

March 28, 2006

Mr. John Tanner
Chief, Voting Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Re: Comments to Georgia Submission under Section 5 with respect to S.B. 84

Dear Mr. Tanner:

We write on behalf of individuals and organizations that are advocates for voting rights. They are identified at the end of this letter and on **Schedule I** attached hereto. They are the substantially the same group that opposed Georgia House Bill 244 (“**H.B. 244**”) and they now oppose Georgia Senate Bill 84 (“**S.B. 84**”).

For reasons set forth in this letter, we object to the preclearance approval of S.B. 84, a bill hastily passed by the Georgia Assembly on January 24, 2006, and signed by Governor Perdue on January 26, 2006. S.B. 84 provides for partial modifications to Georgia Act 53 (which, prior to codification, was H.B. 244) and correspondingly the amendments to O.C.G.A. § 21-2-417 promulgated thereunder. Act 53 is currently enjoined by an order issued on October 18, 2005 by Judge Harold Murphy of the United States District Court for the Northern District of Georgia.¹ It is our position that S.B. 84’s modifications to the voter ID requirements established by H.B. 244 (now codified at O.C.G.A. § 21-2-417, Act No. 53) are insignificant and superficial corrections to a deeply flawed statute, and in no way remediate the discriminatory and retrogressive effect of the voter ID requirements established by H.B. 244.

In fact, it is our reasoned opinion that the circumstances surrounding passage of S.B. 84 are even more indicative of the retrogressive nature of the statute than those surrounding enactment of H.B. 244. Substantial information has been made available to the Legislature and the Governor via public comment, public media reports, and publicly available court proceedings. These sources have all amply established that the voter ID requirements promulgated by H.B. 244 are discriminatory and retrogressive. However, the Legislature did not take appropriate time and consideration in the legislative session to evaluate and weigh such information, nor did the Legislature address the aspects of the voter ID requirements that are retrogressive, as recognized by Judge Murphy, as well as certain members of the staff of the Voting Section, Civil Rights Division of the Department of Justice (the “**Section Staff**”) in the “draft”

¹ See *Common Cause/Georgia v. Billups*, 406 F. Supp. 2d 1326 (N.D. Ga. 2005), attached as **Exhibit A** hereto.

Section 5 Recommendation Memorandum regarding H.B. 244 (“the **Section Staff Memorandum**”).²

Furthermore, despite the fact that the public record indicates fraud in absentee voting is more prevalent than even in-person voting fraud, the Legislature has not taken meaningful measures to address this kind of fraud in the same fashion it has focused on in-person fraud. In short, given that the Legislature did not cure or even attempt to cure a statute with a known retrogressive impact, the intent of the new legislation itself is suspect.

As such, the Department of Justice (the “**Department**”) should refuse preclearance approval pursuant to the authority granted to it in accordance with Section 5 of the Voting Rights Act.

Under Supreme Court precedent and the regulations for implementing Section 5, “the last legally enforceable practice or procedure” is the benchmark for comparison when determining whether an election change has a retrogressive purpose or effect.³ H.B. 244, adopted in 2005, is currently enjoined by the U.S. District Court for the Northern District of Georgia. Consequently, the benchmark is the practice in which Georgia requested, but did not require, photo identification to vote in person. As set forth below, particularly in view of the additional information regarding intent to discriminate and the Legislature’s failure to investigate, much less address the concerns of members of American-Africans and Hispanics,⁴ the Department should not preclear S.B. 84, including those parts which retain the voter ID provisions of H.B. 244.

As you are aware, under Section 5 of the Voting Rights Act, the Department must refuse preclearance of state legislation affecting voting procedures that either has a discriminatory purpose or “the effect of denying or abridging the right to vote on account of race or color.”⁵ Georgia has the burden of showing that its proposed changes do not violate either prong of Section 5.⁶

Georgia has once again failed to carry this burden with respect to its contemplated voter ID requirements. S.B. 84 should fail preclearance approval because: (1) in its attempt to hastily revise the deficiencies in H.B. 244 raised by Judge Murphy’s order, Georgia failed to address the many sources of retrogression in S.B. 84; (2) the Legislature’s blatant disregard for S.B. 84’s retrogressive effects and its calculated decision to retain a known retrogressive statute are both evidence of a retrogressive intent; (3) S.B. 84 contains debilitating ambiguities that require further

² We refer to the Section Staff’s Section 5 Recommendation Memorandum re: Act No. 53 (H.B. 244), dated August 25, 2005. Since the Washington Post made this memo available to the public, we refer to the comments contained therein.

³ *Abrams v. Johnson*, 521 U.S. 77, 96 (1997), quoting the Section 5 regulations, 28 C.F.R. 51.54(b).

⁴ 28 C.F.R. 51.58(d)

⁵ 42 U.S.C. § 1973.

⁶ *Brooks v. State Bd. of Elections*, 775 F. Supp. 1470 (S.D. Ga. 1989), *aff’d* 498 U.S. 916 (1990).

clarification from the Georgia legislature, such that it is impossible to clearly understand the scope of the retrogressive nature of the statute; and (4) preclearing S.B. 84 will require Georgia's counties to quickly respond with much needed administrative regulations that will all require preclearance review, causing a tremendous strain on the Department to respond in time for the July 2006 elections.⁷

As noted above, since our last letter opposing the clearance of S.B. 84's predecessor, H.B. 244, many acute problems with the original bill have come to light. We do not attempt to restate the arguments set forth in our letter dated July 7, 2005, although we incorporate those arguments by reference in this letter, and for your convenience have attached that letter as **Exhibit B** hereto. We have, however, taken leave to restate certain arguments with respect to the retrogressive nature of the voter ID requirements that are maintained by S.B. 84. We also specifically set forth reasons why S.B. 84 does not obviate the retrogressive nature of the requirements, and in fact, exacerbates them. Because S.B. 84 modifies parts of the current requirements, but only insofar as addressing the manner, cost and locations in which the photo identification cards themselves can be obtained, we refer herein to the photo ID requirements established by H.B. 244 as the "**ID Requirements.**"

A. The revised photo identification requirements contained in S.B. 84 still will have a retrogressive effect on minority voters in Georgia.

As amply supported by statistical evidence available to the Department, any African-Americans do not have one of the six forms of identification established by the ID Requirements. S.B. 84 does not expand or alter the number of forms of identification necessary to satisfy the ID Requirements. As a convenience, we present statistics that indicate that African-Americans are far less likely to have one of these six acceptable forms of identification:

- Based on the amount of black households without access to a vehicle, it is reasonable to infer that approximately the same amount of African-Americans do not have a valid driver's license.
- Less than 20 percent of the entire U.S. population has a valid passport.⁸
- Seventy-seven percent of employed African-Americans in Georgia work for private employers. Therefore, they would not have a government-issued

⁷ Although the State will need to submit specific regulatory schemes mandated by S.B. 84 to the Department for preclearance on an individual basis, Georgia is nonetheless requesting preclearance of S.B. 84 in its entirety and on an expedited basis. The result of this approach is that the Department cannot truly understand the scope of the retrogressive nature of the statute until all of the regulatory requirements (i.e., what types of identification will be satisfactory for obtaining photo identification, locations in each county where the ID cards will be available) have been established and reviewed. Georgia also does not currently have sufficient equipment to comply with S.B. 84. On March 20, 2006, only months before the next state-wide primary election in Georgia, the State Election Board had just approved a request for proposals with respect to such equipment. *See Summary of Special Called State Election Board Meeting By Conference Call*, March 20, 2006, available at <http://www.sos.state.ga.us/elections>.

