

Testimony of

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On behalf of the Brennan Center for Justice at NYU School of Law, I thank the Senate Special Subcommittee on Aging for holding this hearing and for providing me the opportunity to discuss opportunities and challenges facing older voters.

My name is Wendy Weiser, and I direct the Brennan Center's work on voting rights and elections. The Brennan Center is a nonpartisan think tank and legal advocacy organization that focuses on issues of democracy and justice. Among other things, we seek to ensure fair and accurate voting procedures and systems and to promote policies that maximize citizen enfranchisement and participation in elections. We have done extensive work on a range of voting issues of concern to older Americans, including voter identification and voting system accessibility and usability. Our work on these topics has included the publication of studies and reports; assistance to federal and state administrative and legislative bodies with responsibility over elections; and, when necessary, participation in litigation to compel states to comply with their obligations under federal law and the Constitution. Most recently, we submitted an *amicus* brief to the Supreme Court in *Crawford v. Marion County Election Board*, a case challenging the constitutionality of Indiana's voter identification law.¹

My testimony today will focus principally on voter identification requirements and their impact on older Americans. As set forth below, voter ID requirements—especially the restrictive photo ID requirements that have been proposed and introduced over the past few years—substantially and disproportionately burden the voting rights of seniors. If restrictive ID requirements are put in place, many older Americans will be deprived of their right to vote.

¹ The Brennan Center's webpage devoted to the Crawford case, available at http://www.brennancenter.org/content/resource/crawford_v_marion_county_election_board, contains all the Supreme Court filings in the case and a range of other resources. The Brennan Center's brief in that case is posted here: http://brennan.3cdn.net/a465d0f4779ca49726_tim6blgw7.pdf.

The impact on our elections would be far-reaching. As the AARP recently noted in a brief before the Supreme Court, older Americans consistently participate in the electoral process at a higher rate than other age groups.² Moreover, by 2030, the number of older voters is expected to double (to 71.5 million), which means that older voters will likely comprise a much larger percentage of the electorate.³ It is vital to the health of our democracy that we ensure that our electoral systems facilitate, and do not impede, the participation of this important segment of the population.

New Restrictive Voter ID Requirements

Over the past few years, there has been a concerted push across the country to impose new, strict identification requirements on voters. In 2007 alone, bills were introduced in more than thirty states and in Congress to make voter identification requirements more restrictive by requiring voters to show photo ID or proof of citizenship.⁴ (Those states include all but four of the Super Tuesday states.) Since the beginning of 2008, restrictive photo ID bills have been introduced or pre-filed in at least nine states,⁵ and officials in at least two other states have publicly announced their intent to pursue photo ID requirements.⁶ More than a dozen states also have currently pending bills requiring documentary proof of citizenship to register or to vote.⁷

Prior to 2005, no state mandated photo ID as an absolute requirement for voting, and no state required documentary proof of citizenship to register or to vote. The vast majority of states still use other methods of identifying voters that are far less onerous than photo ID. And in most states that require some form of documentary ID, there is an alternative identification mechanism for those voters who do not have the required documentation that allows them to vote at the polls. I attach as an appendix to my testimony a summary of the current voter identification requirements in the states.

In the Help America Vote Act of 2002 (“HAVA”), Congress considered and rejected a photo ID requirement for voting, opting instead for a more limited ID provision focused on new registrants who had not yet been vetted by state election systems, and allowing those voters to

² See Brief *Amici Curiae* AARP and National Senior Citizens Law Center in Support of Petitioner, *Crawford v. Marion County Election Bd.*, No. 07-21 (U.S. 2007) [hereinafter “AARP Brief”], at 7, available at http://brennan.3cdn.net/1edc5ab89f9e9edeb8_v6m6bnrlw.pdf. For example, according to the U.S. Census Bureau, in the 2004 presidential election, 71.8% of citizens 55 and older reported voting, as compared to 63.8% of all voting-age citizens. U.S. Census Bureau, *Voting and Registration in the Election of November 2004: Population Characteristics* 4 (Mar. 2006), <http://www.census.gov/prod/2006pubs/p20-556.pdf>.

