons had voted and that votes had been cast in the names of the dead.” (p. 19)

It has been alleged – but not proven – that one single vote in this race was cast in person in the name of another. See State Example #2 and #5.

⁹⁶ Moreover, with machine resources invested in and willing to go to such lengths to steal an election, it would surely be possible to manufacture fake ID.

Election Officials Example #25:

“In Milwaukee, Wisconsin, investigators said they found clear evidence of fraud, including more than 200 cases of felons voting illegally and more than 100 people who voted twice, used fake names or false addresses, or voted in the name of a dead person.” (p. 19)

No source has been cited with any allegation that any of the votes above involved in-person impersonation fraud. See State Example #2 and #6.

Election Officials Example #26:

“By one estimate, for example, there were over 181,000 dead people listed on the voter rolls in six swing states in the November 2004 elections, including almost 65,000 dead people listed on the voter rolls in Florida.” (p. 19-20)

The source cited for this allegation is the same source in Election Officials Example #13, and as described there, does not cite **any** allegation of voting in the name of another, at the polls or otherwise. See Election Officials Example #13.

Election Officials Example #27:

“The “Pendergast Machine” in Kansas City so institutionalized vote fraud in Missouri that the 1999-2000 Official Missouri State Manual (published by Democrat Missouri Secretary of State Rebecca Cook) describes its practices in detail.” (p. 20)

The source describes ballot-box manipulation, intimidation and violence, and election judges who falsified vote tallies. To the extent that election officials are involved in fraud, a law requiring photo ID at the polls (which the officials will ignore) cannot solve the problem.

Election Officials Example #28:

“Missouri’s other major city, St. Louis, likewise has a “miserable tradition” of vote fraud. Editorial, Miserable Tradition, St. Louis Post Dispatch, Dec. 11, 2000 [sic], at B2. For a more detailed summary of Missouri’s longstanding history of vote fraud, see, Mark F. (Thor) Hearne II, The Missouri Voter’s Protection Act – Real Election Reform for All Missouri Voters, St. Louis Lawyer (June 2006)” (p. 20)

Neither cited source describes any allegation of impersonation fraud not mentioned elsewhere in the brief (and analyzed elsewhere here).

Election Officials Example #29:

“The 2000 Presidential election in St. Louis became a matter of national attention (and local embarrassment). The Los Angeles Times noted that in St. Louis, [“][t]he dearly departed seem to have quite a constituency around here. At least three dead aldermen registered to vote in

Tuesday’s mayoral primary. So did one alderman’s deceased mother. And, a dead man was listed as the chief plaintiff in a lawsuit filed on election day last November. He was having trouble voting, the suit said, due to long lines at his polling station. So he petitioned a judge – successfully – to keep city ballot boxes open late.[”] Stephanie Simon, In St. Louis, Dead Are Causing Lively Debate with Their Votes, Los Angeles Times, February 28, 2001, at A1.” (p. 21)

The same article cited shows that the “chief plaintiff” incident involved a simple mistake: listing Robert “D.” Odom instead of Robert “M.” Odom.⁹⁷ The other incidents involved registration fraud, attributed in the cited article either to an attempt to commit absentee fraud, to a smear campaign, or to lazy registration workers.⁹⁸ There were no allegations of actual votes cast in the name of another, whether at the polls or otherwise.

Election Officials Example #30:

“For a more detailed account of the St. Louis 2000 election see Bruce Ashton, Dead Man Voting, The Riverfront Times, Apr. 4, 2002; The Florida Election Debacle: Can it Happen in Missouri?, Jour. of the Missouri Bar, Nov.-Dec. 2001, at 294-300” (p. 21 n.32)

The cited sources describe confusion, allegations that ineligible voters cast votes, and allegations of fraud connected to court orders keeping the polls open, but neither cited source describes any allegation of impersonation fraud at the polls in the 2000 election.⁹⁹

Election Officials Example #31:

“Both Democrat Secretary of State Cook and her Republican successor investigated the election; both found significant instances of vote fraud and irregularities. . . . Report by Secretary of State Rebecca McDowell Cook, Analysis and General Recommendation Report Regarding the November, 2000 General Election in the City of St. Louis 8-9 (Jan. 4, 2001); see also Report by Secretary of State Matt Blunt, Mandate for Reform: Election Turmoil in St. Louis (July 2001).” (p. 21 & n.34)

Although the cited sources do allege significant irregularities, neither cited source describes any allegation of a vote cast in someone else’s name at the polls. See State Example #4 and #7.

Election Officials Example #32:

“The Detroit News reported that, “[a]cross Michigan, 132 people were listed as having voted in November [2005]’s local elections although they had recently died.” (p. 22)

The cited article has been debunked as inaccurate. See Election Officials Example #2.

⁹⁷ Stephanie Simon, *In St. Louis, Dead Are Causing Lively Debate with Their Votes*, L.A. Times, Feb. 28, 2001, at A5.

⁹⁸ *Id.*

⁹⁹ See also Levitt, *Truth About Voter Fraud* 24-26.

Election Officials Example #33:

“The New York Daily News reported that between 400 and 1,000 voters registered in both Florida and New York City had voted twice in at least one election.” (p. 22)

The source article attempted to match voter rolls to each other, which likely yielded significant errors.¹⁰⁰ Even if accurate, however, the article mentions **no** allegations of any voting in the name of another, at the polls or otherwise. See Election Officials Example #14.

Election Officials Example #34:

“In September 2004, the Kansas City Star reported that more than 300 people may have voted twice in the same election in Missouri in 2000 and 2002, and the number “could be even higher.” Greg Reeves, One Person, One Vote? Not Always, Kansas City Star, Sept. 5, 2004, at A1. Two people plead guilty to voting in both Kansas and Missouri in the 2000 and 2002 federal elections. . . . Two others were charged with voting at two different Missouri locations. . . .” (p. 22 & n.37)

Many of the alleged multiple votes were later found to result from clerical error; even for the remaining few documented cases, there is no allegation that the votes were cast through impersonation at the polls. See State Example #7 and #8.

Election Officials Example #35:

“The Denver Post reported in March 2005 that “[h]undreds of Coloradans are being investigated for voter fraud in the November [2004] elections. Prosecutors in at least 47 counties are probing cases involving accusations of forged signatures, felons voting or people who attempted to vote twice. Susan Greene & Karen E. Crummy, Voter Fraud Probed in State Double Dippers, Denver Post, Mar. 24, 2005, at A-01” (p. 23)

A correction clarified that “47 counties had looked into the possibility of voting irregularities, and 13 counties reported finding them.”¹⁰¹ And though the article described these irregularities as allegations of fraudulent absentee ballots, double votes, and votes by individuals rendered ineligible because of convictions, it mentioned **no** allegation of any vote cast in the name of another at the polls.¹⁰²

Election Officials Example #36:

“It was reported in January 2005 that the FBI and U.S. Attorney’s office were investigating 59 cases of double voting in Duval County, Florida. David DeCamp, Double Voting Being Investigated, Fla. Times-Union, Jan. 25, 2005, at B-1.” (p. 23 & n.39)

¹⁰⁰ See Levitt, Truth About Voter Fraud 8, 12-13; Michael McDonald & Justin Levitt, Seeing Double Voting (2007), at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=997888.

¹⁰¹ Susan Greene & Karen E. Crummy, *Voter Fraud Probed in State Double Dippers*, Denver Post, Mar. 24, 2005, at A-01

¹⁰² *Id.*

In a rare follow-up article, it was later reported that the investigation found no wrongdoing: “each apparent case of double voting was attributed to a clerical error, such as someone signing the voter rolls at one polling place before being told they had to go to another location to vote. One case involved a father and son with the same name who signed in the wrong place.”¹⁰³ There was no evidence of any impersonation, much less impersonation at the polls.

Election Officials Example #37:

“In Broward County, officials referred at least 30 cases of suspected double voting to law enforcement. Amy Sherman, Double-Voters’ Names Going to Prosecutors, Miami Herald, Nov. 14, 2004, at 5B.” (p. 23 & n.40)

There is no allegation in the cited article that **any** voter attempted to cast a vote in the name of another.

Election Officials Example #38:

“A joint federal-local law enforcement task force in Milwaukee found “clear evidence of fraud in the [Nov. 2, 2004] election,” including hundreds of felons voting and “more than 100 individual instances of suspected double-voting, voting in names of persons who likely did not vote, and/or voting in names believed to be fake”; the task force also discovered the number of votes counted in Milwaukee recorded as voting by 4,500. The U.S. Attorney later downplayed notions of a “massive conspiracy” but charged 18 people with felonies, including four cases of “double voting.”” (p. 23-24 & n.40)

The cited sources do not allege that any of these votes were cast at the polls in someone else’s name. The 18 criminal charges — 14 federal and 4 state — included 12 individuals disenfranchised by felony convictions, 4 double-voting cases, and 2 counts of voter registration fraud; none of these involved impersonation fraud at the polls.¹⁰⁴ See State Example #2 and #6.

Election Officials assertion about photo ID:

“The Federal REAL ID Act of 2005, Pub. L. No. 109-13, div. B, . . . established requirements that States must meet by 2008 for the issuance of photo identification that will be necessary to enter a federal building, board a plane or open a bank account. § 202, 119 Stat. at 312” (p. 28 n.47).

This is not true. The REAL ID Act stated that Federal agencies may not accept a driver’s license or identification card issued by a State without the requirements mentioned.¹⁰⁵ But to the extent that Federal agencies accept documentation other than a driver’s license or state identification

¹⁰³ *No Fraud Found in Duval Vote*, Tallahassee Democrat, July 31, 2005, at B2.

¹⁰⁴ Steve Schultze, *No Vote Fraud Plot Found*, Milwaukee J.-Sentinel, Dec. 6, 2005, at A1.

¹⁰⁵ REAL ID Act of 2005, Pub. L. No. 109-13, div. B, § 202, 119 Stat. 231, 312.

card, the REAL ID will not be necessary to enter a federal building, board a plane, or open a bank account.

Enter a federal building: not true. Although there are many federal buildings that require photo ID (though not necessarily a driver's license or state ID card), there are also many government buildings, including the Supreme Court, for which photo ID is not required.

Board an airplane: not true. See *Gilmore v. Gonzales*, 435 F.3d 1125, 1129-30, 1133 (9th Cir. 2006) (“The identification policy requires airline passengers to present identification to airline personnel before boarding or be subjected to a search that is more exacting than the routine search that passengers who present identification encounter.”); FAA Security Directive 96-05(1)(C).