⁸ Section Staff Memorandum, at 16.

identification from their place of employment. Even though 19 percent of employed African-Americans work in the public sector, many do not have government-issued employee identification because government employees who work outside of Georgia's large urban areas usually do not receive photo identification.⁹

Opponents of the photo identification requirements and the Section Staff itself have reported that the ID Requirements will have a retrogressive effect on the voting rights of racial minorities. Indeed, Judge Murphy's opinion, not disturbed by the Eleventh Circuit, established that the new ID requirements imposed substantial burdens on the effective exercise of franchise. The Department should respect Judge Murphy's determinations, leaving the Department with a factual inquiry that goes primarily to the particular impact on minority voters.

Although much of the evidence in the Section Staff Memorandum properly refers to the retrogressive impact of the ID Requirements, these sources of retrogression have not been addressed by S.B. 84. Indeed, at least to the extent currently known (given that certain rules and regulations mandated by the statute have yet to be established), the new statute could make the ID Requirements even more retrogressive. In particular, we call your attention to the racially disparate transportation, literacy, economic, and logistical barriers to voting that made the ID Requirements retrogressive, and that make the modifications set forth by S.B. 84 even more retrogressive.

1. The transportation obstacles to obtaining photo identification under S.B. 84 disparately impact racial minorities.

S.B. 84 requires the photo ID cards be made available in at least one "place" in every county. However, there is no accompanying requirement that the "place" be centrally located, accessible by public transportation or otherwise adequately publicized. Accordingly, these requirements do not mitigate the racially disparate transportation barriers created by the ID Requirements; rather, such provisions of S.B. 84 increase the requirements' disparate impact. We call your attention to the following:

- Before passing H.B. 244, Governor Perdue reported that at least 300,000 Georgians do not have driver's licenses.¹⁰ No information has subsequently been presented to refute this estimate. These individuals would have as much difficulty traveling to any "place" within their county, as they would to a DDS location, particularly given the lack of readily available public transportation in Georgia.

⁹ *Id.* at 28.

¹⁰ See Jim Tharpe & Nancy Badertscher, *Voter ID Bill Likely to Be Law*, Atlanta Journal Constitution, Apr. 2, 2005.

- African-Americans in Georgia are nearly five times less likely than whites to have access to a motor vehicle.¹¹ The Section Staff itself has noted that 390,414 Georgians of voting age do not have access to a vehicle.¹² Over half of the 250,000 households in Georgia without access to a vehicle are African-American. This translates to 17.7 percent of African-American households without access to a vehicle, compared to 4.4 percent of white households. In Atlanta, the number of African-American households without a vehicle is even higher, reaching almost 20 percent.¹³
- The State of Georgia still has not sufficiently provided data that correlates any statistical relationship between race and possession of drivers licenses.¹⁴ Notwithstanding the lack of readily available data, which we urge the Department request from the State, we direct you to a study done in Wisconsin regarding relationships between drivers licenses and race, specifically relating to the voting age population, attached as **Exhibit C** hereto.¹⁵ This study found an alarming disparity between African-American and white voting age residents with driver's licenses. We concur with the Section Staff that, if provided, Georgia's statistics would show a "stronger correlation between driver's license ownership and race."¹⁶

Before S.B. 84 was passed earlier this year, supporters of the bill, including House Speaker Glenn Richardson and House Majority Whip Barry Fleming, suggested that the voter identification cards would be made available at every county's voter registration office.¹⁷ Besides the fact that the State Election Board has not passed any implementing regulations to determine what "place" § 21-2-417.1 contemplates, offering the photo IDs at county registrar offices does not address the retrogressive transportation barriers caused by S.B. 84. Even if the State Election Board adopts the Representatives' suggested location (a decision which itself would need to be precleared by the DOJ), the retrogressive impact of S.B. 84 will not be alleviated. In

¹¹ Census Summary File 3 (SF3).

¹² Section Staff Memorandum, at 14.

¹³ Wendell Cox & Alan E. Pisarski, *Blueprint 2003: Affordable Mobility and Access for All Atlanta and Georgia*, at 24, available at <http://ciprg.com/ul/gbt/atl-report-20040621.pdf>.

¹⁴ It is important to note that the Legislature had over ten months to evaluate this data and commission statistical studies, however, it failed to do so. The State anticipated revisiting the ID Requirements, but nonetheless failed to sufficiently conduct research and compile relevant data for purposes of a Section 5 review, which it anticipated would be necessary. This further act of omission raises the question of retrogressive intent.

¹⁵ See John Pawasarat, *The Driver License Status of the Voting Age Population in Wisconsin*, Employment and Training Institute, University of Wisconsin-Milwaukee, June 2005, available at <http://www.uwm.edu/Dept/ETI/barriers/DriversLicense.pdf>.

¹⁶ Section Staff Memorandum, at 26-27.

¹⁷ See Nancy Badertscher, *General Assembly's First Day: No Time Wasted on Revised ID Bill*, Atlanta Journal Constitution, Jan. 10, 2006, at A1.

fact, it would create additional transportation-related obstacles for African-American voters. For example:

- Unlike Department of Driver Services offices which can be readily located by a map on the Department of Driver Services website and by road signs and other prominent signage, county election registrar offices are not easily locatable. Although there is a centralized list on the Secretary of State's website, finding this information is not intuitive or readily accessible.¹⁸
- Registrar offices are not necessarily in easily recognizable locations that have sufficient signage to identify the office.
- Many registrar offices are not located in readily accessible areas and may not be accessible by elderly or disabled persons. Of the 159 counties in Georgia, 54 counties do not have any public transportation. Also, given the fact that registrar offices are usually small offices, it is likely that even in counties with some public transportation, many of the offices may be off these transportation routes.

The State has submitted to the Department that the State's GLOW Bus is an adequate remedy to address the retrogressive nature of the ID Requirements. Remarkably, despite publicly available information to the contrary (and presumably because the Department did not obtain additional information from the State regarding the GLOW Bus), in a letter dated October 7, 2005 to Senator Bond, attached as **Exhibit D** hereto, Assistant U.S. Attorney General William E. Moschella of the Department of Justice mistakenly stated that the GLOW bus will eliminate any adverse effect on African-Americans in need of photo identification. However, for the following reasons, the GLOW program hardly mitigates any of the racially disparate transportation barriers explained above:

- There is only one GLOW bus available for the entire state (57,906 square miles). It has an already well-documented history of having mechanical failures and low impact even when it is operational.¹⁹
- Contrary to Mr. Moschella's position that the GLOW bus is a "critical factor mitigating (if not eliminating) any potential adverse impact," the highly limited availability of the GLOW bus makes it an insignificant factor in measuring S.B. 84's retrogressive impact. The GLOW bus is only available to the public for a few dates a month. As of the date of this letter, the

¹⁸ In fact, even assuming voters will have readily accessible Internet access (which is an assumption not based on probable facts), a visitor to the Secretary of State's general website will have to traverse through three web pages before there is a link to the local registrar's addresses.

See <http://www.sos.state.ga.us/default1024.asp>.

¹⁹ See Jim Wooten, Editorial, *Voter Photo ID 'Problem' Overstated*, Atlanta Journal Constitution, Oct. 25, 2005, at A15; Nancy Badertscher, *State Bus Will Roll for Voter Ids*, Atlanta Journal Constitution, Aug. 9, 2005, at B1.