³ AARP Brief at 8 (citing Administration on Aging, U.S. Dep’t of Health and Human Services, *A Profile of Older Americans: 2006* (last updated July 12, 2007), <http://www.aoa.gov/prof/Statistics/profile/2006/profiles2006.asp>).

⁴ Those states include: Alabama, Arkansas, California, Colorado, Florida, Georgia, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Mississippi, Missouri, Montana, New Hampshire, North Carolina, New Mexico, New York, Nevada, Oregon, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin.

⁵ Those states include: Colorado, Illinois, Maryland, Mississippi, Missouri, New Mexico, Oklahoma, Tennessee, and West Virginia.

⁶ Those states are Texas, which just held a hearing on voter ID and fraud on January 25, 2008, and Kansas.

⁷ Those states include: Colorado, Georgia, Kansas, Massachusetts, Maryland, Michigan, Mississippi, Missouri, New York, Rhode Island, South Carolina, Tennessee, Virginia, and Washington.

identify themselves using a broad range of documents.⁸ Notwithstanding the compromise reached in HAVA, proponents of voter ID continue to strenuously press their cause.

To date only three states—Georgia, Indiana, and Missouri—have passed laws requiring voters to present photo ID to vote and to have their votes counted, and only Georgia and Indiana still have those requirements in place.⁹ Although four other states also request photo ID of their voters, voters who do not have photo IDs in those states are entitled to cast ballots that will count without having to negotiate significant hurdles. Specifically, Louisiana, Michigan, and South Dakota allow voters who do not have photo IDs to cast regular ballots if they swear an affidavit to their eligibility. And while Florida law provides that a voter without photo ID may only vote by provisional ballot, the state must count that provisional ballot so long as the voter's signature matches the signature on file with election officials.¹⁰

Although only a few states currently impose strict photo ID requirements, other states have made their existing voter ID requirements more burdensome. The most onerous new requirement beyond photo ID is Arizona's requirement that voters present documentary proof of citizenship in order to register to vote.¹¹ Like the recently-enacted Georgia and Indiana laws, Arizona's law is currently being challenged in court.

Impact of Voter ID Requirements on Older Americans

Strict voter ID requirements have the potential to disenfranchise millions of eligible voters. Those requirements fall most harshly on the poor, people of color, youth, and—most significantly for this hearing—senior citizens. Studies consistently show that millions of Americans do not have government-issued photo IDs, and that seniors are disproportionately represented among those without IDs.

Studies Show That Millions of Older Americans Lack Photo IDs

According to a nation-wide survey by the National Opinion Research Corp. sponsored by the Brennan Center in late 2006, 11% of voting-age Americans—roughly twenty-one million citizens—do not have current government-issued photo IDs.¹² The impact is far more

⁸ 42 U.S.C. § 15483(b) (requiring first-time voters who register by mail and whose registration information the state is unable to match with an existing state record to show either a photo ID or one of a variety of non-photo IDs).

⁹ All three of those laws have been challenged in court. The Missouri Supreme Court struck down the Missouri law under the state constitution, and so it is no longer in effect. *Weinshenck v. Missouri*, 203 S.W.3d 201 (Mo. 2006). Prior versions of the Georgia law were enjoined by federal and state courts, *Common Cause/Georgia v. Billups*, 439 F.Supp.2d 1294 (N.D. Ga. 2006); *Perdue v. Lake*, 647 S.E.2d 6 (2007). An amended version of Georgia's law was upheld by a federal court and is now on appeal. Indiana's law is currently being considered by the U.S. Supreme Court after being upheld in lower courts.

¹⁰ See Ltr. from Christopher Coates, Acting Chief, U.S. Dep't of Justice Voting Section, to Florida Attorney General Bill McCullom and Assistant General Counsel Maria Matthews, Jan. 23, 2008, available at http://www.brennancenter.org/page/-/Democracy/AR-M620U_20080124_105007.pdf (preclearing Florida's amended voter ID law with the understanding that provisional ballots cast by voters without photo ID will count so long as the signatures match).

¹¹ Ariz. Rev. Stat. § 16-579.