Open a bank account: not true. Federal regulations require that banks verify the identity of individuals opening a new account, but provide many different options for banks to do so.¹⁰⁶ Banks primarily operating online, like ING Direct, for example, requires a Social Security number but not a photo ID.¹⁰⁷

Election Officials assertion about other states:

“More than 24 states currently require every voter to provide identification before casting a ballot; according to the National Conference of State Legislatures, of these 24, seven [Florida, Georgia, Hawaii, Indiana, Louisiana, South Dakota and Ohio] require some form of Photo ID.” (p. 30 & n.55).

It is not true that seven states require some form of photo ID, and NCSL does not say that they do. Instead, seven states *request* some form of photo ID, and only Indiana and Georgia provide no meaningful alternative available to any voter without the requisite ID, so that such a voter may cast a ballot that can be counted.¹⁰⁸

¹⁰⁶ 31 C.F.R. § 103.121(b)(2)(ii)-(iii).

¹⁰⁷ See ING Direct, Open An Account, <https://banking.ingdirect.com/printandmail/printandmail.asp?type=OSA>.

¹⁰⁸ Michigan, not Ohio, is the seventh state to request ID. See Brennan Center Brief 35-38; Fla. Stat. §§ 101.043, 101.048; Haw. Stat. § 11-136; La. Rev. Stat. Ann. § 18:562(A)(2); Mich. Comp. Laws § 168.523; S.D. Codified Laws § 12-18-6.2; see also Ohio Rev. Code § 3503.18(A)(1).

BRIEF OF AMERICAN UNITY LEGAL DEFENSE FUND
American Unity Example #1:

“Some Albuquerque frauds appear plainly in the case file in Women Voters of Albuquerque/Bernalillo County, Inc., v. Santillanes, 506 F.Supp.2d 598 (D.N.M. 2007), . . . another challenge to voter identification requirements. In Santillanes, preliminary motions and congressional testimony reveal that Dwight Adkins had his vote impersonated; his vote was not counted because the impersonator had voted first. The same was true for Rosemary McGee, whose impersonator not only voted earlier, but mis-spelled her name. At least four other such impersonations were detected in that election.” (p. 3; see also p. 8-12, 17, 22, 27-28)

No specific documents were cited in support of the allegation; documents in the cited court case reveal only a cursory reference to Mr. Adkins, without more detail.¹⁰⁹ Further investigation of the election reveals six specific but unproven allegations of votes cast in others names at the polls. For three of the instances, accounts indicate that the voters were told that others had signed on the lines by their name in the pollbooks, but no public sources document an investigation to determine whether similarly-named voters mistakenly signed the wrong pollbook line.¹¹⁰ For the other three instances, there appears to be no public record of any of the details of the incidents; the source cited as supporting the incidents does not in fact mention the incidents.¹¹¹

American Unity Example #2:

“The Albuquerque election had some of these other types of election fraud. See, e.g., Christopher Drew and Eric Lipton, “G.O.P. Anger in Swing State Eased Attorney’s Exit,” The New York Times, March 18, 2007. . . ; Perea, supra; Lott, supra” (p. 12; see also p. 13)

The cited articles allege that fraudulent registrations were apparently submitted by a rogue worker to defraud the organization compensating her for her effort.¹¹² There is no allegation that any ballots were cast in the names of these fraudulent registrations, much less cast in person. The incident could not have been prevented by a requirement to show photo ID at the polls.

¹⁰⁹ See Memo. in Supp. of Mot. to Intervene, League of Women Voters of Albuquerque/Bernalillo County v. Santillanes, No. CIV05-1136-MCA/WDS (D.N.M. June 13, 2006).

¹¹⁰ See, e.g., Dan McKay, Jeff Jones & Leann Holt, *Tallying of Ballots Could Take Days*, Albuquerque J., Nov. 3, 2004, at A1; Dan McKay & David Miles, *Clerk Tossing 25% of Ballots*, Albuquerque J., Nov. 9, 2004, at A1.

¹¹¹ *Securing the Vote: New Mexico: Hearing Before the Comm. on H. Admin.*, 109th Cong. 103 (2006) (statement of Vickie Perea, President, Albuquerque City Council) (citing Albuquerque Journal articles in note 65).

¹¹² Christopher Drew & Eric Lipton, *G.O.P. Anger in Swing State Eased Attorney’s Exit*, The New York Times, March 18, 2007; see also Levitt, *Truth About Voter Fraud* 20-21.

American Unity Example #3:

“Diane Taylor, for example, was convicted of vote fraud for simply forging voter registrations in the name of her three teenage children. KRQE-TV 13, “Rep. Pearce Mingles with Vote Fraud Figure,” September 2007. . . ” (p. 12)

The cited article alleges that fraudulent registrations were submitted, with the intent to later cast absentee ballots. This could not have been prevented by a requirement to show photo ID at the polls.¹¹³

American Unity Example #4:

*“In counting the first 5,000 provisional ballots in Bernalillo County, observers turned up 53 instances of individuals voting more than once.” [Prof. John Lott, “John Fund on the Voting Process in New Mexico,” November 10, 2004, available at <http://johnlott.blogspot.com/2004/11/john-fund-onvoting-process-in-new.html>.] “Double voting appears to fall into two categories: voters who themselves may have voted multiple times, and those whose votes were essentially stolen.” *Id.*” (p. 13-14)*

The “stolen” votes refer to the same allegations in American Unity Example #1, *supra*. The cited blog posting contains **no** further allegations of any in-person impersonation fraud.

American Unity Example #5:

“This type of impersonation has occurred recently in other elections. On October 25, 2006, United Press International reported that “[h]undreds of bogus address changes have surfaced near St. Louis and the election board is warning voters to make sure they get a polling-place notification card. If the card does not show up, a voter’s address may have been fraudulently changed, the county elections director said.” UPI, “Bogus voter-address changes in St. Louis,” Oct. 25, 2006, “Tom Stanislawski registered to vote six years ago. But this summer, someone signed him up again and changed his party affiliation. ‘My concern would be I’d walk in November 2nd and be unable to vote,’ he said.” Hang Right Politics, “The ACORN doesn’t fall far from the tree,” Oct. 26, 2006, available at: <http://hangrightpolitics.com/2006/10/26/the-acorn-doesnt-fall-far-from-the-tree/>.” (p. 14)

Despite the assertion that “this type of impersonation has occurred,” the sources contain allegations of faulty registrations, but **no** allegation of any attempt to impersonate another voter at the polls.¹¹⁴

¹¹³ KRQE-TV 13, *Rep. Pearce Mingles with Vote Fraud Figure*, September 2007, at <http://www.krqe.com/Global/story.asp?S=7113367>; Ashley Meeks, *Police Search Taylor House*, Roswell Daily Record, Feb. 28, 2007.

¹¹⁴ See also Levitt, *Truth About Voter Fraud* 20-21.

American Unity Example #6:

“In June 2006, Francine Busby lost the special election to replace convicted Cong. Randy “Duke” Cunningham (R-CA) in part because she was seen to have encouraged voting by illegal immigrants. “At the end of the event, a man asked Busby a question in Spanish, which was translated for her: ‘I want to help, but I don’t have papers.’ Busby responded: ‘Everybody can help, yeah, absolutely, you can all help. You don’t need papers for voting, you don’t need to be a registered voter to help.’” John Gizzi, “GOP Moderate Scrapes by After Democrat Panders to Illegals,” Human Events, June 12, 2006” (p. 17-18)

On its face, this incident presents **no** allegation of any fraud that might be prevented by a law requiring photo ID at the polls.

American Unity Example #7:

“On the weekend before the November 2000 elections, the California Democratic Party mailed hundreds of thousands of fake “Voter Identification Cards” to lists which included non-citizens. Julie Foster, “Non-citizens vote with ‘Clinton card’?” WorldNet Daily, November 7, 2000 The cards were accompanied by a letter signed by then-President Bill Clinton, who exhorted recipients to vote. Id. The Clinton letter included a postscript, just below President Clinton’s signature, which read: “Here is your personal Voter Identification Card. Sign your name, then detach your card. Bring your card with you to your polling place on Election Day. It will help your voting go more smoothly.” Id.” (p. 17-18)

The recounted incident, describing a get-out-the-vote mailing, presents **no** allegation of any fraud, much less any fraud that might be prevented by a law requiring photo ID at the polls.¹¹⁵

American Unity Example #8:

“A more contentious example was in the 1996 election in California’s 46th Congressional District. Comm. on House Oversight, “Dismissing the Election Contest Against Loretta Sanchez,” H. Rpt. 105-416. In that election, Loretta Sanchez defeated incumbent Robert Dornan by only 979 votes. Id., at 15. A congressional investigation found “significant vote fraud and vote irregularities.” Id., at 16. The Committee determined that the number of noncitizen and other illegal votes uncovered by the investigation was not as large as Sanchez’s margin of victory, so the election challenge was dismissed. Id. [¶] An advocacy group was alleged to have encouraged illegal voter registration, and, in this case, voting. Id., at 3. The Orange County, California, District Attorney found that 61% of the voter registrations by the advocacy group, Hermandad Mexicano Nacional, were illegal. Id., at 337. In addition, the California Secretary of State determined that 303 non-citizens registered by the group had voted in the disputed election. Id., at 19, 337. The organization admitted having registered illegal immigrants. PBS Online Newshour, “Contested Contest,” Online Focus, October 22, 1997 . . . (“And Lopez of Hermandad Mexicana admits his group registered noncitizens.”). . . .” (p. 19-20, see also p. 31-32)

¹¹⁵ *Speaking of Dubious Results, Florida May Be Tip of Iceberg*, Investor’s Business Daily, Nov. 13, 2000, at A26.

The incident involves **no** allegation of in-person impersonation fraud. *See* AG Example #2, *supra*.

The advocacy group in question assisted individuals proceeding through the naturalization process in registering to vote; many were registered immediately after passing an INS citizenship interview, and after receiving a misleading official letter indicating that they had become naturalized, but before they actually became citizens.¹¹⁶ None of the alleged misconduct could have been prevented by a law requiring photo ID at the polls.