Georgia Department of Drivers' Services website does not have a single date scheduled in April 2006 for the GLOW bus to provide voter identification cards.²⁰ Furthermore, the bus made only one stop in March.²¹ At this rate, the GLOW bus would only visit (or revisit) one of Georgia's 159 counties before the July 2006 election.

- The GLOW program does not address the problem of obtaining supporting documents required to obtain a voter identification card.
- The GLOW bus is not handicapped accessible.

In light of the retrogressive impact the new statute would have on the voting rights of African-Americans by reasons of accessibility, and the fact that the GLOW program is not situated to improve S.B. 84's disparate impact, we recommend that the Department further request the following information from the State:

- Additional statistically sound information regarding the correlation between African-Americans' possession of state ID cards and/or licenses and their voting registration status;
- Statistical information regarding the concentration and geographic proximity of African-American residents in regard to locations of DDS and county election offices (until the State Election Board submits regulations clearly defining the "place" where the photo IDs will be made available);
- Additional information regarding the location of county election offices, signage, and accessibility of those locations by public transit;
- Additional information regarding the GLOW program and its operations, including a proposed schedule leading up to the July 2006 primary election and description of outreach efforts over the coming months.

2. Considering Georgia literacy levels, the ID Requirements and S.B. 84 disparately and retrogressively impact racial minorities because absentee balloting inherently disenfranchises more African-Americans.

The literacy level in Georgia among African-Americans is yet another significant source of S.B. 84's retrogressive impact. The following statistics are

²⁰ See <http://www.dds.ga.gov/drivers/glowbus.aspx>, attached as **Exhibit E** hereto.

²¹ The GLOW bus's most recent stop came on March 26 at the Georgia International Horse Park near Conyers, Rockdale County, Georgia. Of significant note, the Horse Park is not accessible to any public transportation. The closest MARTA location to Conyers is the Indian Creek station which is approximately 35 minutes away. In fact, there is no general Rockdale County mass transit. Rockdale County Senior Services provides services to older residents for trips to the Senior Center in Rockdale County, trips to medical appointments and social service agencies, but it is not clear if the Horse Park is on the list of approved locations. In any event, it may not matter since the Senior Services operates from 7:30 a.m. to 4:00 p.m., Monday through Thursday, and 7:00 a.m. to 3:30 p.m. on Friday. Notably, the service center was not open on Saturday, the day when the GLOW bus came to Rockdale County.

particularly alarming with respect to the ability of voters to navigate the drastically changed voting and absentee ballot requirements under S.B. 84. For example:

- Based on a study by the National Institute for Literacy, attached as **Exhibit F** hereto, 23 percent of the voting age population in Georgia is at the lowest literacy level, “Level 1.”²² These adults have difficulty using basic literacy skills to complete tasks “considered necessary for functioning in everyday life.”²³ Adults at this literacy level can sign their name, however they generally cannot enter background information on a social security form, locate their eligibility from a table of benefits, or even locate an intersection on a street map.²⁴ By requiring illiterate Georgia voters to navigate a newly established voter ID system, in addition to other documentary requirements, the Georgia legislature is essentially imposing a literacy test on Georgia voters. Oddly enough, as touch screen balloting reduces literary barriers for Georgians to exercise their right to vote, requiring voters to navigate a new administrative system diminishes these benefits.
- Voters at Level 1 Literacy have the skills to sign their name. Under the current law, African-American voters (who statistically have higher percentages at Level 1 literacy or below) are not disparately affected because they can sign their name swearing their personal identity. By eliminating affidavits and imposing more cumbersome standards and procedures, S.B. 84 will disparately impact and disenfranchise disproportionate numbers of African-American voters at low literacy levels.
- The six counties in Georgia with the highest percentage of their voting age population at Level 1 all have African-American populations above 55 percent. We call your attention to the following table:

County	Percentage of the Voting Age Population at Level 1 Literacy ²⁵	Percentage of the county population that is African-American (based on the 2000 census) ²⁶
Hancock	47	78
Jefferson	41	56
Macon	41	60
Randolph	42	60
Talbot	40	62
Terrell	41	61

²² National Institute for Literacy, *The State of Literacy in America: Estimates at the Local, State, and National Levels*, at 4-5 (1998).

²³ *Id.*

²⁴ *Id.*

²⁵ *See id.*

²⁶ These figures are based on the Georgia Office of Planning and Budget’s 2000 Census, available at http://www.gadata.org/information_services/Census_Info/2000race_county.htm.

- The Section Staff previously recognized that African-Americans would have a harder time voting by absentee ballots because this method “requires knowledge of the deadlines and the application process, which may be harder for illiterate and less well-educated voters, who are disproportionately black.”²⁷ By merely examining the Absentee Ballot Application, attached as **Exhibit G** hereto, it is not difficult to see that even an individual with literacy skills above Level 1 would have trouble navigating the form. Yet, the State has taken no steps to assist illiterate voters in registering for an absentee ballot, which the State touts as a widely available alternative to voting without photo identification.

Given the percentage of African-Americans at the lowest literacy level, it is impossible to ignore the retrogressive racial impact of S.B. 84. Yet, the State has offered no arrangements to aid these African-American voters who, because of their low literacy level, will be adversely affected, if not entirely disenfranchised by S.B. 84.

In light of the disparate impact the new statute would have on illiterate voters, or even voters with Level 1 literacy skills, who are disproportionately African-American, we recommend that the Department further request the following information from the State:

- Additional statistically sound information regarding literacy rates and the limitations on the illiterate or marginally literate with respect to obtaining voter ID cards; and
- Additional information regarding the number of available personnel at each county elections office who can assist with the completion of necessary paperwork to obtain a voter ID card.

3. The economic obstacles to obtaining photo identification under S.B. 84 disparately impact racial minorities.

Despite the fact that the State is now offering an identification card itself for no charge, there still are accompanying costs to obtain the card that will disparately impact African-American voters. Under S.B. 84, in order to obtain an ID card an individual still will need to provide some other form of certified identification information, which ironically was largely the same information previously permissible to use for identification at the polls. Difficulties obtaining these certified documents, including the time and cost needed to travel and obtain the card, have a disparate impact on lower-income African-Americans. Given that the uniform requirements for what certified documentation will be acceptable by each county elections office have not yet been finalized (or even submitted to the Department for Section 5 preclearance review) the aggregate per person costs are still uncertain. We specifically note the following

²⁷ Section Staff Memorandum, at 36.

costs that African-American voters will disproportionately face in order to obtain a voter ID card:

- A certified copy of a birth certificate can cost anywhere from \$10 to \$45, if rush delivery is required. In situations where voters might use provisional ballots because they do not have proper identification, it is highly likely that voters will need to have these materials delivered to them overnight in order to meet the tight 48-hour deadline required for the provisional vote to be counted.
- Certified naturalization documents cost \$210.
- Passports cost at least \$97 (on a non-expedited basis).
- In cases where individuals do not have birth certificates because they were delivered by midwives or born at a time prior to centralized birth record-keeping, a birth certificate would be impossible to obtain.²⁸
- In order to obtain supporting documents and the voter identification card itself, voters will likely have to take time off of work. For many lower income and hourly-waged workers, this time would be extremely costly. Statistics generally support the proposition that this cost would disproportionately impact Georgia's African-American population.