¹² Brennan Center for Justice at NYU School of Law, *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification*, at 3 (Nov. 2006), <http://www.brennancenter.org/page/->

pronounced for older Americans: 18% of citizens 65 and older do not have current government-issued photo IDs.¹³ Using 2005 census estimates, that amounts to more than 6 million senior citizens who could be excluded by strict photo ID requirements.

These findings are consistent with the findings of the three major social science studies that have examined the rates of ID possession in particular states. Most recently, researchers at the University of Washington studied the rates at which voting age citizens in Indiana possessed the kinds of ID required by the state's photo ID law. They found that age has a "curvilinear relationship" with access to photo ID, in which both younger and older voters are less likely to have access to photo ID.¹⁴ According to their survey results, 19.4% of registered voters over 70 do not have valid photo IDs, as compared to 16.3% of total registered voters in Indiana.¹⁵

A 2005 study by researchers at the University of Wisconsin who examined the state's driver's license and photo ID records found that 23% of people aged 65 and older (177,399 people) in Wisconsin do not have a driver's license or a non-driver's photo ID. Of that group, 79% are women.¹⁶ Researchers at the University of Georgia similarly found that older citizens in Georgia are significantly less likely than average to have government-issued photo ID.¹⁷ Surveys by the AARP in Indiana and Georgia also found that significant numbers of seniors do not have the kinds of photo IDs required by those states' laws.¹⁸

It is not surprising that so many seniors lack government-issued photo IDs. By far the most common state-issued photo ID is a driver's license, but many older Americans do not drive. Indeed, many states make it difficult for seniors to obtain driver's licenses.¹⁹ Relatively few Americans, including older Americans, travel abroad, and so few have need for a passport.

[/d/download_file_39242.pdf](#); cf. Robert Greenstein *et al.*, Center for Budget and Policy Priorities, *Survey Indicates House Bill Could Deny Voting Rights to Millions of U.S. Citizens* (Sept. 22, 2006), <http://www.cbpp.org/9-22-06id.htm>.

¹³ *Citizens Without Proof*, *supra* note 12, at 3.

¹⁴ Matt A. Barreto, Stephen A. Nuño & Gabriel R. Sanchez, *The Disproportionate Impact of Indiana Voter ID Requirements on the Electorate* (Working Paper, Washington Institute for the Study of Ethnicity and Race), Nov. 8, 2007, at 11, 14, at http://depts.washington.edu/uwiser/documents/Indiana_voter.pdf. The study also found that 21.8% of black Indiana registered voters (and when non-registered citizens are included, 28.3% of eligible black Indiana citizens) do not have valid photo IDs.

¹⁵ *Id.* at 18.

¹⁶ John Pawasarat, Employment and Training Institute, University of Wisconsin-Milwaukee, *The Driver License Status of Voting Age Population in Wisconsin*, at 1 (June 2005), available at http://www.brennancenter.org/page/-/d/download_file_50902.pdf.

¹⁷ M. V. Hood III & Charles S. Bullock, III, *Worth A Thousand Words?: An Analysis of Georgia's Voter Identification Statute*, at 14 fig. 1 (April 2007) (presented at March 2007 Annual Meeting of the Southwestern Political Science Association), available at http://www.brennancenter.org/page/-/d/download_file_50886.pdf.

¹⁸ According to the Indiana AARP's survey of its registered voters, 3% of those 60 and older and 6% of those 75 or older had neither a valid driver's license nor a state-issued identification card. See *Indiana Democratic Party v. Rokita*, 458 F. Supp. 2d 775, 824 n.73 (citing Susan L. Silberman, Indiana AARP, *Voter Identification in Indiana: A Demographic Analysis of Impact on Older Indiana Citizens* (Oct. 2005)). And according to the Georgia chapter of the AARP, 36 percent of Georgians over age 75 do not have a driver's license. See Deanna Wrenn, *Three States Debate Requiring Voters to Show ID*, *Ventura County Star*, Mar. 31, 2005, at 6.

