

CHALLENGES to Fair Elections



ISSUE: Voter ID/ proof of citizenship requirements for voting and registration

As a nation, we now face a serious threat to the very nature of our democracy, and the core American belief that wide electoral participation by as many eligible voters as possible is central to our prosperity and success. With salacious and often unfounded allegations of efforts to vote by non-citizens, the deceased, felons and even pets, partisans, fringe organizations, and opinion makers of all kinds have pressed for strict new voter identification requirements. But the facts do not warrant these extreme proposals. All available evidence suggests that voter fraud is exceedingly rare. The few substantiated instances of actual voter fraud in recent elections involved absentee voting, fraudulent voter registration applications, and erroneous voting by those ineligible to cast a ballot—none of which would have been prevented by requiring photo ID in order to vote. Courts have recently thrown out or enjoined photo ID laws passed in Georgia and Missouri. Just as the proposals don't stop the problems, these laws also risk preventing upwards of 20 million Americans without government-issued identification from meeting the most fundamental responsibility of citizenship—exercising the right to vote.¹

Where to Watch

Progress

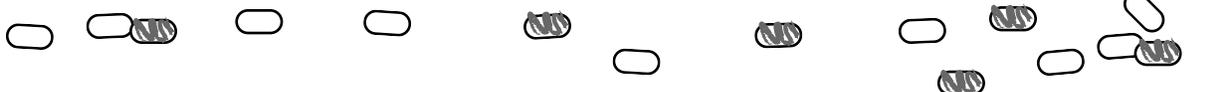
State Level: Courts have blocked implementation of the Georgia and Missouri laws. Wisconsin Governor Jim Doyle has vetoed photo ID legislation in his state on three occasions.

National Level: The Senate adjourned on September 30, 2006 without taking action on the House bill.

Problems

State Level: Georgia, Missouri, Indiana and Arizona have enacted restrictive photo identification or proof of citizenship laws for voting or voter registration. Similar bills were introduced in other states all across the country.

National Level: The House of Representatives passed H.R. 4844, a photo ID and proof of citizenship bill introduced by Rep. Henry Hyde, on September 19, 2006.



Voter fraud at the polls is minimal.

- A recent survey of Ohio's 88 county boards of elections found only four instances of ineligible people attempting to vote, out of over 9 million votes cast in the state during the 2002 and 2004 general elections—a fraud rate of 0.000044 percent.²
- The U.S. Department of Justice (DOJ) reports that while 200 million votes were cast in federal elections since October 2002, only 86 individuals have been convicted of federal voter fraud—and none for offenses that would have been prevented by a voter ID requirement.³
- An extensive analysis of election fraud conducted by Professor Lorraine Minnite at Barnard College in 2002—the only study of its kind, to date— found that voter fraud is rare, that safeguards to prevent fraud are already in place, and that individual voter fraud rarely sways election results.⁴

New voter ID laws are not based upon evidence of individuals impersonating other voters at the polls. They also fail to address practices that are actually responsible for most reported incidents of fraud.

- In blocking Georgia's strict voter ID-at-the-polls statute, two separate courts have found little to no evidence supporting the new voting restriction. According to Superior Court Judge T. Jackson Bedford, Jr., "the only evidence [of voter fraud] the Court actually heard was from the State's own witness, Ms. Gloria Champion, representing the Fulton County Board of Elections." Ms. Champion testified that in her 26 years as an employee of that Board, she had personal knowledge of only one instance of voter fraud when someone tried to vote twice.⁵
- Indiana could not cite "any incidents or persons attempting to vote, or voting, at a voting place with fraudulent or otherwise false identification" in the course of the federal lawsuit against Indiana's voter ID law. No voter in Indiana history has been formally charged with any sort of crime related to impersonating someone else for the purpose of voting. No evidence of in-person voting fraud was presented to the Indiana legislature before it enacted its voter ID statute.⁶
- In the few instances where voter fraud has occurred in recent years, it has commonly involved the submission of fraudulent absentee ballots or false voter registration forms.⁷ The stringent photo ID laws enacted in Georgia and Indiana would not have prevented these sorts of misconduct.⁸ Investigations of voting by ineligible felons, a third area of concern, show that these cases are most often the result of widespread misunderstandings about each state's unique felon voting restrictions.⁹

Millions of Americans lack government-issued photo ID, particularly the elderly, people with disabilities, the poor and people of color. Strict voter ID requirements will block thousands of legitimate votes for the one, rare fraudulent ballot.

- According to the 2001 National Commission on Federal Election Reform, 6 to 10 percent of voting-age Americans have no driver's license or state-issued non-driver's photo identification card—approximately 11 to 20 million citizens. Those who lack photo ID are disproportionately poor and urban.¹⁰
- In 2005, the American Association of People with Disabilities estimated that more than 3 million Americans with disabilities do not possess a driver's license or state-issued photo ID.¹¹
- The American Association of Retired People of Georgia estimated that about 153,000 Georgia residents over the age of 60 *who voted* in 2004 did not possess a government-issued photo ID. The AARP of Indiana has estimated that 10 percent of registered voters over the age of 60 do not have a state-issued driver's license in that state.¹²
- Proof of citizenship requirements burden American voters with a new type of poll tax. A passport costs \$97, and only one quarter of the U.S. population has one. Even birth certificates cost between \$5 and \$23, and some U.S. citizens—such as Native Americans born on reservations, and elderly African Americans born in the South under the care of midwives—were never issued these documents in the first place.¹³