As the Section Staff previously noted, for African-Americans making less than the median income of \$12,576, or whose income falls below the poverty line, “these fees are significant.”²⁹ Indeed, according to a report by the Kaiser Family Foundation, non-whites in Georgia are nearly six times more likely than whites to fall below the poverty line.³⁰ Thus, S.B. 84 imposes these additional costs so as to burden African-American voters more heavily than white voters.

We recommend that the Department request the State to produce information regarding the total economic cost of obtaining IDs and also, regarding how the cost may disproportionately impact African-Americans.

4. Additional sources of retrogression exist under S.B. 84.

In addition to transportation, literacy, and economic factors related to the ID Requirements and S.B. 84 that will have a disproportional impact on African-American

²⁸ Cynthia Tucker, Editorial, *Voter ID Laws Ugliness Can't Be Disguised*, Atlanta Journal Constitution, Feb. 8, 2006, at A11. In her article, Tucker describes the experience of Ruth White, mother of Mayor Shirley Franklin, who was born at home. After writing several letters to Georgia's Bureau of Vital Statistics, Ms. White was told there was no record of her birth. In his opinion, Judge Murphy cited Ms. White's declaration and noted that Ms. White “could not get a Photo ID card because the State of North Carolina could not find her birth certificate, but was issued a letter that was good enough to get a passport from the federal government—yet not good enough to get a Photo ID card.” *Common Cause/Georgia v. Billups*, 406 F. Supp. 2d 1326, 1341-42 (N.D. Ga 2005).

²⁹ Section Staff Memorandum, at 30.

³⁰ *Georgia Poverty Rate by Race/Ethnicity*, available at <http://www.statehealthfacts.org/cgi-bin/healthfacts.cgi?action=profile&area=Georgia&category=Demographics+and+the+Economy&subcategory=People+in+Poverty&topic=Poverty+Rate+by+Race%2fEthnicity>.

voters, S.B. 84 gives rise to other sources of retrogression. These include problems that existed with H.B. 244 that have not been remedied by S.B. 84. In particular, we note the following:

- a) African-American voters rely more heavily on forms of identification that S.B. 84, and its predecessor H.B. 244, eliminated.
 - Given the high number of African-Americans below the poverty line and receiving government aid, eliminating non-photo government documents (i.e.: TANF documentation and unemployment checks) will disproportionately affect African-American voters.

- b) Expanding the availability of absentee voting to voters who do not have photo identification does not cure the retrogressive effect of S.B. 84.
 - Both H.B. 244 and S.B. 84 expand opportunities in Georgia for absentee voting. It is well documented that African-American voters do not vote by absentee ballots as often as white voters. Across the country and in Georgia, white voters vote by absentee almost twice as often as African-American voters. In the 2004 presidential election, of all non-Hispanic black voters registered, only 5.7 percent requested absentee ballots, compared to 11 percent of non-Hispanic white voters.³¹ In Georgia, approximately seven percent of registered African-American women voted by absentee ballots, compared with 12 percent of registered white female voters.³² Approximately six percent of Georgia's registered African-American male voters voted by absentee ballots, compared with 11 percent of male white voters.³³
 - As we explain above, many African-Americans do not have the economic resources or literacy skills to navigate the new voter ID requirements or use absentee ballots as a viable alternative.
 - Furthermore, Georgia has presented no plans as to how voters will be informed about the relaxed standards for absentee voting. Absentee voting requires meeting deadlines and registering in advance; thus for the reasons set forth above, African-American voters are disproportionately less likely to be aware of these guidelines and use the "alternative" of absentee voting.

- c) African-American voters rely more heavily on using the affidavit option to prove their identity in lieu of photo identification.

³¹ Kimball W. Brace & Dr. Michael P. McDonald, *Final Report of the 2004 Election Day Survey*, submitted to the U.S. Election Assistance Commission, at 5-8 (Sept. 27, 2005).

³² See Absentee Voters By Race Gender, attached as **Exhibit H** hereto. These statistics were generated by Georgia Secretary of State's Office after the 2004 general election. Judge Murphy relied on these figures in his opinion enjoining H.B. 244. See *Common Cause/Georgia*, 406 F. Supp. 2d at 1353.

³³ *Id.*

- By eliminating this alternative to photo identification, those minority voters who are unable to get a voter ID card and have limited literacy skills will be completely disenfranchised.

As noted above, it is Georgia's burden to present evidence that S.B. 84 is not retrogressive. In Georgia's preclearance submission for H.B. 244, Susan Laccetti Meyers, Chief Policy Advisor to the Georgia House of Representatives, admitted to the Section Staff that the Legislature did no analysis or independent inquiry into the effect the photo identification requirements might have on racial minorities. According to Meyers, the Georgia legislature relied solely on the uncorroborated statistic that more Georgians had driver's licenses than were registered to vote.³⁴

The State's failure to provide readily-available evidence and statistics on these issues is particularly troubling and further demonstrates the State's retrogressive intent in passing S.B. 84, especially considering the amount of regularly recorded and easily accessible statistics.³⁵ For example, election workers in Georgia are required to record the type of identification presented by voters on the voter's certificate. The voter's certificate form, approved by the Secretary of State and used by election officials, includes check boxes for the different types of identification. The certificates are required to be kept for a minimum of 24 months.³⁶ Georgia is also one of the few states, which records the race of voters. These two sources of information could reveal which types of identification documents have been presented by the race of the voter. It also could reveal the race of voters who executed an affidavit, instead of presenting identification.

We once again recommend that the Department request from Georgia information from these sources, which would be instructive regarding the racial impact of limiting the types of acceptable identification. The information is available, and should be produced whether statewide or by sampling of representative precincts. This is exactly the type of information the state should have investigated before adopting S.B. 84 and the ID requirements.

This type of detailed information regarding the race of persons who used alternative election structures was utilized by the Department to interpose an objection to certain changes in Florida law in 1999. In that instance, the Department relied on information as to the race of persons who requested absentee ballots and the race of persons whose absentee ballots were rejected.³⁷ Similarly, the available data kept by Georgia is probative and should be requested in order for the submitting jurisdiction to meet its burden of proof.

³⁴ Section Staff Memorandum, at 6-7.

³⁵ See Section B, *infra*.

³⁶ See O.C.G.A. § 21-2-411.

³⁷ See Letter from Acting Assistant Attorney General Bill Lann Lee to Assistant Attorney General of Florida, George L. Wass, p. 3-4, June 1, 1999.

Despite having an additional ten months to compile such readily-available research, Georgia presents no statistical evidence to refute the retrogressive effects of S.B. 84. The Section Staff themselves recognized that by not producing even a scintilla of evidence as to the racial impact of the ID requirements, Georgia has not carried its burden under Section 5.³⁸ Having a second opportunity, Georgia once again fails to meet its burden. Accordingly, we urge the Department deny preclearance and investigate the statistical information necessary to fully measure the retrogressive impact that is clearly generated by S.B. 84 and the ID Requirements generally.

B. The legislative history and alleged purpose of S.B. 84 suggest the bill was passed with a retrogressive intent.

As noted above, we believe S.B. 84 is an attempt to make a known retrogressive law enforceable in the eyes of a court and, regrettably not an attempt to sufficiently reduce or remove the statute's sources of retrogression. The statements of public officials have made this abundantly clear. Unfortunately, Georgia is no stranger to such efforts to modify retrogressive laws in a misguided attempt to pass legal and constitutional muster before the courts. A recent report by the American Civil Liberties Union states that Georgia is one of the most persistent and egregious challengers to the protection of voting rights.³⁹ Sadly, in this instance, Georgia is living up to its reputation. For the following reasons, we believe that not only do S.B. 84 and the ID Requirements have a retrogressive effect, but that they were passed by a legislature with a retrogressive intent.