¹⁹ See AARP Brief, *supra* note 2, at 9 (noting that 17 states, including Indiana, require older drivers to renew their licenses more frequently than other drivers; at least 10 states require a special vision screening for older drivers, and some require a physician's note attesting to the individual's fitness for driving; and 17 states require older drivers to appear in person at the DMV to renew their licenses).

According to the U.S. Department of State Bureau of Consular Affairs, only 25% of Americans have a U.S. passport.²⁰ And, as discussed below, it is difficult for many older Americans to fulfill the requirements for obtaining state-issued photo IDs.

Requirements for Obtaining Photo ID Are Especially Burdensome for Seniors

All current state-issued photo IDs cost money, either directly or indirectly. Although some states waive the direct costs of photo IDs for indigent citizens, no state waives the costs of all the underlying documents required to obtain a photo ID. An applicant for a state-issued photo ID in Indiana, for example, is required to show several documents, including one of the following: a certified copy of a U.S. birth certificate, a passport, naturalization papers, or a U.S. military or merchant marine photo ID. For a birth certificate search, Indiana charges \$10.00, in addition to applicable county fees;²¹ the cost in other states can run even higher. A U.S. passport costs \$97.00.²² Replacement naturalization papers cost \$380.00 and can take up to a year to obtain.²³

Many older Americans do not have ready access to these documents proving citizenship. According to a survey sponsored by the Center on Budget and Policy Priorities, individuals over the age of 65 are much less likely to have citizenship documents than those under 65.²⁴ The financial costs of obtaining these documents needed for photo IDs are particularly burdensome to older voters who live on fixed incomes.

In addition to the costs of the underlying documents required for photo ID, applicants for photo ID must incur the burden and costs of transportation to various government offices, often multiple times.²⁵ This can be a significant burden to the many senior citizens for whom public transportation is difficult to access. Older Americans are far more likely to have disabilities than other citizens,²⁶ making it more difficult for them to travel and to navigate the procedures required to obtain photo ID.

²⁰ U.S. State Dep't, Frequently Asked Questions about the New Travel Document Requirements, http://www.travel.state.gov/travel/cbpmc/cbpmc_2225.html#8 (last visited Jan. 28, 2008).

²¹ Ind. Code § 16-37-1-11; 16-37-1-11.5.

²² U.S. Dep't of State Bureau of Consular Affairs, Passport Fees, http://travel.state.gov/passport/get/fees/fees_837.html (last visited Jan. 28, 2008).

²³ U.S. Citizenship and Immigration Serv., Application for Replacement Naturalization/Citizenship Document, <http://www.uscis.gov/n-565> (last visited Jan. 28, 2008); U.S. Citizenship and Immigration Serv., Frequently Asked Questions about Naturalization, <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=ee14b4ac0933e010VgnVCM1000000ecd190aRCRD&vgnnextchannel=fe529c7755cb9010VgnVCM10000045f3d6a1RCRD> (last visited Mar. 5, 2008).

²⁴ Robert Greenstein *et al.*, *supra* note 12, at 3; accord Families USA, *Citizens Update: Administration Creates Additional Barriers to Medicaid Enrollment* 6 (2006), <http://www.familiesusa.org/assets/pdfs/DRA-Citizenship-Update.pdf>.

²⁵ For example, the Indiana Bureau of Motor Vehicles turns away 60% of applicants for photo ID because they do not have the required supporting documents. See Brief for Petitioners Indiana Democratic Party *et al.*, *Crawford v. Marion County Election Bd.*, No. 07-25, at 13 (U.S. 2007) (citing record evidence).

²⁶ For example, 72% of Americans 80 and older in 2002 reported having disabilities, as compared to 18% of all Americans. AARP Brief, *supra* note 2, at 28 (citing U.S. Census Bureau, Table 1, Prevalence of Disabilities by Age, Sex, Race, and Hispanic Origin: 2002, available at <http://www.census.gov/hhes/www/disability/sipp/disab02/ds02t1.pdf>).