American Unity Example #9:

“Some allegations of election fraud in Albuquerque, for example, were linked to an advocacy group, the Association of Community Organizations for Reform Now (“ACORN”). . . . “Similar allegations have been made in Pennsylvania, Ohio and Colorado, though no charges been filed.” Fox News.com, “ACORN Accused of Bogus Forms in Mo.,” [Oct. 25, 2006]. . . . The reports of ACORN-related election fraud are numerous, and continuing. “Three of seven defendants in the biggest voter-registration fraud scheme in Washington history have pleaded guilty and one has been sentenced, prosecutors said Monday. . . . The defendants were all temporary employees of ACORN.” Keith Ervin, “Three Plead Guilty in Fake Voter Scheme,” Seattle Times, October 30, 2007. . . . “Federal indictments allege the four turned in false voter registration applications. Prosecutors said the indictments are part of a national investigation,” KMBC-TV, “ACORN Workers Indicted on Alleged Voter Fraud,” Kansas City, Missouri, Nov. 1, 2006. . . .” (p. 20-21)

The sources allege that fraudulent registration forms were submitted by voter registration drive workers, but present no allegations of any in-person impersonation fraud. *See, e.g.*, Election Officials Example #1; American Unity Example #2.

American Unity Example #10:

“Unfortunately, individual identification fraud is also rampant and growing. “The prevalence of identity theft is growing.” General Accounting Office, “Identity Fraud: Prevalence and Links to Alien Illegal Activities.” GAO-02-830T, June 25, 2002, at 1.” (p. 22-23, see also p. 33-34)

To the extent that identity theft is accomplished by stealing someone else’s identification document, a law requiring photo ID at the polls would not prevent the theft. The study cited mentions no allegations of the use of identity theft to vote, much less any such allegations involving voting at the polls.

¹¹⁶ *See* Levitt, Truth About Voter Fraud 19-20.

American Unity Example #11:

“Cases and reports over many years indicate that non-citizens have voted illegally across the country. In 1954, for example, the Senate Committee on Rules and Administration noted that illegal immigrants had voted in the 1952 New Mexico Senate election. Committee on Rules and Administration, Report of the Subcommittee on Privileges and Elections, 83rd Congress, 2nd Session, “General Findings and Conclusions,” at 1, U.S.G.P.O. Wash. 1954.” (p. 30)

On its face, this incident does not involve **any** allegation that any votes were cast at the polls in the name of another. A requirement to show photo ID at the polls would not have prevented the alleged activity.

American Unity Example #12:

“Petitioners themselves disclose a report noting 19 convictions between 2002 and 2005 “because the voters were not eligible to vote, either because they were convicted felons or non-citizens.” Reply Brief for Petitioners Crawford, et al., at 2, citing Minnite, supra.” (p. 30)

There are no allegations that **any** of these incidents involved in-person impersonation fraud. See State Example #1.

American Unity Example #13:

“In Gonzalez v. Arizona, 485 F.3d 1041 (9th Cir., 2007), the Ninth Circuit noted that the record in that case “indicates that, between 1996 and the present, as many as 232 non-citizens tried to register to vote and that the State prosecuted ten of those 232 alleged noncitizens.” 485 F.3d at 1048.” (p. 30-31)

The case files show 232 allegations — some substantiated and some unsubstantiated — that non-citizens had attempted to register but **no** allegation that any of these individuals registered or voted in the name of another. Indeed, the case record showed “*no evidence whatsoever* that any person has ever impersonated another voter at a polling place in Arizona.”¹¹⁷ None of the incidents here would have been prevented by a law requiring photo ID at the polls.

American Unity Example #14:

“In United States v. Knight, 490 F.3d 1268, 1270 (11th Cir, 2007), the Eleventh Circuit upheld the conviction of a Jamaican citizen who voted in the 2000 Presidential election.” (p. 31)

Ricardo Knight registered and voted in his own name. This could **not** have been prevented by a law requiring photo ID at the polls.

¹¹⁷ ITCA Pls. Reply in Supp. of Mot. for Prelim. Inj. at 2, Gonzalez v. Arizona, No. CV06-01268-PHX-ROS (D.Ariz. Aug. 23, 2006).

American Unity Example #15:

“In Simmons v. Jones, 838 S.W.2d 298, 299 (Tex. App. 1992), the Court of Appeals of Texas, El Paso, reported that “Simmons lost one vote because one person voted for him who was not a citizen of the United States.” (p. 31)

The case contains **no** allegation of in-person impersonation fraud. A law requiring photo ID at the polls would not have prevented any of the incidents described in the case.

American Unity Example #16:

“In 2005, the Government Accountability Office reported that, from January 2001 to May 2004, “In California, the only state with an investigative unit dedicated to voter fraud issues. . . the California investigative unit opened for investigation 29 allegations of non-citizens either registering or voting.” Govt. Accountability Off., “Elections: Additional Data Could Help State and Local Elections Officials Maintain Accurate Voter Registration Lists,” GAO-05-478, June 10, 2005, at 59, App. III.” (p. 31)

The cited report does not indicate the outcome of any of these investigations. Moreover, the report contains no allegation of **any** attempt to vote in someone else’s name, much less an attempt to impersonate another at the polls.

American Unity Example #17:

“During the same period, GAO reported that “[a]t the federal level, DOJ attorneys initiated at least 61 election fraud investigations or matters; of those cases, 15 involved voter registration or ineligible voters.” Id.” (p. 31)

There is **no** allegation that any of these instances involved an attempt to impersonate another voter at the polls. See State Example #1.

BRIEF OF EVERGREEN FREEDOM FOUNDATION**Evergreen Example #1:**

“Washington state’s gubernatorial election of 2004 illustrates the ill effects of fraudulent ballots in a close race. . . . The trial court found that “1,678 illegal votes were cast,” over thirteen times the margin of victory in the race. [Borders v. King County, No. 05-2-00027-3, at 8 (Wash. Super. Ct. 2005)]. . . . Petitioner claims there were only 19 instances of voter impersonation fraud in Washington’s 2004 governor’s race, and that none would have been prevented by a photo identification requirement. This is a gross understatement. The court in the election contest found there were at least 24 instances of voter impersonation, and in another 252 instances provisional or regular ballots were illegally cast for a voter with missing or unverified registration information. . . . A photo identification requirement would also have made a difference in other instances of in-person voter fraud in the 2004 race that were discovered after the election contest ended. See Memorandum from Jefferson County Auditor to Jefferson County Prosecutor Juelanne Dalzell, March 7, 2006, available at <http://soundpolitics.com/JeffersonDoubleVoters20060322.pdf>.” (p. 6 & n.3; see also p. 17, 18, 22)

In the court document cited, the court states that “19 ballots were cast in the name of deceased persons” — a newspaper article cited by respondents present one allegation that one of those ballots was cast at the polls, and the remainder were either cited as cast absentee or have not been cited one way or the other. See State Example #2 and #5. It is not clear which other 5 cases amicus claims as “instances of voter impersonation.” Though the court cited evidence of other votes cast by people rendered ineligible due to felony convictions, votes cast by people rendered ineligible due to mental incompetence, double votes, and ballots cast but not credited to individual voters, there were **no** other allegations of any individual casting a vote in someone else’s name. Moreover, the 252 instances of ballots cast for a voter with missing or unverified registration information show that proper procedures were not followed for the casting of those ballots, not impersonation; the appropriate remedy is to follow proper procedures for casting ballots at the polls.

As for the instances “discovered after the election contest ended,” the cited document reveals that two voters seem to have voted twice, with matching signatures, in their own names; one voted absentee and in person, and the other seems to have returned two absentee ballots.¹¹⁸ Requiring a voter to show photo identification at the polls would not have solved this problem.

Evergreen Example #2:

“A hotly contested mayoral race in Indiana was reversed by the Indiana Supreme Court in 2004 because the incumbent had engineered the casting of hundreds of illegal ballots in his favor. Pabey v. Pastrick, 816 N.E.2d 1138 (Ind. 2004).” (p. 8; see also p. 22-23)

¹¹⁸ See Memorandum from Jefferson County Auditor to Jefferson County Prosecutor Juelanne Dalzell, March 7, 2006, available at <http://soundpolitics.com/JeffersonDoubleVoters20060322.pdf>.

The incident involved absentee ballot fraud and ballots cast in the wrong precinct, with no allegations at all of any vote cast in someone else's name at the polls. See State Example #10.

Evergreen Example #3:

“A Tennessee state senator elected in 2005 by 15 votes was ousted after election officials found a number of illegal ballots had been cast in one Memphis precinct. Travis Loller, Senate votes Ford out, The Tennessean, April 20, 2006.” (p. 8-9 & n.5)

The cited article recounted 12 invalid votes either cast by deceased voters, residents of other districts, or individuals rendered ineligible by conviction. There is **no** indication that any of the alleged votes in the name of a deceased individual were cast at the polls, and no other allegation that any of the invalid votes were due to impersonation fraud.

Evergreen Example #4:

“And after a year-long legal battle, a 2004 mayoral race in Greensboro, Alabama was overturned after it was discovered hundreds of illegal ballots had been cast for the apparent victor. Washington v. Hill, 960 So.2d 643 (Ala. 2006).” (p. 9)

As the case states, “In all, the special master found that at least 148 illegal absentee votes had been cast for [the apparent victor] and 8 illegal absentee ballots had been cast for [the apparent loser].”¹¹⁹ But all of these votes were absentee, and could not possibly have been prevented by a law requiring photo identification at the polls.

Evergreen Example #5:

“These limitations were highlighted in Washington state’s 2004 election when many illegal ballots were cast that should have been stopped by the signature verification process. In dozens of instances, ballots with signatures that clearly didn’t match registration records were counted.” (p. 16)

There is no citation to the claim above, and no document cited with respect to Washington’s 2004 election indicates that dozens of “ballots with signatures that clearly didn’t match registration records were counted,” much less that these ballots were ballots cast in person rather than absentee.

Evergreen Example #6:

“In 2006, a grandmother living near Seattle named Jane Balogh grew concerned about the insecurity of Washington’s election system. As a public demonstration of the problem, she registered her dog to vote. Under the HAVA requirements she had to send voter identification

¹¹⁹ *Washington v. Hill*, 960 So.2d 643, 646 (Ala. 2006).

with the mailed-in registration form. Id. She did so with a utility bill that she forged to show her dog's name. This was Balogh's first offense, and she had no specialized training or experience in forging documents. But her dog's registration was accepted, and he was given the opportunity to vote in three elections before Balogh made her action public." (p. 20-21)

Balogh, determined to commit an election offense, forged several documents to put her dog on the rolls, but still did not attempt to cast a ballot in person. See Election Officials Example #11.

Evergreen Example #7:

"Additionally, the District Court below recognized numerous examples of in-person voter fraud in several states. Indiana Democratic Party, 458 F.Supp.2d at 793-94." (p. 27)

The materials cited by the court do *not* include more than one single allegation of in-person *impersonation* fraud, as the Brennan Center Brief demonstrates at length. See Brennan Center Brief 11-25; State Example #2; US Example #5.