1. The manner in which Georgia voted on and passed S.B. 84 evidences Georgia's retrogressive intent.

Federal District Court Judge Harold Murphy enjoined H.B. 244 on October 18, 2005. Judge Murphy issued a 123-page order explaining the many problems with the photo identification requirements. Between October 2005 and January 2006, the state had ample time to research and prepare a curative proposal with respect to the ID Requirements. In fact, shortly after the statute was passed in the Spring of 2005, it appeared the Legislature would revisit the ID requirements in their entirety, with particular discussion of absentee ballot fraud, a much more prevalent form of voter

³⁸ See Section Staff Memorandum, at 20 ("The submitting attorney provided almost no information regarding the availability of the seventeen forms of identification that are acceptable under the benchmark, the method to obtain them, or any discrepancies in ownership of these forms of identification by race. As it is the jurisdiction's burden to demonstrate that the proposed voting change is not retrogressive, it has failed to do so.").

³⁹ See Laughlin McDonald & Daniel Levitas, *The Case for Extending and Renewing the Voting Rights Act - Voting Rights Litigation 1982-2006: A Report of the Voting Rights Project of the American Civil Liberties Union*, March 2006. In particular, nearly half of the 293 voting rights complaints the ACLU Voting Rights Project has filed since 1982, when the Voting Rights Act was last renewed, were in Georgia.

fraud in Georgia.⁴⁰ Instead, upon resuming session in 2006, the Legislature hastily passed S.B. 84 in the Georgia General Assembly with alarming and reckless speed.

The State waited for the 2006 session of the General Assembly to begin and then rushed the “revised” Voter ID bill onto the agenda. The bill’s rapid journey through the Georgia legislature and approval by the Governor demonstrates the State’s retrogressive intent and disregard for maladies in the original bill. For example:

- On January 9, 2006, the first day of the 2006 session, the House Governmental Affairs Committee approved S.B. 84 on a party-line vote, mere hours after Speaker of the House, Glenn Richardson announced the bill. Just three days later, on January 12, 2006, S.B. 84 was passed by the entire House of Representatives.
- The Chairman of the House Governmental Affairs Committee, Rep. Austin Scott, limited the speaking time of those who testified about S.B. 84 so that he and another representative could make another meeting.⁴¹
- State Representative Gail Buckner reported to the House of Representatives that the bill was rushed through committee so fast that the state’s elections director did not have time to read the bill, let alone comment on its impact on local registrars.⁴² She commented that: “I was reminded of the adage haste makes waste.”⁴³
- Within two weeks, the Senate voted for S.B. 84. The House then gave its final approval on January 25, 2006, and Governor Perdue signed the bill the next day.

The State did not conduct vital fact-finding regarding the potential discriminatory effect a photo identification bill might have on African-American voters. The proponents of S.B. 84 did not engage in any discussions with opponents of the ID Requirements, or otherwise reach out to determine the concerns of the impacted parties.⁴⁴ Nor did the Legislature consider alternatives to curb the alleged problems it sought to address with the ID requirements.⁴⁵

⁴⁰ On April 24, 2005, in an interview on WXIA Channel 11 in Atlanta, Representative Bill Stephens, then part of the Georgia Republican leadership of the House and now a candidate for Secretary of State, promised that during the next legislative session there would be a discussion of the absentee ballot issue. That promise was not realized, as there was no substantive dialogue of absentee ballots during the S.B. 84 debate.

⁴¹ See Mike Billips, *Voter ID, Gas Cut Pushed Through Committees on First Day*, Macon Telegraph, Jan. 10, 2006.

⁴² *Voter ID Bill on its Way to the House Floor*, Atlanta Journal Constitution, Jan. 11, 2006, at B4.

⁴³ Nancy Badertscher & Sonji Jacobs, *Legislature 2006: In Brief*, Atlanta Journal Constitution, Jan. 11, 2006, at B4.

⁴⁴ House Speaker Glenn Richardson told critics of S.B. 84 on the record that they could draft separate legislation if they wanted to deal with absentee fraud. See Alan Judd, *Absentee Voter Fraud Untouched by ID Law: Most Frequent Form of Cheating May Be Eased by Recent Rules*, Atlanta Journal Constitution, Jan. 29, 2006, at A1.

⁴⁵ The Section Staff had previously outlined several available alternatives that would lessen the impact of Georgia’s proposed changes on African-American voters. These alternatives were not substantively incorporated in the new legislation.

In deciding whether to preclear S.B. 84, Attorney General must consider, *inter alia*, the extent to which Georgia allowed African-American voters “an opportunity to participate in the decision to make the change” and the extent to which Georgia took into account concerns of African-American voters in making the change.⁴⁶ In its great haste to pass S.B. 84 through the legislative process, Georgia completely disregarded the voice of African-American lawmakers, voters and other opponents to S.B. 84.⁴⁷

As S.B. 84 was pushed through the Legislature, Georgia made it very clear that it had no intention of curing the retrogression in H.B. 244, or even considering alternatives that would have a lesser racially disparate impact. The Legislature’s intent in making these choices apparently was to retain the discriminatory and retrogressive effects inherent in the currently proposed ID Requirements.

2. The photo identification requirements purport to fix a non-existent problem.

S.B. 84’s stated purpose is to eliminate voter impersonation and fraud at the polls. However, Georgia has no such problem of any materiality. Several different sources have corroborated other evidence that Georgia’s claimed interest is non-existent:

- Secretary of State Cathy Cox testified that neither she nor any of her staff could recall a single case or complaint of voter impersonation at the polls.⁴⁸
- David Worley, an appointee to the State Election Board said that the bill was “designed to correct a problem that doesn’t exist.”⁴⁹
- The Report of the Commission on Federal Election Reform noted that, requiring voter identification at the polls to prevent alleged fraud is “a solution in search of a problem.”⁵⁰
- Georgia Representative Calvin Smyre, chairman of the House Democratic Caucus stated that: “This is not about voter fraud. I’m just going to peel the onion away. This came from the playbook of the Republican national movement.”⁵¹

⁴⁶ See 28 C.F.R. § 51.57.

⁴⁷ As just one example of the limited discourse on S.B. 84, despite great interest of the opponents of S.B. 84 to testify with respect to the proposed bill, Representative Austin Scott, chairman of the House Governmental Affairs Committee, limited the speaking time of those opponents prior to the time when S.B. 84 was voted on by the Committee. See Mike Billips, *Voter ID, Gas Cut Pushed Through Committees on First Day*, Macon Telegraph, Jan. 10, 2006.

⁴⁸ Cox Depo. at 14, 16, 47.

⁴⁹ Alan Judd, *Absentee Voter Fraud, Untouched by ID Law: Most Frequent Form of Cheating May Be Eased by Recent Rules*, Atlanta Journal Constitution, Jan. 29, 2006, at A1.

⁵⁰ Commission on Federal Election Reform, *Building Confidence in U.S. Elections*, at 18 (Sept. 2005).

⁵¹ Carlos Campos, *Voter ID Bill Clears House*, Atlanta Journal Constitution, Jan. 13, 2006.