For some older Americans, especially people of color, it may be extremely difficult or impossible to obtain the documents needed for photo ID. Many minority citizens born before and during the 1960s were born outside of hospitals because of lack of access to health care.²⁷ One study found that three out of four nonwhite infants born in December 1939 and January 1940 were born at home, and that 23% of all nonwhite births outside of hospitals were unregistered.²⁸ Thus, older minority citizens are significantly less likely to have access to a birth certificate on file with the state.

Older women who have taken their husbands' surnames may face the additional hurdle of proving that their citizenship documents refer to them. The Brennan Center's national survey found that only 48% of voting-age women with ready access to their U.S. birth certificates have a birth certificate with their current legal name—as opposed to a name they had before marriage, divorce, or other name change—and only 66% have ready access to *any* type of citizenship document with their current legal name.²⁹

The Crawford Case Before the U.S. Supreme Court and Indiana's Voter ID Law

On January 9, 2008, the Supreme Court heard oral argument in *Crawford v. Marion County Board of Elections*, a case challenging the constitutionality Indiana's voter ID law. The most restrictive voter ID requirement in the country, Indiana's law requires all voters at the polls to present a current government-issued photo ID with an expiration date. Because of its expiration date requirement, Indiana's law excludes many forms of government-issued photo IDs, including veterans' IDs, Congressional IDs, many student IDs, and work IDs.

Although many older Americans do not have the forms of ID required by Indiana's law, its impact on older Americans is mitigated somewhat by the state's absentee balloting rules. Like many pending voter ID proposals, Indiana's voter ID law applies only to voters who appear at the polls and specifically excludes individuals who vote by absentee ballot. Unlike many states, Indiana allows all citizens aged 65 and older to vote absentee.³⁰ Thus, a senior citizen without voter ID can cast a valid ballot in Indiana if she votes absentee.

Voting absentee, however, is not an adequate substitute for the right to participate in the political process in person. Many older Americans object to being excluded from the civic ritual of voting at the polling place and being relegated to a second-tier voting mechanism. Moreover, unlike those who vote in person, those who vote absentee must apply for, receive, and complete their ballots well in advance of Election Day. Not only is this an added burden, but it also deprives those voters of full information about the elections since they must mail their ballots before late-breaking information about the candidates and campaigns. Absentee ballots are typically less likely to be counted than regular ballots. And absentee voters must navigate confusing instructions without the assistance of poll workers.

²⁷ See *id.* at 23 (citing S. Shapiro, *Development of Birth Registration and Birth Statistics in the United States*, 4 Population Studies 86, 99 (1950) (citation omitted)).

²⁸ See *id.* (citing same).

²⁹ *Citizens Without Proof*, *supra* note 12, at 2.

³⁰ See Ind. Code § 3-11-10-22(c).

Indiana's law has one additional feature supposedly designed to reduce its burden on voters who are indigent or have religious objections to photo IDs. Specifically, a voter without acceptable photo ID may cast a provisional ballot at the polls that will count so long as the voter travels to the circuit court clerk's office or the county election board within ten days of the election and swears an affidavit that he either has a religious objection to being photographed or is an indigent who is unable to obtain the required ID without paying a fee.³¹ Indiana does not allow voters to execute those affidavits at the polls on Election Day.

This provision is of minimal benefit to Indiana's poor citizens, since it creates an overly—and gratuitously—burdensome process for them to have their ballots counted. Indigent voters who do not have state-issued photo IDs do not drive and may not be able to afford the cost of transportation (or the time) to make a second trip to vote. This creates a two-tier voting system based on wealth; while most voters need only go to one government office or public place to vote, indigent voters must go to two.

Older Americans Injured by Indiana's Law

Because *Crawford* was filed before the 2006 elections in an effort to block Indiana's law from going into effect, the record in the case was developed before the law was in effect in an election. Nonetheless, there is evidence that Indiana's law has already harmed older Americans.