Evergreen Example #8:

"The Carter-Baker Commission on election reform acknowledged the reality of voter fraud, stating: "there is no doubt that it occurs." Carter-Baker Report at 18 (emphasis added)." (p. 27)

The Carter-Baker Commission did no direct investigation of voter fraud, and cited irrelevant or debunked reports in support of its assertion that "there is no doubt" that in-person fraud occurs. See State Example #12.

Evergreen Example #9:

"Investigators in Milwaukee, Wisconsin, found evidence of fraud, including more than 200 felons voting illegally and more than 100 people who voted twice, used fake names or addresses, or voted in the name of a dead person. This investigation revealed there were 4,500 more votes cast than voters listed. . . . [¶] . . . In the Milwaukee, Wisconsin investigation, four individuals were charged with multiple voting, and six people were charged with providing false information regarding their felon status, in the 2004 general elections." (p. 27, 28)

In addition to the fact that several of these initial allegations were debunked as false, no cited sources allege that **any** of these votes were cast at the polls in someone else's name. See State Example #2 and #6.

Evergreen Example #10:

"The Commission cited an estimate that over 181,000 dead people were listed on voter rolls in six swing states in the November 2004 elections." (p. 27)

The source cited for this allegation is the same source in Election Officials Example #13, and as described there, does not cite **any** allegation of voting in the name of another, at the polls or otherwise.

Evergreen Example #11:

“Since October 2002 the U.S. Department of Justice has launched more than 180 investigations into election fraud, resulting in charges for multiple voting and providing false information on felon status.” (p. 27-28)

None of the charged instances of election fraud involves an allegation that a voter attempted to impersonate someone else at the polls. See State Example #1.

Evergreen Example #12:

“Three Kansas residents were convicted of voting in both Kansas and Missouri in the 2002 and 2000 elections.” (p. 28)

These voters voted twice in the same name, which would not have been prevented by an in-person photo ID requirement. See State Example #8.

Evergreen Example #13:

“In Florida, 14 non-citizens, including a candidate for the state legislature, pleaded guilty or were convicted at trial of voting-related offenses. U.S. Department of Justice press release, Department of Justice To Hold Ballot Access and Voting Integrity Symposium, August 2, 2005.” (p. 28 & n.31)

No case presented any allegation of voting at the polls in the name of another, and none of these cases would have been prevented by a law requiring photo ID at the polls. See Election Officials Example #7.

Evergreen Example #14:

“The problem of voter fraud is also judicially recognized. See Evans v. City of Chicago, 10 F.3d 474, 480 (7th Cir. 1993) (“Electoral fraud has been a persistent blemish on the political system of Chicago.”).” (p. 28)

The cited case concerned governmental authority to enter consent decrees concerning judgment interest, and had no substantive discussion whatsoever of alleged election fraud. The underlying case cited for the proposition that electoral fraud was a “persistent blemish” concerned a consent

decree establishing a more rigorous canvass to maintain the accuracy of the registration rolls.¹²⁰ That case itself contained no allegations of any votes actually cast in the name of another.¹²¹

Evergreen Example #15:

“The problem of voter fraud is also judicially recognized. See . . . Ortiz v. City of Philadelphia Office of City Comm’rs Voter Registration Div., 28 F.3d 306, 318 (3rd Cir. 1994) (Scirica, J., concurring) (“Voter fraud, including the practice of voting dead or non-resident citizens, is no stranger to Pennsylvania. . . .”).” (p. 28)

The cited case affirmed the legality of a planned purge program under the Voting Rights Act. Though the case reviewed a notorious recent case of absentee fraud, and reviewed other allegations of invalid votes cast, it presented no allegation of any vote cast in the name of another at the polls.¹²²

Evergreen Example #16:

“The problem of voter fraud is also judicially recognized. See . . . Nader v. Keith, 385 F.3d 729, 733 (7th Cir. 2004) (“ . . . especially in a state as notorious for election fraud as Illinois. . . .”).” (p. 28)

The cited case concerned ballot access restrictions aimed at petitioning onto the ballot, and the selected quote addressed the potential for fraudulent petition signatures. The case presented no allegation of any vote cast in the name of another at the polls.

Evergreen Example #17:

“The problem of voter fraud is also judicially recognized. See . . . Griffin v. Roupas, 385 F.3d 1128, 1130-31 (7th Cir. 2004) (“Voting fraud is a serious problem in U.S. elections. . . .”).” (p. 28)

The cited case concerned a right to an absentee ballot, and the selected quote, in full, is “Voting fraud is a serious problem in U.S. elections generally and one with a particularly gamey history in Illinois (as we noted in *Nader v. Keith*, supra), and it is facilitated by absentee voting.”¹²³ The case presented no allegation of any vote cast in the name of another at the polls.

¹²⁰ *Kasper v. Bd. of Election Commissioners*, 814 F.2d 332 (7th Cir.1987).

¹²¹ *Id.* at 343.

¹²² *Ortiz v. City of Philadelphia Office of City Comm’rs Voter Registration Div.*, 28 F.3d 306, 316-17 (3rd Cir. 1994).

¹²³ *Griffin v. Roupas*, 385 F.3d 1128, 1130-31 (7th Cir. 2004).

Evergreen Example #18:

“Even a cursory review of recent headlines demonstrates the existence of voter fraud. An investigative reporter in Pittsburgh discovered 9,000 deceased voters still registered, with 16 of them voting in recent elections. Rick Earle, Ghost Voters Cast Ballots In Pittsburgh Elections, WPXI, November 1, 2007.” (p. 29)

The investigative report itself acknowledged that it uncovered 16 clerical errors, not impersonation fraud: “relatives with similar names are voting for their deceased loved ones,” with votes mistakenly tallied under the deceased’s name instead of the living voter.¹²⁴ The report itself characterized the cast votes as “mistakes” which were corrected as soon as they were brought to the attention of the election board.¹²⁵

Evergreen Example #19:

“A husband and wife in California pleaded no contest to a misdemeanor charge of fraudulently voting in an election they were not legally registered. Walter Yost, Couple sentenced for voter fraud in bond election, Sacramento Bee, Nov. 5, 2007.” (p. 29)

The story concerns a couple who registered at an invalid address. There is **no** allegation that any votes were cast in the name of another.¹²⁶

Evergreen Example #20:

“Two county elections workers in Ohio were convicted for rigging a ballot recount during the hotly contested 2004 presidential election. Jim Nichols, Ohio: Election Workers Convicted, New York Times, January 25, 2007.” (p. 29)

The incident involved election workers pre-selecting precincts for an audit, rather than randomly conducting the audit as they were obligated to do. There is **no** allegation in this case that any votes were cast in the name of another at the polls.¹²⁷

Evergreen Example #21:

“In an attempt to prove the “system is flawed,” a Washington woman registered her dog to vote. Neil Modie, Canine removed from voter rolls, Seattle Post-Intelligencer, July 11, 2007.” (p. 29)

See Evergreen Example #6.

¹²⁴ Rick Earle, *Ghost Voters Cast Ballots In Pittsburgh Elections*, WPXI.com, Nov. 1, 2007, at <http://www.wpxi.com/news/14480164/detail.html>.

¹²⁵ *Id.*

¹²⁶ Walter Yost, *Fraud Counts Filed in Measure M Vote*, Sacramento Bee (Cal.), July 24, 2007.

¹²⁷ See, e.g., Jim Nichols, *Election Workers Plead No Contest*, Cleveland Plain Dealer, Nov. 6, 2007, at B1.

Evergreen Example #22:

“A circuit judge in Mississippi found voter irregularities including a vote cast for a dead man and a vote by a man who was in the hospital on election day. Editorial, Voter fraud in Jeff Davis demands reform, Hattiesburg American, October 27, 2007.” (p. 29)

Other sources indicate that most of these irregularities were attributed to absentee ballots, though the two specified ballots were cast at the polls. The same sources also present the allegation that the vote cast for the dead man may have been caused by a clerical error involving the man’s son, who shares the same first and last name; there is no indication that the pollbooks were in fact examined to rule out clerical error.¹²⁸

Evergreen Example #23:

“A campaign worker in St. Louis submitted bogus signatures – including those belonging to dead voters – in an unsuccessful attempt to force a recall vote. Jake Wagman, Campaign worker plead guilty to fraud, St. Louis Dispatch, November 8, 2007.” (p. 29)

This incident concerned bogus signatures submitted for a recall petition. There is no allegation that any vote was cast in anyone else’s name, at the polls or otherwise.¹²⁹

Evergreen Example #24:

“An investigation by Mississippi officials revealed that votes were cast for at least three dead people in a recent election. Residents of a single nursing home were registered in six different precincts. At least three convicted felons and one incarcerated individual were allowed to cast votes. Two votes were also cast by persons not registered as U.S. citizens. Peter Thomas, Judge calls for special election, The Tunica Times, November 5, 2007.” (p. 29-30)

Most, if not all, of the allegations in this election were attributed to absentee ballots. There is no allegation that any vote was cast in anyone else’s name at the polls.¹³⁰

¹²⁸ Susan Lakes, *Judge Orders New Election*, Hattiesburg American (Miss.), Oct. 24, 2007; Susan Lakes, *Candidate to Stay on Ballot*, Hattiesburg American (Miss.), Oct. 25, 2007.

¹²⁹ Jake Wagman, *Campaign Workers Charged With Fraud*, St. Louis Post-Dispatch, May 11, 2007, at C1.

¹³⁰ Peter Thomas, *Primary Election Tinged With Twists, Turns*, Tunica Times (Miss.), Aug. 16, 2007; Peter Thomas, *Judge Calls for Special Election*, Tunica Times (Miss.), Nov. 15, 2007.

BRIEF OF LAWYERS DEMOCRACY FUND

Lawyers Democracy Fund Example #1:

“The bipartisan Baker-Carter Commission concluded that there is “no doubt” that voter fraud and multiple voting take place and “could affect the outcome of a close election.”” (p. 3; see also p. 24)

The Carter-Baker Commission did no direct investigation of voter fraud, and cited largely irrelevant or debunked reports in support of its assertion that “there is no doubt” that in-person fraud occurs. See State Example #12. Multiple voting in the voter’s own name cannot be prevented by requiring a photo ID at the polls.

Lawyers Democracy Fund Example #2:

“The 1600 fraudulent ballots cast in the 2004 Washington gubernatorial elections substantially exceeded the 129 vote plurality of the winner, but the result stood because no one knew who the beneficiary of the fraud was.” (p. 3; see also p. 24-25)

It has been alleged – but not proven – that one single vote in this race was cast in person in the name of another. See State Example #2 and #5.