- State Senator Robert Brown commented, “This does not have anything to do with fraud. If we were interested in fraud, we would be going after absentee ballots.”⁵²

Given the non-existent fraud that S.B. 84 purports to remedy, the ID requirements in these bills are unnecessary, or at least, overly onerous. Simply put, the anti-fraud rationale advanced for S.B. 84, like H.B. 244 before it, is pretextual. The Legislature must have another stimulus for continuing to push this bill forward with such rigor, in the face of far-reaching political opposition and ever-increasing legal costs for the State in defending the bill in court.⁵³

The only logical inference is that the Legislature attempted to use this piece of legislation as a means to disparately suppress the African-American vote in Georgia. This inference is supported by statements made by the bill’s sponsor, Representative Sue Burmeister, who said that if there were fewer blacks voting it would only be because there is less opportunity for fraud. She continued to remark that if African-Americans in her district “are not paid to vote, they don’t go to the polls.”⁵⁴ These words alone and Burmeister’s admission that her statement as reported by the Section Staff Memorandum “was more accurate than not” helps bring to light the Legislature’s retrogressive intent behind the ID requirements of S.B. 84 and H.B. 244.⁵⁵

3. The Legislature expanded the availability of absentee voting, the greatest source of voter fraud.

Absentee voting is the area with the highest reported rate of voter fraud. Secretary of State Cox reported in her deposition that the State Elections Board has dealt with cases of fraud in connection with absentee voting at nearly every meeting over the past ten years.⁵⁶ Indeed, since the beginning of 2004, 16 of the 27 cases brought before the Elections Board involved absentee ballots.⁵⁷

Despite unequivocal evidence that voting by absentee creates greater opportunities for fraud and irregularities, the Legislature opted not to target this form of voting. Instead, the Legislature went after in-person voting, which to date has been free of fraud and voter impersonation. This alone would be enough to seriously

⁵² Mike Billips, *Senate Passes Voter ID Bill*, Macon Telegraph, Jan. 25, 2006.

⁵³ Walter C. Jones, *State Could Need \$2.5 Million to Defend Voter ID Law*, Athens Banner-Herald, Jan. 19, 2006; Shannon McCaffrey, *Cox Draws Fire for Voting to Fund Defense of State’s Voter ID Law*, Ledger-Enquirer, Jan. 19, 2006.

⁵⁴ Nancy Badertscher, *General Assembly’s First Day: No Time Wasted on Revised ID Bill*, Atlanta Journal Constitution, Jan. 10, 2006, at A1.

⁵⁵ See Bob Kemper & Sonji Jacobs, *Voter ID Memo Stirs Tension: Sponsor of Disputed Georgia Legislation Told Feds that Blacks in Her District Only Vote If They Are Paid To Do So*, Atlanta Journal Constitution, Nov. 18, 2005, at A1.

⁵⁶ Cox Dep. at 12-13.

⁵⁷ See Alan Judd, *Absentee Voter Fraud Untouched by ID Law*, Atlanta Journal Constitution, Jan. 29, 2006, at A1.

question the Legislature's intent. However, the Legislature then undertook to expand the availability of absentee voting. It is no coincidence that almost twice as many white voters use absentee ballots compared to their African-American counterparts.

In light of this evidence, it is quite implausible that the Legislature's true intent in passing S.B. 84 was to cure alleged voter fraud at the polls. If the Legislature were truly concerned with voter fraud, at the polls or otherwise, it certainly would not have invited widespread fraud to Georgia's elections by drastically relaxing the requirements to obtain absentee ballots. This discrepancy in the law has been recognized by many figures at the forefront of this debate:

- Secretary of State Cox wrote in her memorandum to the Georgia State Senate: "If the authors are indeed concerned about voter fraud, they would not likely authorize the easiest-and most prevalent form-of election law violations: unregulated voting by mail."
- Judge Murphy also recognized in his order that the Legislature "let the field wide open for voter fraud by absentee voting."⁵⁸
- Representative Carolyn Fleming Hugley stated: "In the same breath, you say that for absentee voters we're going to expand the period [for absentee voting] – and the form of identification that's necessary for an absentee voter is their signature. So there's still inconsistencies there and this bill is a solution to something that's never been a problem in Georgia."⁵⁹

The Legislature's actions with respect to absentee voting indicate that the intent behind S.B. 84 was to disadvantage African-American voters. We urge the Department to revisit the issue of intent by conducting more exhaustive discussions with the proponents and opponents of S.B. 84, and in particular the Speaker of the House and the Chairs of the Governmental Affairs Committee. We also recommend that the Department review the procedural history of S.B. 84 in an effort to understand why it was so hastily approved. We are confident that a full vetting of the passage of S.B. 84 will further illuminate the retrogressive nature of the statute.

C. S.B. 84 contains ambiguities that require further clarification before preclearance can be granted.

The State's submission asks the Department to preclear S.B. 84 in its entirety. However, under Section 5, preclearance is required before the State may "enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or

⁵⁸ *Common Cause/Georgia*, 406 F. Supp. 2d at 1362.

⁵⁹ Nancy Badertscher, *General Assembly's First Day*, Atlanta Journal Constitution, Jan. 10, 2006, at A1.

procedure with respect to voting."⁶⁰ Indeed, even those "ministerial" acts the individual counties must undertake in administering S.B. 84 require preclearance.⁶¹

The language of § 21-2-417.1(h) mandates that the State Election Board "shall adopt rules and regulations for the administration" of the voter identification provisions located elsewhere in S.B. 84. Once in place, these regulations that set forth the administrative scheme of S.B. 84 will cause substantial changes in voting practices in Georgia that, in addition to the substantive requirements of S.B. 84, require preclearance. There remains considerable ambiguous language in S.B. 84, which would be subject to the varying interpretations of 159 different county boards of registrars and each dependent upon Section 5 preclearance by the Department. We call your attention to the following ambiguities:

- Section 21-2-417.1(a) requires each county board of registrars to provide "at least one *place* in the county" where voter ID cards shall be provided. (emphasis added). Without further explanation, this "place" could be anywhere the county election board chooses to distribute the IDs. For example, this "place" could be an office, a library, or a school, but it could also could also a small office space in a mall or an inaccessible space in an office park (or even someone's home, which is the location of the county registrar in at least one Georgia county).⁶² Further, given the numerous transportation obstacles that African-Americans are likely to face to reach this "place," further elaboration is essential for preclearance. As written, the location of the "place" is entirely within the discretion of each county election board. Indeed, the potential exists for counties to situate these offices in predominately white neighborhoods, making the IDs even more inaccessible for African-American voters.
- Section 21-2-417.1(e) requires the "presentation and verification" of supporting documents in order to obtain a voter ID card. However, as this language stands, the county employees will be the arbiter of whether the documents submitted are sufficiently "presented" and "verified." Georgia must clarify what is required to "present" and to "verify" the documentary prerequisites for voters to obtain an identification card. Putting further discretion in the hands of county (not State) employees will most definitely result in inconsistent application. This also increases the risk that bias and discrimination will be injected into the process, without any provision for monitoring to direct such problems.
- Section 21-2-417.1(e) identifies four forms of documentation required to obtain a voter ID in substantially vague terms. For example, § 21-2-417.1(e)(1) calls for "a photo identity document, except that a nonphoto identity document is

⁶⁰ 42 U.S.C. § 1973(c).