First, the plaintiffs in the case include a number of older Americans who do not have and were unable to obtain the requisite ID and thus could not vote in person in Indiana. One plaintiff is Thelma Ruth Hunter, an 85-year-old woman who has resided and voted in person in Indianapolis her entire life but has no photo ID. She was born at home in Tennessee, and to her knowledge, no state record of her birth exists. At the time of the district court hearing, she had been unable to obtain a "delayed certificate of birth" from Tennessee and thus could not obtain an Indiana photo ID.³² Other older plaintiffs include: Imogene Chapman, an 84-year-old woman who has worked at the polls in Marion County for 15 years and has no state-issued photo ID; Theresa Clemente, a 78-year-old Indiana resident who tried but was unable to obtain an Indiana photo ID after spending \$28.00 for a certified copy of her birth certificate from Boston; David Harrison, a 75-year-old military veteran who has neither photo ID nor an original birth certificate and cannot afford to secure a birth certificate without charitable assistance; Lois Holland a 69-year-old pollworker who has no photo ID and no birth certificate; Ernest Pruden, a 74-year-old former poll worker who has neither the requisite photo ID nor a birth certificate from North Carolina, where he was born; and Barbara Smith, a 71-year-old woman who only has government-issued photo ID without an expiration date.³³

Several older individuals associated with the Indiana League of Women Voters, who submitted an *amicus* brief in the case, were also injured by the law. One such individual is 92-year-old Mary Wayne Montgomery Eble, the daughter of a suffragette with a strong family

³¹ Ind. Code § 3-11.7-5-2.5. A citizen with photo ID but who did not present it at the polls may also have her provisional ballot counted if she presents it at one of these offices within the ten-day window.

³² *Indiana Democratic Party v. Rokita*, 458 F. Supp. 2d 775, 778 (S.D. Ind. 2006).

³³ *Id.*

tradition of voting and civic participation at the polls. Ms. Eble has no photo ID, and she lives in a rural county with no public transportation, forty-five minutes away from the nearest state office that issues photo IDs, and one hour away from the place she would have to go to obtain a certified record of her birth. Ray Wardell, a 78-year-old Korean War veteran, was required to cast a provisional ballot in a recent election because he had no photo ID after his wallet was stolen and the state motor vehicles office refused to issue him a photo ID based on his Medicare card.³⁴ For his provisional ballot to count, he would have had to obtain a photo ID and present it to the county clerk or the election board within ten days of the election.

In addition to voters facing the prospect of future disenfranchisement, there is evidence of older Americans who were actually disenfranchised in a recent election. The bi-partisan Marion County Board of Elections, one of the respondents in the case, asserted in their brief that at least 32 provisional ballots were not counted in a 2007 municipal election in Indianapolis because the individuals who cast those ballots did not present the required ID. Most of those individuals had voted in the same precincts for many elections.³⁵ In a follow up report, the *New York Times* identified two of the disenfranchised citizens, and both were older. Specifically, Mary-Jo Criswell, age 71, was unable to vote using her bank card with a photograph, and Valerie Williams, age 60, was barred from voting in the lobby of her retirement home using her telephone bill, a Social Security letter with her address, and an expired Indiana driver's license.³⁶

These affected individuals are only a small portion of the Indiana citizens injured by the state's photo ID law. While the parties to the *Crawford* case disagree on the number of Indiana citizens affected by the law, even under the state's minimalist interpretation of the evidence, at least 43,000 Hoosiers lack the photo IDs required to vote and thus could be disenfranchised by the law. (According to the petitioners, the number of Hoosiers without IDs is ten times that.)

The Baseless Justification for Indiana's Law

Like other voter ID proponents, Indiana justifies its restrictive voter ID law as a measure to prevent voter fraud. But photo ID does not stop vote-buying, ballot tampering, absentee ballot fraud, or even voting by non-citizens—the types of election misconduct that do occur. The only type of fraud that photo ID can prevent is voting in the name of another registered voter at the polls, or impersonation fraud.

The Brennan Center has extensively studied allegations of voter fraud over several years and has found no evidence that impersonation fraud is anything but an anomaly. Our recent report, *The Truth About Voter Fraud*, contains the most comprehensive analysis of public allegations of voter fraud.³⁷ It finds that almost all of those allegations—many of which are repeatedly raised by proponents of voter ID—have either been proved incorrect or are

³⁴ Brief of League of Women Voters of Indiana, *Crawford v. Marion County Election Board*, Nos. 07-21, 07-25, at 9-12 (2007), available at http://brennan.3cdn.net/65eaf0b4162702f06_4xm6iibjy.pdf.