Lawyers Democracy Fund Example #3:

“In Milwaukee in the 2004 general election, more than 200 ineligible felons voted; more than 100 persons voted twice, used fake names or false addresses, or voted in the name of dead people. More than 4,500 votes were cast than voters listed. State S.J. Ex. 4 at 2-4.” (p. 25)

The cited source does not allege that **any** of these votes were cast at the polls in someone else’s name. See State Example #2 and #6.

Lawyers Democracy Fund Example #4:

“In St. Louis, in the 2000 general election, there were more than 1,000 fraudulent ballots cast, including 14 dead people, 68 multiple votes, and 79 vacant-lot votes. Fund, Stealing Elections: How Voter Fraud Threatens Our Democracy (2004) at 64.” (p. 25)

In addition to the fact that many of these allegations have been debunked, there is no allegation that any of these ballots were cast in the name of another at the polls. See State Example #4 and #7.

Lawyers Democracy Fund Example #5:

“In the 1997 Miami mayoral election, dozens and perhaps hundreds of persons not residing in the city cast fraudulent ballots. State S.J. Ex. 10 at 1-2.” (p. 25)

This election involved absentee ballot fraud. There is **no** allegation in the source cited of any vote cast in someone else’s name at the polls. See AG Example #3.

Lawyers Democracy Fund Example #6:

“The Department of Justice has conducted more than 180 investigations into voter fraud since 2002, making 89 charges and securing 52 convictions. State S.J. Ex. 2 at 23.” (p. 25)

None of the charged instances of election fraud involves an allegation that a voter attempted to impersonate someone else at the polls. See State Example #1.

Lawyers Democracy Fund Example #7:

“Dead people voted in Georgia, Illinois, and Pennsylvania. State S.J. Ex. 12-14; 18.” (p. 26)

The first example, from Georgia, has been repeatedly debunked. There is no allegation in the remaining sources of any vote cast in someone else’s name at the polls. See State Example #2.

Lawyers Democracy Fund Example #8:

“The Seventh Circuit has held that voter fraud “is a serious problem in U.S. elections generally” and Illinois has a “particularly gamey history” of voter fraud. [Griffin v.] Roupas, 385 F.3d at 1130-31.” (p. 26)

The cited case concerned a right to an absentee ballot, and the selected quote, in full, is “Voting fraud is a serious problem in U.S. elections generally and one with a particularly gamey history in Illinois (as we noted in *Nader v. Keith*, *supra*), and it is facilitated by absentee voting.”¹³¹ The case presented no allegation of any vote cast in the name of another at the polls. See Evergreen Example #17.

Lawyers Democracy Fund assertion about ubiquitous photo ID:

“Citing the 2005 Carter-Baker Commission Report, the panel observed that today, no person in the United States can board an airline, enter a government building, or purchase liquor or cigarettes, without providing photo identification.” (p. 1)

“Photo ID is essential for the exercise of numerous rights. To exercise the constitutional right of access to the federal courts, one must present valid photo ID even to enter the building. To exercise one’s constitutional right to travel to the seat of government to petition Congress, photo

¹³¹ *Griffin v. Roupas*, 385 F.3d 1128, 1130-31 (7th Cir. 2004).

ID is a prerequisite to boarding the aircraft. Most banks will not disburse cash without a photo ID; many commercial office buildings deny access to visitors without photo ID.” (p. 18-19)

“Photo IDs are currently needed to board a plane, enter federal buildings, and cash a check.” (p. 30)

Board an airline: not true. See *Gilmore v. Gonzales*, 435 F.3d 1125, 1129-30, 1133 (9th Cir. 2006) (“The identification policy requires airline passengers to present identification to airline personnel before boarding or be subjected to a search that is more exacting than the routine search that passengers who present identification encounter.”); FAA Security Directive 96-05(1)(C).

Enter a government building: not true. Although there are many federal buildings (including federal courts) that require photo ID (though not necessarily photo ID with an expiration date), there are also many government buildings, including the Supreme Court, for which photo ID is not required.

Purchase alcohol: not true. In fact, at least as of July 2007, only one state (Tennessee) requires every customer, no matter how old, to show ID to purchase alcohol.¹³²

Purchase cigarettes: not true. Federal regulations used to require identification of all purchasers under age 27¹³³, but that regulation was struck down.¹³⁴ There is no state of which we are aware that requires photo ID of every individual before purchasing a cigarette; indeed, cigarette vending machines (with no means to check ID) are still available in several states.¹³⁵

Disburse cash: not true. Most banks will disburse cash to a user with an ATM card, which need not have a photo.

Commercial buildings: technically true. Many commercial office buildings may deny access to visitors without a photo ID, though policies vary widely. However, many more commercial buildings, of all shapes and sizes, will not deny access to visitors without a photo ID.

Cash checks: not true. Check-cashing services will allow individuals to cash checks without photo ID, but may charge more for the service.¹³⁶ Moreover, some automated ATMs allow customers to cash checks without photo ID.¹³⁷

¹³² Marissa DeCuir, States Get Creative in Fight Against Underage Drinking, USA Today, July 19, 2007, at 1A; see also, e.g., Texas Alcoholic Beverage Commission, Age Verification, <http://www.tabc.state.tx.us/leginfo/ageVerify.htm>.

¹³³ See 61 Fed Reg. 44616, establishing 21 C.F.R. 897.14(b).

¹³⁴ See *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000).

¹³⁵ See, e.g., Campaign for Tobacco-Free Kids, Where Do Youth Smokers Get Their Cigarettes? (2007), <http://www.tobaccofreekids.org/research/factsheets/pdf/0073.pdf>.

¹³⁶ See Tonya Jameson, *Check-Cash Service Fees on Rise*, San Jose Mercury-News, Aug. 22, 1997, at 1C; Jonathan Nelson, *Banks Set Sights on the “Unbanked”*, The Columbian, Sept. 12, 2007, at E1.

¹³⁷ Eric Torbenson, *Kiosk Cashes Checks, and Also Takes its Cut*, St. Petersburg Times, July 7, 1997, at 9.

BRIEF OF REPUBLICAN NATIONAL COMMITTEE

RNC Example #1:

“[T]he bi-partisan Baker-Carter Commission declared that “there is no doubt that [fraud] occurs.” Baker-Carter Commission Report, at 18 (emphasis added).” (p. 12)

The Carter-Baker Commission did no direct investigation of voter fraud, and cited largely irrelevant or debunked reports in support of its assertion that “there is no doubt” that in-person fraud occurs. *See* State Example #12.

RNC Examples #2-70:

“[M]edia outlets around the country routinely cover stories of vote fraud allegations, investigations, and prosecutions. See, e.g., Republican Nat’l Comm., You Can’t Make This Up!, available at <http://www.gop.com/flexpage.aspx?area=YCMTU> (collecting media reports of vote fraud investigations and indictments). . . .” (p. 12)

The cited webpage contains 69 stories reporting vote fraud; two include allegations of attempted votes cast in the name of another at the polls, one of which was perpetrated by a pollworker and would likely not have been stopped by a requirement to show photo ID. Many of the other 67 irrelevant allegations are addressed elsewhere in this summary:

- 2: Alabama 11/15/07: actually refers to a Mississippi allegation. *See* Evergreen Example #24.
- 3: Alabama 11/2/07: the allegations involve absentee ballots.
- 4: Alabama 8/22/07: the allegations involve absentee ballots.
- 5: Alabama 7/13/07: the allegations involve absentee ballots.
- 6: California 11/5/07: the allegations involve false declaration of residency, not impersonation.
- 7: California 9/22/07: *See* RNC Example #6.
- 8: California 9/6/07: *See* Evergreen Example #19.
- 9: California 8/21/07: the allegations involve false declaration of residency, not impersonation.
- 10: Colorado 12/4/07: the allegations involve inflated rolls, double votes, and votes by persons ineligible because of convictions — but no allegation of impersonation.
- 11: Georgia 12/14/07: the allegations involve local officials allowing voters to vote outside of the proper precinct, and improper assistance to elderly voters — but no allegation of impersonation.
- 12: Illinois 12/18/07: the allegations involve vote-buying, not impersonation.
- 13: Illinois 9/7/07: the allegations involve absentee ballots.
- 14: Indiana 12/13/07: the allegations involve absentee ballots or voting outside of the proper precinct, not impersonation at the polls. *See* State Example #10.
- 15: Indiana 11/8/07: *See* RNC Example #14.
- 16: Indiana 9/25/07: *See* RNC Example #14.
- 17: Indiana 9/21/07: *See* RNC Example #14.

- 18: Indiana 8/24/07: See RNC Example #14.
- 19: Indiana 8/20/07: See RNC Example #14.
- 20: Indiana 6/16/07: the allegations involve absentee ballots.
- 21: Indiana 12/6/06: See RNC Example #14.
- 22: Kentucky 10/15/07: the allegations involve vote-buying, not impersonation.
- 23: Kentucky 10/3/07: See RNC Example #22.
- 24: Kentucky 9/25/07: See RNC Example #22.
- 25: Kentucky 8/7/07: See RNC Example #22.
- 26: Kentucky 7/12/07: the allegations involve vote-buying, not impersonation.
- 27: Kentucky 3/15/07: See RNC Example #22.
- 28: Kentucky 4/24/07: the allegations involve vote-buying, not impersonation.
- 29: Louisiana 12/15/07: the allegations involve absentee ballots.
- 30: Massachusetts 4/24/07: the allegations involve voting outside of the proper precinct, not impersonation at the polls.
- 31: Michigan 5/11/07: the allegations involve absentee ballots.
- 32: Mississippi 11/6/07: the allegations involve absentee ballots.
- 33: Mississippi 9/13/07: the allegations involve vote-buying, not impersonation.
- 34: Mississippi 8/31/07: See RNC Example #33.
- 35: Mississippi 8/25/07: See RNC Example #33.
- 36: Mississippi 8/15/07: See RNC Example #32.
- 37: Mississippi 8/14/07: See RNC Example #32.
- 38: Mississippi 8/6/07: See RNC Example #33.
- 39: Mississippi 8/5/07: See RNC Example #33.
- 40: Missouri 11/8/07: See Evergreen Example #23.
- 41: Missouri 9/5/07: the allegations involve voter registration fraud; there are no allegations that any vote was cast in the name of any of these registrations.
- 42: Missouri 5/18/07: See RNC Example #41.
- 43: Missouri 5/11/07: See Evergreen Example #23.
- 44: New Jersey 11/7/07: the allegations involve absentee ballots.
- 45: New Jersey 7/8/07: this story involves an allegation of a single attempt to impersonate another voter at the polls. The attempt failed.
- 46: New Mexico 2/27/07: the allegations involve vote-buying, not impersonation.
- 47: New York 8/16/07: the allegations involve signature fraud on a petition, not any cast vote.
- 48: Ohio 5/9/07: the allegations involve double voting in the voter's own name, not impersonation.
- 49: Pennsylvania 6/7/07: the allegations involve voter registration fraud; there are no allegations that any vote was cast in the name of any of these registrations.
- 50: Rhode Island 5/14/07: the allegations involve signature fraud on a petition, not any cast vote.
- 51: South Carolina 6/14/07: the allegations involve absentee ballots and voting outside of the proper precinct, not impersonation at the polls.
- 52: Tennessee 12/20/07: this story involves an allegation of a single attempt to impersonate another voter at the polls by a pollworker; when election officials themselves are willing to disobey the law, that cannot be stopped by a law requiring photo ID.
- 53: Texas 10/10/07: the allegations involve absentee ballots.