⁶¹ *Curtis v. Smith*, 121 F. Supp. 2d 1054, 1061-63 (E.D. Tex. 2000) ("[W]here a subdivision of a state takes 'ministerial' action in accordance with state law whereby a change in voting practice occurs, that subdivision is seeking to administer such a change. That in and of itself requires preclearance where there is potential for discrimination.").

⁶² Nancy Badertscher, *Legislature 2006: Voter ID Bill Up for Vote Today: Democrats to Fight for a Delay till 2010*, Atlanta Journal Constitution, Jan. 12, 2006, at C1.

acceptable if it includes both the person's full name and date of birth." As written, any private club membership card with a picture would satisfy the language of § 21-2-417.1(e)(1). Furthermore, the forms of acceptable nonphoto identification under § 21-2-417.1(e)(1) are also wide open for disparate and arbitrary interpretation.

Given the inherent retrogressive effects of S.B. 84, we believe that the regulations to implement S.B. 84 also will likely have a disparate and retrogressive effect on the voting rights of racial minorities in Georgia. As noted above, the danger is even greater that S.B. 84's requirements will be administered in a racially discriminatory manner. For example, Georgia has the burden of showing that the machines' locations in each county will not create transportation and economic obstacles that disparately affect African-Americans. However, Georgia has not yet identified where the ID-making machines will be located. How then can the Department meaningfully assess any potential retrogression? Georgia must present the locations of the ID-making machines in each county before the Department can approve the underlying statute. Given the potential for discrimination in a largely unguided county-by-county implementation of S.B. 84, and the resulting burden on the Department, the need for Georgia to submit a more detailed plan to implement S.B. 84 and the ID Requirements cannot be understated.

We take the position, and respectfully urge the Department to take the position, that Georgia must clarify the above listed ambiguities, and in each case seek separate preclearance with respect to the particulars of administering S.B. 84. Additionally, to the extent that S.B. 84 requires each individual county to effectuate changes to the current benchmark practices, all 159 counties in Georgia will be submitting such changes to the Department for preclearance. This will ultimately result in an overwhelming amount of submissions even closer to the time of elections.

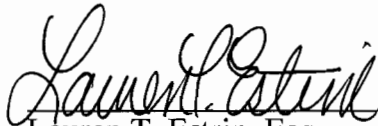
We believe that having to review numerous submissions on such a hurried schedule would endanger the preclearance process and effectively require the Department to return to ad hoc, case-by-case adjudications that was the procedure in place before the Voting Rights Act and Section 5 were enacted. Thus, in the interests of efficiency, reliability of Section 5 and its protections, and the goal of an orderly elections process in Georgia, the Department, in this specific case, should decline preclearance of S.B. 84 until all its component parts are in place. Until this time, S.B. 84 remains fatally vague and should not be precleared.

D. Conclusion

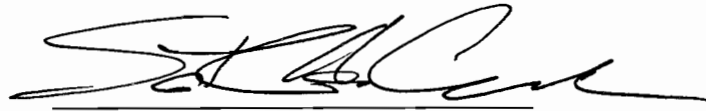
Once again, Georgia has failed to carry its burden under Section 5 of the Voters Rights Act. Implementing S.B. 84 has a far-reaching retrogressive impact on African-American voters in Georgia. Furthermore, and perhaps most troubling, Georgia has failed to show that the legislation was not enacted without a retrogressive intent, despite significant evidence to that effect. S.B. 84's rapid rush through the Legislature

without careful consideration of potential retrogressive effects on a historically suppressed racial minority is contrary to the core purposes of the Voting Rights Act and the Fifteenth Amendment. S.B. 84 is vigorously opposed by the American Civil Liberties Union, Common Cause/Georgia, National Voting Rights Institute, the Georgia Association of Black Elected Officials, the NAACP, the NAACP Legal Defense and Educational Fund, the AARP, the League of Women Voters, the Lawyers' Committee for Civil Rights Under Law, the National Council of Jewish Women and other public interest organizations, as well as dozens of religious organizations of all faiths. Accordingly, we submit to you in the strongest terms, S.B. 84 should be denied preclearance under Section 5 of the Voting Rights Act.

Respectfully submitted,



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cc: United States Attorney General Alberto R. Gonzales
Governor Sonny Perdue
Georgia Attorney General Thurbert Baker
Georgia Secretary of State Cathy Cox

attachments

Schedule I Organizations

AARP
Advancement Project
ACLU of Georgia
ACLU – National Voting Rights Project
American Jewish Committee, Atlanta Chapter
Asian American Justice Center
Asian Pacific American Legal Center
Anti-Defamation League, Southeast Region
Atlanta Black-Jewish Coalition
Common Cause/Georgia
Demos: A Network for Ideas & Action
Georgia Association of Black Elected Officials
Georgia Association of Community Organizations for Reform Now
Georgia for Democracy
Georgia Rural Urban Summit
Jewish Council for Public Affairs (JCPA)
Lawyers' Committee for Civil Rights Under Law
League of Women Voters of Georgia, Inc.
Legislative Black Caucus
National Association for the Advancement of Colored People
National Association for the Advancement of Colored People – Legal Defense and
Educational Fund, Inc.
National Council of Jewish Women Georgia
National Voting Rights Institute
Project Vote
The Georgia Alliance of African American Attorneys

EXHIBIT A

C

Motions, Pleadings and Filings

United States District Court,
N.D. Georgia,
Rome Division.
COMMON CAUSE/GEORGIA, League of Women
Voters of Georgia, Inc., The
Central Presbyterian Outreach and Advocacy Center,
Inc., Georgia Association of
Black Elected Officials, Inc., The National
Association for the Advancement of
Colored People (NAACP), Inc., through its Georgia
State Conference of Branches,
Georgia Legislative Black Caucus, Concerned Black
Clergy of Metropolitan
Atlanta, Inc., and the following qualified and
registered voters under Georgia
law: Mrs. Clara Williams, Plaintiffs,
v.
Ms. Evon BILLUPS, Superintendent of Elections for
the Board of Elections and
Voter Registration for Floyd County and the City of
Rome, Georgia, Ms. Tracy
Brown, Superintendent of Elections of Bartow
County, Georgia, Mr. Gary Petty,
Ms. Michelle Hudson, Ms. Amanda Spencer, Mr.
Ron McKelvey, and Ms. Nina
Crawford, members of the Board of Elections and
Registration of Catoosa County,
Georgia, Judge John Payne, Superintendent of
Elections of Chattooga County,
Georgia, Ms. Shea Hicks, Superintendent of
Elections for Gordon County,
Georgia, Ms. Jennifer A. Johnson, Superintendent of
Elections for Polk County,
Georgia, Mr. Sam Little, Superintendent of Elections
for Whitfield County,
Georgia, individually and in their respective official
capacities as
superintendents or members of the elections boards in
their individual
counties, and as class representatives under Federal
Rule of Civil Procedure
22(b)(1) and (b)(2) of a class consisting of all
superintendents and members of
city and county boards of elections throughout the
State of Georgia, and
Honorable Cathy Cox, individually and in her official

capacities as Secretary
of State of Georgia and Chair of the Georgia
Elections Board, Defendants.
No. CIV.A. 4:05CV0201HLM.

Oct. 18, 2005.

Background: Not-for-profit organizations and registered voter brought suit against State officials, challenging constitutionality of Georgia's photo identification (ID) requirement for in-person voting. Plaintiffs moved for preliminary injunction precluding Georgia from applying the photo ID requirement in upcoming elections.