³⁵ Brief of Respondent Marion County Election Board, *Crawford v. Marion County Election Bd.*, Nos. 07-21, 07-25, at 16-17 (2007), available at http://brennan.3cdn.net/ebbb2f5f83bad24a92_jsm6b9ki5.pdf.

³⁶ Ian Urbina, *Voter ID Laws Are Set to Face a Crucial Test*, *New York Times*, Jan. 7, 2008, at A11.

³⁷ Justin Levitt, *The Truth About Voter Fraud* (2007), http://brennan.3cdn.net/e20e4210db075b482b_wcm6ib0hl.pdf (reviewing allegations of voter fraud cited by state and federal courts, multipartisan and bipartisan federal commissions, political party entities, state and local election officials, and authors, journalists, and bloggers).

unsubstantiated and unlikely to reflect voter fraud. Instead, much evidence that purports to reveal voter fraud can be traced to far more common causes—including clerical and typographical errors, computer matching errors, jumping to unwarranted conclusions from information in the voter rolls or from mailings, and voter errors.³⁸

Over the years, there have been only a handful of substantiated cases of individual ineligible voters attempting to defraud the election system. But by any measure, impersonation fraud is extraordinarily rare. That is not surprising, because it is irrational. Each voter fraud in connection with a federal election risks five years in prison and \$10,000 in fines, in addition to state penalties.³⁹ In return, the fraud-feasor stands to gain only one marginal vote.

The conclusion that impersonation fraud is extremely rare is supported by the record in the *Crawford* case. Indiana conceded that it had never prosecuted a case of in person voter fraud and that it was not aware of any actual incidents of in person voter fraud in Indiana. What is more, there was no showing that Indiana's existing procedures or less draconian rules elsewhere were inadequate to address any existing problem.

In fact, in all the briefs submitted before the Supreme Court, the law's supporters did not cite a single proven incident anywhere in the country of a fraudulent vote that could have been prevented by photo ID.⁴⁰ Despite the fact that the Department of Justice has had a program dedicated to voter fraud since 2002, out of the more than 400 million votes that were cast since 2000, the law's supporters cited only nine *unproven* allegations of impersonation fraud.⁴¹ These paltry numbers make clear that impersonation fraud is not a serious problem, and they suggest that the existing measures in the states to protect against such fraud are sufficient to prevent threats to election integrity.

Recommendations for Congress

The Supreme Court's decision in *Crawford* is likely to reverberate far beyond Indiana. A decision to uphold Indiana's voter ID law will bolster efforts across the country to enact new ID restrictions. For the reasons I have provided, that could harm the voting rights of millions of older Americans.

Fortunately, the Supreme Court does not have a monopoly on protecting voting rights. Where the Constitution has been insufficient to protect voting rights in the past, Congress has stepped in and achieved excellent results.⁴² Regardless of how the Supreme Court rules in *Crawford*, there are steps that Congress can do to protect all Americans, and especially older Americans, from disenfranchising voter ID requirements. These steps include:

³⁸ *Id.* at 7-11.

³⁹ 42 U.S.C. § 1973i(c), (e); 42 U.S.C. § 1973gg-10.

⁴⁰ This conclusion is based on the Brennan Center's detailed analysis of all 250 alleged reports of fraud described in all the briefs supporting in the case. See Justin Levitt, *Analysis of Alleged Fraud in Briefs Supporting Crawford Respondents*, Dec. 31, 2007, <http://www.truthaboutfraud.org/pdf/CrawfordAllegations.pdf>.

⁴¹ *Id.*

⁴² Most notably, the Voting Rights Act of 1965 provides more protections for minority voters than the Constitution.