- 54: Texas 9/13/07: the allegations involve voting by noncitizens, not impersonation.
- 55: Texas 6/10/07: See RNC Example #54.
- 56: Texas 6/1/07: the allegations involve absentee ballots.
- 57: Virginia 12/13/06: the allegations involve absentee ballots.
- 58: Washington 10/30/07: the allegations involve registration fraud; there are no allegations that any vote was cast in the name of any of these registrations.
- 59: Washington 10/26/07: See RNC Example #58.
- 60: Washington 9/6/07: the allegations involve absentee ballots.
- 61: Washington 7/26/07: See RNC Example #58.
- 62: Washington 7/26/07: See RNC Example #58.
- 63: Washington 7/11/07: See RNC Example #60.
- 64: Washington 6/24/07: See RNC Example #60.
- 65: Washington 6/23/07: See RNC Example #58.
- 66: Wisconsin 10/9/07: the allegations involve vote-buying, not impersonation.
- 67: Wisconsin 10/8/07: the allegations involve votes cast by persons ineligible because of conviction, not impersonation.
- 68: Wisconsin 9/12/07: the allegations involve votes cast by persons ineligible because of conviction, not impersonation.
- 69: Wisconsin 8/23/07: the allegations involve double voting in the voter's own name, not impersonation.
- 70: Wisconsin 6/15/07: See Election Officials Example #3.

RNC Examples #71-111:

"[M]edia outlets around the country routinely cover stories of vote fraud allegations, investigations, and prosecutions. See, e.g., . . . Am. Ctr. for Voting Rights, Vote Fraud, Intimidation & Suppression in the 2004 Presidential Election (Aug. 2, 2005) (collecting media reports concerning allegations of vote fraud during the 2004 election cycle)." (p. 12)

The cited report contains 41 reports of irregularities and alleged fraud; not one includes an allegation of an attempted vote cast in the name of another at the polls. Many are addressed elsewhere in this summary:

- 71: Wisconsin p. 35: See State Example #2 and #6.
- 72: Washington p. 35: See State Example #2 and #5.
- 73: Alabama p. 36: the allegations involve absentee ballots.
- 74: Alabama p. 36: the allegations involve absentee ballots, intimidation, and bribery, not impersonation at the polls.
- 75: Colorado p. 37-38: the allegations involve absentee ballots, double-voting, and votes cast by persons rendered ineligible because of conviction, not impersonation at the polls.
- 76: Colorado p. 38-40: the allegations involve registration fraud; there are no allegations that any vote was cast in the name of any of these registrations.
- 77: Colorado p. 40-41: the allegations involve partisan registration activity and registration fraud; there are no allegations that any vote was cast in the name of any fraudulent registration.

- 78: Florida p. 41-42, 44: the allegations, since debunked,¹³⁸ involve registration fraud; there are no allegations that any vote was cast in the name of any of these registrations.
- 79: Florida p. 42: the allegations involve registration fraud and mishandled voter registration forms; there are no allegations that any vote was cast in the name of any fraudulent registration.
- 80: Florida p. 42-43: the allegations involve improper partisan activity by a nonprofit organization, not impersonation.
- 81: Florida p. 44: the allegations involve registration fraud; there are no allegations that any vote was cast in the name of any fraudulent registration.
- 82: Florida p. 45: the allegations involve absentee ballots.
- 83: Florida p. 45: the allegation involves registration fraud; there is no allegation that a vote was cast in the name of this fraudulent registration.
- 84: Florida p. 45: the allegations, including some which have since been debunked, *see* Election Officials Example #14, involve double-voting and inflated rolls; there is no allegation that any vote was cast in the name of another.
- 85: Illinois p. 46-47: the allegations involve vote-buying, not impersonation.
- 86: Kentucky p. 47: the allegations involve vote-buying, not impersonation.
- 87: Michigan p. 48: the allegations involve registration fraud; there are no allegations that any vote was cast in the name of any fraudulent registration.
- 88: Minnesota p. 48-49: the allegations involve mishandling of voter registration forms, not impersonation.
- 89: Missouri p. 49-50: the allegations involve registration fraud; there are no allegations that any vote was cast in the name of any fraudulent registration.
- 90: Missouri p. 50: the allegations involve registration fraud; there are no allegations that any vote was cast in the name of any fraudulent registration.
- 91: Missouri p. 50: the allegations involve duplicate registrations and invalid registration forms, not any sort of fraud.
- 92: Missouri p. 51: *see* State Example #7 and Election Officials Example #15.
- 93: Nevada p. 51: the allegations involve registration fraud; there are no allegations that any vote was cast in the name of any fraudulent registration.
- 94: Nevada p. 51-52: the allegations involve registration fraud; there are no allegations that any vote was cast in the name of any fraudulent registration.
- 94: Nevada p. 52: the allegations involve individuals rendered ineligible because of conviction who were nevertheless registered to vote, not impersonation.
- 95: New Mexico p. 53-54: the allegations involve registration fraud; there are no allegations that any vote was cast in the name of any fraudulent registration.
- 96: New Mexico p. 54: the allegations involve mishandling of absentee ballots and theft of voter registration forms, not impersonation.
- 97: Ohio p. 55-57: the allegations involve the difference between the exit polls and the vote count, not impersonation.
- 98: Ohio p. 58: the allegations involve large numbers of registrations or duplicate registrations, not fraud.
- 99: Ohio p. 59: *See* Election Officials Example #9.

¹³⁸ *See* Lorraine C. Minnite, *The Politics of Voter Fraud* 22-24 (2007).

- 100: Ohio p. 59-62: the allegations involve registration fraud and the mishandling of registration forms; there are no allegations that any vote was cast in the name of any fraudulent registration.
- 101: Pennsylvania p. 62: the allegations involve large amounts of new registrations, not fraud.
- 102: Pennsylvania p. 63: the allegations involve registrations at invalid addresses, not impersonation.
- 103: Pennsylvania p. 63: the allegations involve improper siting of polling places, not fraud.
- 103: Pennsylvania p. 63: the allegations involve mishandled absentee ballots and votes by individuals rendered ineligible because of convictions, not impersonation.
- 104: Pennsylvania p. 64: the allegations involve vote-buying, not impersonation.
- 105: Virginia p. 64: the allegations involve fraud on nominating petitions, not impersonation.
- 106: Washington p. 64-66: See State Example #2 and #5.
- 107: West Virginia p. 66-67: the allegations involve vote-buying and campaign finance violations, not impersonation.
- 108: Wisconsin p. 68-70: See State Example #2 and #6.
- 109: Wisconsin p. 70: the allegations involve registration fraud; there are no allegations that any vote was cast in the name of any fraudulent registration.
- 110: Wisconsin p. 71: the allegations involve voting by individuals rendered ineligible because of convictions and multiple voting, not impersonation.
- 111: Wisconsin p. 71-72: the allegations involve vote-buying, not impersonation.

RNC Example #112:

“Comparisons between the Washington Secretary of State’s statewide voter file and other databases showed multiple instances of specific fraudulent and improper behavior [in 2004]. See Chris McGann, State GOP Gets Specific About Election Charges, Seattle Post-Intelligencer, Jan. 19, 2005, at A1. The comparisons found that:

- 437 provisional ballots were counted without first being verified;
- 37 felons had voted in the election who did not have voting rights restored;
- 9 dead people were credited with voting;
- 20 people voted both in Washington and another state; and
- 10 people voted twice.

Id. . . . Dino Rossi challenged approximately 2,200 votes that could not “be matched with voters credited with casting a ballot, so-called ‘mystery voters.’” Id. . . . [¶] . . . One year later, The Seattle Times reported that the Secretary of State’s Office had, following the election, deleted 55,000 registrations from the state’s voter registration rolls “after finding [35,445] duplicate records and [19,579] dead voters.” Andrew Garber, State Purges 55,000 Dead and Duplicate Voters from Database, The Seattle Times, May 13, 2006, at B1. Additionally, 30 cases of possible double voting were forwarded to county officials for investigation. Id.” (p. 16-17)

The cited sources contain **no** allegation of in-person impersonation fraud. They allege ballots that were counted by election officials but should not have been, ballots cast by persons rendered ineligible due to conviction, double voting, and inflated registration rolls. None of these would have been prevented by a requirement to show photo ID at the polls. The first source also

alleges that ballots were cast by deceased individuals, but contains no indication that they were cast in-person. See State Example #2 and #5.

RNC Example #113:

“For example, problems also existed in Wisconsin, where a joint federal task force was convened to investigate allegations of widespread fraud. See Greg J. Borowski, Inquiry Finds Evidence of Fraud in Election, Milwaukee J.-Sentinel, May 11, 2005, at 1.” (p. 17 n.10)

The source contains no allegation of any vote cast in the name of another in person. See State Examples #2 and #6.

RNC Example #114:

“Additionally, a 2005 Tennessee special state senate race was overturned following allegations of vote fraud. See Lucas L. Johnson II, Tennessee Senate Votes to Oust Member, AP, Apr. 20, 2006.” (p. 17 n.10)

The source contains no allegation of any vote cast in the name of another in person. See Evergreen Example #3.