- Real ID, a new federal law that mandates national standards for state drivers' licenses and identification cards, is often cited as the remedy for purported voting by non-citizens. But according to a new report, "Real ID will cost more than \$11 billion over five years, have a major impact on services to the public and impose unrealistic burdens on states to comply with the [A]ct by the May 2008 deadline."¹⁴ When Real ID goes into effect, in May 2008, state drivers' licenses and identification cards will need to show the citizenship of the bearer. More than 245 million U.S. driver's license/ID holders and all new applicants for drivers' licenses and state identity cards will need to obtain and present original birth certificates or passports in person in order to be issued the Real ID-compliant cards—at great cost.
- The most noticeable effect of Arizona's Proposition 200—which requires would-be registrants to present a passport, birth certificate, naturalization papers, tribal documents or a recent driver's license—has been to prevent U.S. citizens from registering to vote. Maricopa County, Arizona's most populous county, rejected 35 percent of registrations for inadequate proof of citizenship in 2005. Seventeen percent of new applicants were rejected between January and September 2006 for the same reason. Only a tiny fraction of those are believed to be actual non-citizens; most are believed to be citizens who simply lacked access to a passport, birth certificate or other required document.¹⁵
- One such individual is Eva Steele, a 57 year-old disabled American whose son is serving a tour of duty in Iraq. Ms. Steel testified before the House Committee on Administration earlier this year stating that she does not have the economic means to pay the fees associated with obtaining the documents necessary to prove citizenship. In her words, "Life is hard enough for disabled people like me without the added insult of being excluded from participating in our democracy."¹⁶

Voter ID proponents commonly misrepresent the actual incidence of voter fraud or photo ID's ability to prevent it.

- Voter fraud claims are commonly raised by partisan figures disenchanted with election results. In recent years, the allegations—many of which are later shown to be greatly exaggerated or unfounded—have been coupled with calls for strict voter ID requirements. The 2004 presidential and gubernatorial races in Wisconsin and Washington are illustrative.
- **In Wisconsin:** John Kerry carried Wisconsin by an 11,000 vote margin in the 2004 presidential race. Nearly 3 million votes were cast statewide. Former U.S. Rep. Susan Molinari alleged that the race was "decided by illegal votes."¹⁷ As authority she cited a report issued by an inter-agency task force led by U.S. Attorney Steve Biskupic. In fact, Biskupic announced that his probe had uncovered "no evidence of a conspiracy to influence the 2004 presidential elections."¹⁸ Only 14 indictments have resulted from the task force's investigations.
- State GOP leaders in Wisconsin held a news conference in August 2005 to announce that nine people who voted in Milwaukee in November 2004 had also voted in Chicago, Minneapolis or Madison. A U.S. Attorney investigating the allegations later found that of the nine alleged "double votes," none involved fraud. Six were attributable to clerical error; the remaining three concerned persons with similar names but different dates of birth.
- **In Washington State:** Former U.S. Rep. Susan Molinari also cited the contested 2004 gubernatorial race in Washington, which she claimed was "decided by illegal votes," as justification for a national photo identification requirement for voting.¹⁹ In fact, Chelan County Superior Court Judge John Bridges found severe and widespread errors in the processing and counting of ballots—but no evidence suggesting that voter fraud played any role in now-Governor Christine Gregoire's slim victory. According to the court, "While there is evidence of irregularity, as there appears to be in every election, based on the testimony of various county election officials, there is no substantial evidence by clear and convincing evidence that improper conduct or irregularity procured Ms. Gregoire's election to the Office of Governor." The majority of the irregularities unearthed in the litigation involved voting by people with felony convictions unaware of their ineligibility to vote.²⁰ A photo ID requirement would not have prevented these ballots from being cast in 2004.

Legislators should reject harmful photo ID requirements at the polls and should, instead, turn their focus on the range of known, research-based election reforms that will serve to increase fair ballot access and strengthen our democracy

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 - 3 DOJ Press Release, July 26, 2006.
 - 4 Lorraine Minnite and David Callahan, *Securing the Vote: An Analysis of Election Fraud* (2003) <http://www.demos.org/pubs/EDR - Securing the Vote.pdf>.
 - 5 Letter from Cathy Cox, Ga. Secretary of State, to Members of the Georgia Assembly (March 29th 2005) available at <http://moritzlaw.osu.edu/electionlaw/litigation/documents/ExhibitA.pdf>; see also Letter from Cox to Sonny Perdue, Governor, State of Georgia (April 8, 2005), available at <http://www.aclu.org/FilesPDFs/ACF2209.pdf>; see also Letter from Cox, to John Tanner, Chief, Voting Rights Section, U.S. Department of Justice (August 25, 2005). Available at <http://www.advancementproject.org/vp/GASubm.pdf>. See also COMMON CAUSE/GEORGA v BILLUPS, U.S. District Court, Northern District of Georgia (Rome) 4:05-cv-00201-HLM, Deposition of Cathy Cox, dated October 4, 2005 ("Cox Dep.") at 14; Plaintiffs' PI Brief, Exhibits A & B.]
 - 6 *Indiana Democratic Party v. Rokita*, 2006 WL 1005037, at *9 (S.D. Ind. April 14, 2006).
 - 7 See Testimony of Georgia Secretary of State Cathy Cox in *Common Cause v., Georgia*, at 12, 15, 60; Declaration of Member of Fulton County Board of Registration and Election, also in *Common Cause v., Georgia* at 47-50; Preliminary Findings of Joint Task Force Investigating Possible Election Fraud, (May 10, 2005) <http://www.wispolitics.com/1006/electionfraud.pdf>. "The task force has found that persons who had been paid to register voters as "deputy registrars" falsely listed approximately 65 names in order to receive compensation for the registrations. The evidence does not indicate that these particular false registrations were later used to cast votes."
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