- *Resist restrictive ID and proof of citizenship requirements.* First and foremost, Congress should resist any attempt at the federal level to make photo ID and proof of citizenship a pre-condition of voting or voter registration.
- *Prohibit onerous state documentation requirements.* Congress should also enact protections to guard against voter disenfranchisement as a result of restrictive state-imposed photo ID or proof of citizenship requirements.
- *Reduce the costs and burdens associated with photo IDs.* Congress should make it easier for indigent and older Americans to obtain federal photo IDs and citizenship documents.
- *Repeal onerous provision of REAL ID Act.* The REAL ID Act of 2005,⁴³ which is scheduled to go into effect this year for states that do not obtain extensions, imposes a series of burdensome federal requirements on state photo ID cards. Among those is a requirement that each citizen show documentary proof of citizenship and that the state verify that documentation with the Department of Homeland Security before the individual is issued a driver's license or other photo ID. This will make it substantially more difficult for older Americans to obtain state-issued photo ID cards. The National Governors Association, the National Council of State Legislatures, and the American Association of Motor Vehicle Administrators have estimated that it will cost states at least \$11 billion to implement the REAL ID Act over the first 5 years.⁴⁴ And a number of states have rejected the Act. To prevent a disaster, Congress should repeal the onerous requirements of the REAL ID Act.
- *Resources for voter and poll worker education on ID.* A significant number of voters are asked to provide photo ID at the polls even though such ID is not required by state law. While there has been no reliable empirical research into how many of these Americans have been disenfranchised as a result, the potential for problems is huge. Congress should provide resources for state and local election officials to educate their voters and poll workers about what ID is necessary as well as what ID is not required to vote and should require states to post accurate information about ID requirements at every polling place.⁴⁵

Accessibility and Usability of Voting Systems

Although my testimony today addresses only voter identification, the Brennan Center has also done extensive work on two other issues of significant concern to older Americans: the accessibility and usability of electronic voting systems.

⁴³ Making Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Pub. L. No. 109-13, 119 Stat 231 (codified in relevant part at 49 U.S.C. § 30301 note (2005)).

⁴⁴ See http://www.ncsl.org/print/statefed/Real_ID_Impact_Report_FINAL_Sept19.pdf.

⁴⁵ For more information, see Wendy R. Weiser and Jonah Goldman, *An Agenda for Federal Election Reform* (2007), at <http://www.federalectionreform.com/pdf/Federal%20Agenda%20Policy%20Paper.pdf>.

According to the 2000 Census, there were 19.1 million Americans of voting age who have trouble seeing; 30.8 million who have trouble hearing; and 28.3 million who have physical difficulty, including trouble grasping or handling small objects. Not surprisingly, the elderly are disproportionately represented in this group. All of these disabilities make it more difficult to vote privately and independently on any voting system.

In 2006, the Brennan Center released a four-part series of studies providing a comprehensive empirical analysis of the electronic voting systems used in the United States. I have submitted copies of two of those reports—one dealing with voting system accessibility⁴⁶ and one dealing with voting system usability⁴⁷—with my testimony.

With respect to the technologies currently in use, those reports found that none of the current voting systems fully satisfies HAVA's requirement that disabled voters be able to vote privately and independently. They also found that all of the current voting systems could be improved to ensure that voters' choices are accurately recorded. Many features that would make voting systems more accessible are new to the market or still in development.

With respect to the way in which voting machines are used, the reports found that, regardless of the specific technology used, there is still much each jurisdiction can do to ensure that elderly voters' choices are accurately recorded and counted. The reports laid out a number of basic usability and accessibility principles that officials should adopt when making decisions about using voting machines, ranging from where machines should be placed in the polling place to the type of ballot design that should be employed.

Just as important, election officials should work with older voters in their communities to assess how accessible and usability their machines are, and what might be changed to ensure that voters can use them. Good usability and accessibility testing of that includes older Americans is essential to ensure that their intended votes are accurately recorded.

Thank you very much.

⁴⁶ Lawrence Norden *et al.*, *The Machinery of Democracy, Voting System Accessibility*, Oct. 10, 2006, at http://www.brennancenter.org/content/resource/the_machinery_of_democracy_voting_system_accessibility

⁴⁷ Lawrence Norden *et al.*, *The Machinery of Democracy: Usability of Voting Systems*, Aug. 28, 2006, at http://www.brennancenter.org/content/resource/the_machinery_of_democracy_voting_system_usability.