RNC assertion about photo ID:

“Photo identification requirements are consistent with the 2005 recommendations of the Baker-Carter Commission, which recognized that, with the enactment of the federal REAL ID program, photo identification is required to conduct some of the most basic, routine transactions and activities. See Baker-Carter Commission Report, at 18 (“Photo IDs currently are needed to board a plane, enter federal buildings, and cash a check. Voting is equally important.”). Indeed, photo identification is vital to obtain employment, open a bank account, purchase certain goods and services, qualify for government entitlement programs, and even to exercise the right of access to federal courts.” (p. 11)

Indiana’s photo ID law is not consistent with the 2005 recommendations of the Carter-Baker commission. See State Example #12. Moreover, it is not true that photo identification is required for most of the cited activities.

Board a plane: not true. See *Gilmore v. Gonzales*, 435 F.3d 1125, 1129-30, 1133 (9th Cir. 2006) (“The identification policy requires airline passengers to present identification to airline personnel before boarding or be subjected to a search that is more exacting than the routine search that passengers who present identification encounter.”); FAA Security Directive 96-05(1)(C).

Enter federal buildings/courts: partially true. Although there are many federal buildings that require photo ID (though not necessarily a photo ID with an expiration date), there are also many government buildings, including the Supreme Court, for which photo ID is not required.

Cash a check: not true. Check-cashing services will allow individuals to cash checks without photo ID, but may charge more for the service.¹³⁹ Moreover, some automated ATMs allow customers to cash checks without photo ID.¹⁴⁰

Obtain employment: not true. Federal law provides individuals without photo identification the opportunity to show several non-photo-ID documents to prove identity.¹⁴¹

Open a bank account: not true. Federal regulations require that banks verify the identity of individuals opening a new account, but provide many different options for banks to do so.¹⁴² Banks primarily operating online, like ING Direct, for example, requires a Social Security number but not a photo ID.¹⁴³

Purchase certain goods and services: unclear. No citation is offered for this assertion. It may be that there are certain goods for which photo identification is required (although it is commonly claimed that photo identification is required to purchase firearms¹⁴⁴ or alcohol¹⁴⁵ or cigarettes,¹⁴⁶ or to rent DVDs,¹⁴⁷ none of which is true). There are many more goods and services which may be purchased without photo identification.

Qualify for government entitlement programs: unclear. No citation is offered for this assertion. It may be that there are certain entitlement programs for which photo identification is required (although it is commonly claimed that photo ID is required for Medicaid, which is not true¹⁴⁸). There are many more programs for which individuals may qualify without photo identification.

¹³⁹ See Tonya Jameson, *Check-Cash Service Fees on Rise*, San Jose Mercury-News, Aug. 22, 1997, at 1C; Jonathan Nelson, *Banks Set Sights on the "Unbanked"*, The Columbian, Sept. 12, 2007, at E1.

¹⁴⁰ Eric Torbenson, *Kiosk Cashes Checks, and Also Takes its Cut*, St. Petersburg Times, July 7, 1997, at 9.

¹⁴¹ See 8 C.F.R. 1274a.2(b)(1)(v).

¹⁴² 31 C.F.R. § 103.121(b)(2)(ii)-(iii).

¹⁴³ See ING Direct, *Open An Account*, <https://banking.ingdirect.com/printandmail/printandmail.asp?type=OSA>.

¹⁴⁴ See, e.g., Bureau of Alcohol, Tobacco & Firearms, *Questions & Answers*, B16, <http://www.atf.treas.gov/firearms/faq/faq2.htm#b16>.

¹⁴⁵ Marissa DeCuir, *States Get Creative in Fight Against Underage Drinking*, USA Today, July 19, 2007, at 1A; see also, e.g., Texas Alcoholic Beverage Commission, *Age Verification*, <http://www.tabc.state.tx.us/leginfo/ageVerify.htm>.

¹⁴⁶ See 61 Fed Reg. 44616, establishing 21 C.F.R. 897.14(b), and struck down by *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000); see also Campaign for Tobacco-Free Kids, *Where Do Youth Smokers Get Their Cigarettes?* (2007), <http://www.tobaccofreekids.org/research/factsheets/pdf/0073.pdf>.

¹⁴⁷ See, e.g., *Blockbuster Tries Out Video Rental Kiosks*, L.A. Times, Nov. 22, 2007.

¹⁴⁸ See 42 C.F.R. § 435.407(e).

BRIEF OF WASHINGTON LEGAL FOUNDATION

Washington Legal Foundation Example #1:

“The [Carter-Baker] Commission reported that in-person voting fraud occurs even though, due to the nature of the crime, it is difficult to measure and identify. Carter-Baker Report at 45 (“While election fraud is difficult to measure, it occurs.”).” (p. 25)

The Carter-Baker Commission did no direct investigation of voter fraud, and cited largely irrelevant or debunked reports in support of its assertion that “there is no doubt” that in-person fraud occurs. See State Example #12.

Washington Legal Foundation Example #2:

“[The Carter-Baker Commission] also related many familiar indicators of fraud, including investigations by the Department of Justice and state and local officials . . .” (p. 25)

None of the instances of election fraud charged by the Department of Justice involves an allegation that a voter attempted to impersonate someone else at the polls. See State Example #1.

Washington Legal Foundation Example #3:

“[The Carter-Baker Commission] also related many familiar indicators of fraud, including . . . the November 2004 Washington state gubernatorial election, in which 1,600 fraudulent ballots were cast, which resulted in Christine Gregoire being elected governor by a 129-vote margin . . .” (p. 25)

It has been alleged – but not proven – that one single vote in this race was cast in person in the name of another. See State Example #2 and #5.

Washington Legal Foundation Example #4:

“[The Carter-Baker Commission] also related many familiar indicators of fraud, including . . . evidence that more than 200 felons voted illegally and 100 people voted twice, used fake names or false addresses, or voted in the names of dead people in Milwaukee” (p. 25)

Neither the cited source nor the documents reporting this investigation alleged that **any** of these votes were cast at the polls in someone else’s name. See State Example #2 and #6.

Washington Legal Foundation Example #5:

“Additionally, a 1997 congressional investigation found that up to 4,023 illegal voters cast ballots in a close House of Representatives election in California . . . John Fund, This Will Make Voter Fraud Easier, Wall Street Journal, Nov. 2, 2007.” (p. 25)

This allegation is both false and irrelevant, though Mr. Fund does make the claim both in the cited article and in his book on election fraud.¹⁴⁹ The Report of the congressional committee investigating the allegation mentions only that approximately 4,023 individuals “in INS databases” matched the name and date of birth of individuals registered to vote in the California Congressional district at issue.¹⁵⁰ The INS Commissioner producing these names herself cautioned: “These 4,023 names do not represent the number of illegal voters or registrants in the 46th District, nor should it be inferred that any particular named individual within this group has voted or registered to vote illegally.”¹⁵¹ Ultimately, the congressional investigation identified only 71 voters reliably “matched” to noncitizen lists, and there is no indication that **any** of these voted either in person or in someone else’s name. See AG Example #2.

Washington Legal Foundation Example #6:

“[T]he Justice Department discovered after the September 11 terrorist attacks on our country that 8 of the 19 hijackers were registered to vote. John Fund, This Will Make Voter Fraud Easier, Wall Street Journal, Nov. 2, 2007.” (p. 25)

This allegation has also been challenged.¹⁵² In any event, there is no allegation that any of the hijackers cast any vote, much less that they did so in someone else’s name.

Washington Legal Foundation Example #7:

“The district court noted other evidence of fraud, as reported by several different studies, investigations, and media reports. See Rokita, 458 F.Supp.2d at 793-94. The details of each study are different, but the results are the same: in-person voting fraud occurs.” (p. 25)

Actually, only one of the sources cited by the district court contained even one allegation of in-person impersonation fraud. See US Example #5.

Washington Legal Foundation assertion about ubiquitous photo ID:

“For instance, as the [Carter-Baker] Commission recognized, “[p]hoto IDs currently are needed to board a plane, enter federal buildings, and cash a check.”” (p. 21)

Board a plane: not true. See *Gilmore v. Gonzales*, 435 F.3d 1125, 1129-30, 1133 (9th Cir. 2006) (“The identification policy requires airline passengers to present identification to airline personnel before boarding or be subjected to a search that is more exacting than the routine

¹⁴⁹ JOHN FUND, STEALING ELECTIONS 24 (2004).

¹⁵⁰ Report of the Committee on House Oversight on H.R. 355, Dismissing the Election Contest Against Loretta Sanchez, Feb. 12, 1998, at 20-21.

¹⁵¹ Ruth Larson, *INS: 4,023 Voters Possibly Illegal in Dornan District*, Wash. Times, June 19, 1997, at A4.

¹⁵² See Spencer Overton, *Voter Identification*, 105 Mich. L. Rev. 631, 649 & n.94 (2007).

search that passengers who present identification encounter.”); FAA Security Directive 96-05(1)(C).

Enter federal buildings: partially true. Although there are many federal buildings that require photo ID (though not necessarily photo ID with an expiration date), there are also many government buildings, including the Supreme Court, for which photo ID is not required.

Cash a check: not true. Check-cashing services will allow individuals to cash checks without photo ID, but may charge more for the service.¹⁵³ Moreover, some automated ATMs allow customers to cash checks without photo ID.¹⁵⁴

¹⁵³ See Tonya Jameson, *Check-Cash Service Fees on Rise*, San Jose Mercury-News, Aug. 22, 1997, at 1C; Jonathan Nelson, *Banks Set Sights on the “Unbanked”*, The Columbian, Sept. 12, 2007, at E1.

¹⁵⁴ Eric Torbenson, *Kiosk Cashes Checks, and Also Takes its Cut*, St. Petersburg Times, July 7, 1997, at 9.

Brief of State Respondents

| | | | |
|-------------|---------------------|-------------------------|--|
| #1: | DOJ investigations | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #2: | Decedent votes | Mostly irrelevant | All but one unproven allegation in Washington could not be solved by requiring pollsite photo ID |
| #3: | Georgia AJC article | Debunked and irrelevant | Allegations proven false, and no allegation of fraud solved by requiring pollsite photo ID |
| #4: | Missouri 2000 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #5: | Washington 2004 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #6: | Wisconsin 2004 | False and irrelevant | Source is misquoted, and no substantiated fraud solved by requiring pollsite photo ID |
| #7: | Missouri 2000, 2002 | Debunked and irrelevant | Allegations proven false, and no allegation of fraud solved by requiring pollsite photo ID |
| #8: | Missouri 2002, 2004 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #9: | Missouri 2004 | Debunked and irrelevant | Allegations proven false, and no allegation of fraud solved by requiring pollsite photo ID |
| #10: | Indiana 2003 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #11: | Indiana 2006 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |

Brief of State Respondents (continued)

| | | | |
|----------------------------------|-------------------------|-------------------------|--|
| #12: | Carter-Baker Commission | Debunked and irrelevant | Allegations proven false, and system recommended is not system in place in Indiana |
| #13: | General | Irrelevant | See Assertions #5 and #6. |
| #14: | Congressional statement | False | Congress has never issued a finding on in-person voting fraud |
| Assertion about photo ID: | | False | Photo ID is not required for most of the activities cited |

Brief of the United States

| | | | |
|----------------------------------|----------------------------|--------------------------------|--|
| #1: | Indiana 2003 | Irrelevant | See State Example #10 |
| #2: | Indiana registration lists | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #3: | Indiana 2003 | Irrelevant | See State Example #10 |
| #4: | Carter-Baker Commission | Debunked and irrelevant | See State Example #12 |
| #5: | Record evidence of fraud | Debunked and mostly irrelevant | All but one unproven allegation in Washington could not be solved by requiring pollsite photo ID |
| Assertion about photo ID: | | Partially false | Photo ID is not required for most of the activities cited |

Brief of Members of Congress

| | | | |
|------------|---------------------------------|------------|--|
| #1: | Missouri generally | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #2: | Michigan registration lists | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #3: | Philadelphia registration lists | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #4: | Los Angeles registration lists | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #5: | Dogs | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |

Brief of State Attorneys General

| | | | |
|------------|--------------------|-------------------|--|
| #1: | “Boss” towns | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #2: | California 1996 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #3: | Miami 1997 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #4: | Washington 2004 | Mostly irrelevant | See State Example #2, Exhibit 15; State Example #5 |
| #5: | DOJ investigations | Irrelevant | See State Example #1 |
| #6: | Texas 1948 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #7: | Port Lavaca 2006 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #8: | Robstown 2006 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |

Brief of State Attorneys General (continued)

| | | | |
|----------------------------------|---------------------------|-------------------------|--|
| #9: | Starr County 2006 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #10: | Refugio County 2006 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #11: | Panola County 2006 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #12: | Beeville 2004 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #13: | Texas absentee 2004, 2006 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #14: | Carter-Baker Commission | Debunked and irrelevant | See State Example #12 |
| #15: | Mr. Johnson testimony | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #16: | Mr. Wallace testimony | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #17: | Wisconsin 2006 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #18: | Missouri 2000, 2002 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #19: | Florida 2000 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #20: | Georgia AJC article | Debunked and irrelevant | See State Example #3 |
| #21: | Texas generally | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| Assertion about photo ID: | False | | Photo ID is not required for most of the activities cited |

Brief of Election Officials

| | | | |
|-------------|---|-------------------------|--|
| #1: | Voter registration '04, '06 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #2: | Missouri '04, Michigan '06 | Debunked and irrelevant | Allegations proven false, and no allegation of fraud solved by requiring pollsite photo ID |
| #3: | Wisconsin 2004 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #4: | California 1996 | False and irrelevant | See Attorney Generals Example #2 |
| #5: | Utah 2004 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #6: | Arizona registration lists | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #7: | Florida 1996-2002 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #8: | Indiana population | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #9: | Ohio 2004 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #10: | Washington 2006 | Irrelevant | See Election Officials Example #1 |
| #11: | Dogs | Irrelevant | See Members' Example #4 |
| #12: | Michigan registration lists | Debunked and irrelevant | See Election Officials Example #2 |
| #13: | Florida 2004 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #14: | Florida-New York 2004 Ohio-New York 2004 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |

Brief of Election Officials (continued)

| | | | |
|-------------|-----------------------------|-------------------------|--|
| #15: | Missouri 2004 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #16: | Carter-Baker Commission | Debunked and irrelevant | See State Example #12 |
| #17: | Georgia 1962 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #18: | Robert Pastor | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #19: | Boss Tweed | Mostly irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #20: | Indiana 1880s | Mostly irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #21: | Indiana 1914 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #22: | Indiana 2003 | Irrelevant | See State Example #10 |
| #23: | National 1876 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #24: | Washington 2004 | Mostly irrelevant | See State Example #2 and #5 |
| #25: | Wisconsin 2004 | Irrelevant | See State Example #2 and #6 |
| #26: | National registration lists | Irrelevant | See Election Officials Example #13 |
| #27: | Kansas City generally | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #28: | St. Louis generally | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |

Brief of Election Officials (continued)

| | | | |
|--------------------------------------|-----------------------|--------------|--|
| #29: | Missouri 2000 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #30: | Missouri 2000 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #31: | Missouri 2000 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #32: | Michigan 2005 | Irrelevant | See Election Officials Example #2 |
| #33: | Florida-New York 2004 | Irrelevant | See Election Officials Example #14 |
| #34: | Missouri 2000, 2002 | Irrelevant | See State Example #7 and #8 |
| #35: | Colorado 2004 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #36: | Florida 2004 | Debunked | Allegations entirely disproved |
| #37: | Florida 2004 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #38: | Wisconsin 2004 | Irrelevant | See State Example #2 and #6 |
| Assertion about photo ID: | | False | Photo ID is not required for most of the activities cited |
| Assertion about other states: | | Mostly false | Photo ID is not required in most of the other states |

Brief of American Unity Legal Defense Fund

| | | | |
|-------------|---------------------------|---------------------------|---|
| #1: | New Mexico 2004 | Relevant but unproven | Six unproven incidents in New Mexico involving votes cast at the polls, allegedly in the name of others |
| #2: | New Mexico 2004 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #3: | New Mexico 2006 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #4: | New Mexico 2004 | Irrelevant or duplicative | See American Unity Example #1 |
| #5: | Missouri, Colorado 2006 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #6: | California 2006 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #7: | California 2000 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #8: | California 1996 | Irrelevant | See AG Example #2 |
| #9: | Several states 2006, 2007 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #10: | National identity theft | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #11: | New Mexico 1952 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #12: | DOJ investigations | Irrelevant | See State Example #1 |
| #13: | Arizona 1996-2006 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #14: | Florida 2000 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #15: | Texas 1992 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |

Brief of American Unity Legal Defense Fund (continued)

| | | | |
|-------------|----------------------|------------|--|
| #16: | California 2001-2004 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #17: | DOJ investigations | Irrelevant | See State Example #1 |

Brief of Evergreen Freedom Foundation

| | | | |
|-------------|-----------------------------|--------------------------------|--|
| #1: | Washington 2004 | Mostly irrelevant | See State Example #2 and #5 |
| #2: | Indiana 2003 | Irrelevant | See State Example #10 |
| #3: | Tennessee 2005 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #4: | Alabama 2004 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #5: | Washington 2004 | Mostly irrelevant | See State Example #2 and #5 |
| #6: | Washington 2006 dog | Irrelevant | See Election Officials Example #11 |
| #7: | Record evidence of fraud | Debunked and mostly irrelevant | All but one unproven allegation in Washington could not be solved by requiring pollsite photo ID |
| #8: | Carter-Baker Commission | Debunked and irrelevant | See State Example #12 |
| #9: | Wisconsin 2004 | Irrelevant | See State Example #2 and #6 |
| #10: | National registration lists | Irrelevant | See Election Officials Example #13 |
| #11: | DOJ investigations | Irrelevant | See State Example #1 |

Brief of Evergreen Freedom Foundation (continued)

| | | | |
|-------------|------------------------|-------------------|---|
| #12: | Missouri 2000, 2002 | Irrelevant | See State Example #8 |
| #13: | Florida 1996-2002 | Irrelevant | See Election Officials Example #7 |
| #14: | <i>Evans</i> 1993 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #15: | Philadelphia 1991-1992 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #16: | <i>Nader</i> 2004 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #17: | <i>Griffin</i> 2004 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #18: | Pennsylvania 2007 | Debunked | Source revealed error, not fraud |
| #19: | California 2007 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #20: | Ohio 2004 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #21: | Washington 2006 dog | Irrelevant | See Election Officials Example #11 |
| #22: | Mississippi 2007 | Mostly irrelevant | All but two unproven allegations could not be solved by requiring pollsite photo ID |
| #23: | Missouri 2007 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #24: | Mississippi 2007 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |

Brief of Lawyers Democracy Fund

| | | | |
|----------------------------------|-------------------------|-------------------------|---|
| #1: | Carter-Baker Commission | Debunked and irrelevant | See State Example #12 |
| #2: | Washington 2004 | Mostly irrelevant | See State Example #2 and #5 |
| #3: | Wisconsin 2004 | Irrelevant | See State Example #2 and #6 |
| #4: | Missouri 2000 | Debunked and irrelevant | See State Example #4 and #7 |
| #5: | Miami 1997 | Irrelevant | See AG Example #3 |
| #6: | DOJ investigations | Irrelevant | See State Example #1 |
| #7: | Decedent votes | Debunked and irrelevant | See State Example #2 |
| #8: | <i>Griffin</i> 2004 | Irrelevant | See Evergreen Example #17 |
| Assertion about photo ID: | False | | Photo ID is not required for most of the activities cited |

Brief of RNC

| | | | |
|-----------------|-------------------------|-------------------------|---|
| #1: | Carter-Baker Commission | Debunked and irrelevant | See State Example #12 |
| #2-70: | various news reports | Mostly irrelevant | All but one allegation of an attempted but thwarted vote (#45) would not be solved by requiring pollsite photo ID |
| #71-111: | ACVR report | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #112: | Washington 2004 | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |

Brief of RNC (continued)

| | | |
|----------------------------------|--------------|---|
| #113: Wisconsin 2004 | Irrelevant | See State Examples #2 and #6 |
| #114: Tennessee 2005 | Irrelevant | See Evergreen Example #3 |
| Assertion about photo ID: | Mostly false | Photo ID is not required for most of the activities cited |

Brief of Washington Legal Foundation

| | | |
|-------------------------------------|--------------------------------|--|
| #1: Carter-Baker Commission | Debunked and irrelevant | See State Example #12 |
| #2: DOJ investigations | Irrelevant | See State Example #1 |
| #3: Washington 2004 | Mostly irrelevant | See State Examples #2 and #5 |
| #4: Wisconsin 2004 | Irrelevant | See State Examples #2 and #6 |
| #5: California 1996 | Irrelevant | See AG Example #2 |
| #6: 9/11 terrorists | Irrelevant | No allegation of fraud solved by requiring pollsite photo ID |
| #7: Record evidence of fraud | Debunked and mostly irrelevant | All but one unproven allegation in Washington could not be solved by requiring pollsite photo ID |
| Assertion about photo ID: | Mostly false | Photo ID is not required for most of the activities cited |