Holdings: The District Court, Harold L. Murphy, J., held that:

(1) Eleventh Amendment precluded court from entertaining claims asserted under the Georgia Constitution;


(2) organizations established a substantial likelihood of succeeding on the merits of their claim that the photo ID requirement violated Equal Protection Clause;

(3) organizations established a substantial likelihood of succeeding on the merits of their claim that \$20 fee for a five-year photo ID card or the \$35 fee for a ten-year photo ID imposed a poll tax on Georgia voters; and

(4) organizations demonstrated that they or their constituents would suffer irreparable harm if the court declined to enter a preliminary injunction, that threatened injury to organizations outweighed against the damage to the state caused by a preliminary injunction, and that entering a preliminary injunction would serve the public interest.

Motion granted.

West Headnotes


[1] Federal Civil Procedure  **103.2**
170Ak103.2 Most Cited Cases

Party invoking federal jurisdiction has the burden of proving standing. U.S.C.A. Const. Art. 3, § 2, cl. 1.

[2] Associations  **20(1)**
41k20(1) Most Cited Cases

An association has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and

neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. U.S.C.A. Const. Art. 3, § 2, cl. 1.

[3] Associations  **20(1)**
41k20(1) Most Cited Cases

Not-for-profit organizations' allegations satisfied the organizational standing requirements for purposes of seeking preliminary injunction precluding Georgia from applying its photo identification (ID) requirement for in-person voting in upcoming election; organizations alleged that they were composed of members who would have standing to sue in their individual right, that the interests which each organization and their members sought to protect were germane to the purpose of each of the organizations, and neither the claim or the relief sought required participation by the individual members of the organizations. U.S.C.A. Const. Art. 3, § 2, cl. 1; O.C.G.A. § 21-2-417.

[4] Federal Courts  **265**
170Bk265 Most Cited Cases

Absent its consent, a state may not be sued in federal court unless Congress has clearly and unequivocally abrogated the state's Eleventh Amendment immunity by exercising its power with respect to rights protected by the Fourteenth Amendment. U.S.C.A. Const. Amends. 11, 14.

[5] Federal Courts  **265**
170Bk265 Most Cited Cases

A federal court may not entertain a cause of action against a state for alleged violations of state law, even if that state claim is pendent to a federal claim which the district court could adjudicate. U.S.C.A. Const. Amend. 11.

[6] Federal Courts  **269**
170Bk269 Most Cited Cases

Eleventh Amendment bars a suit against state officials when the state is the real, substantial party in interest; state is the real party in interest when the judgment sought would restrain the government from acting, or compel it to act. U.S.C.A. Const. Amend. 11.

[7] Federal Courts  **272**
170Bk272 Most Cited Cases

State of Georgia was the real party in interest in suit against state officials seeking to preliminarily enjoin enforcement of photo identification (ID) requirement for in-person voting in upcoming election, and therefore Eleventh Amendment precluded court from

entertaining claims asserted under the Georgia Constitution. U.S.C.A. Const. Amend. 11; O.C.G.A. § 21-2-417.

[8] Elections  **15**
144k15 Most Cited Cases

[8] Elections  **18**
144k18 Most Cited Cases

A citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction; however, states can impose voter qualifications and can regulate access to voting, provided those qualifications and access regulations do not unduly burden or abridge the right to vote. U.S.C.A. Const. art. 1, § 4, cl. 1.

[9] Injunction  **138.51**
212k138.51 Most Cited Cases

Organizations, which sought to preliminarily enjoin enforcement of Georgia's photo identification (ID) requirement for in-person voting in upcoming election, established a substantial likelihood of succeeding on the merits of their claim that the photo ID requirement violated Equal Protection Clause under either strict scrutiny analysis or *Burdick* test; accepting that preventing voter fraud was a legitimate and important State concern, the statute was not narrowly drawn to prevent voter fraud and a number of significantly less burdensome alternatives existed to address the state's interest. U.S.C.A. Const. Amend. 14; O.C.G.A. § 21-2-417.

[10] Injunction  **138.51**
212k138.51 Most Cited Cases

Organizations, which sought to preliminarily enjoin enforcement of Georgia's photo identification (ID) requirement for in-person voting in upcoming election, established a substantial likelihood of succeeding on the merits of their claim that, despite fee waiver affidavit option, \$20 fee for a five-year photo ID card or the \$35 fee for a ten-year photo ID imposed a poll tax on Georgia voters in violation of the Twenty-fourth Amendment with respect to federal elections and Equal Protection Clause with respect to State and municipal elections. U.S.C.A. Const. Amends. 14, 24; O.C.G.A. § 21-2-417.

[11] Injunction  **138.51**
212k138.51 Most Cited Cases

Organizations, which established a substantial likelihood of succeeding on the merits of their claims that Georgia's photo identification (ID) requirement for in-person voting was unconstitutional, were

entitled to preliminary injunction prohibiting enforcement of requirement in upcoming election; organizations, which showed that requirement had the likely effect of causing a significant number of Georgia voters to forego going to the polls or to forego obtaining and voting an absentee ballot, demonstrated that they or their constituents would suffer irreparable harm if the court declined to enter a preliminary injunction, that threatened injury to organizations outweighed against the damage to the state caused by a preliminary injunction, and that entering a preliminary injunction would serve the public interest. O.C.G.A. § 21-2-417.

West Codenotes

Validity Called into Doubt

O.C.G.A. § 21-2-417

*1328 David G.H. Brackett, Emmet J. Bondurant, II, Bondurant Mixson & Elmore, Elizabeth Lynn Littrell, Gerald R. Weber, Margaret Fletcher Garrett, Meredith Bell-Platts, Moffatt Laughlin McDonald, Neil T. Bradley, American Civil Liberties Union Foundation of Georgia, Inc., Miles J. Alexander, Seth Aaron Cohen, Kilpatrick Stockton, Ralph Irving Knowles, Jr., Doffermyre Shields Canfield Knowles & Devine, Tisha Rae Tallman, Mexican American Legal Defense & Educational Fund (Maldef), Atlanta, GA, Edward Hine, Jr., Office of Edward Hine, Jr., Rome, GA, Jon M. Greenbaum, Lawyers' Committee for Civil Rights Under Law, Washington, DC, for Plaintiffs.

Peter R. Olson, Jenkins & Olson, Cartersville, GA, Clifton M. Patty, Jr., Office of Clifton M. Patty, Jr., Ringgold, GA, Lewis Branch Sutton Connelly, Cook & Connelly, Summerville, GA, Anne Ware Lewis, Strickland Brockington Lewis, Mark Howard Cohen, Troutman Sanders, Stefan Ernst Ritter, Office of State Attorney General, Atlanta, GA, for Defendants.

ORDER

HAROLD L. MURPHY, District Judge.

This case is an action to have the photo identification ("Photo ID") requirement in the 2005 amendment to O.C.G.A. § 21-2-417 (Act No. 53), declared unconstitutional both on its face and as applied, and to *1329 enjoin its enforcement on the ground that it imposes an unauthorized, unnecessary, and undue burden on the fundamental right to vote of hundreds of thousands of registered Georgia voters, in violation of article II, section 1, paragraph 2 of the Georgia Constitution, the Fourteenth and Twenty-

Fourth Amendments to the federal Constitution, the Civil Rights Act of 1964 (42 U.S.C.A. § 1971(a)(2)(A) and (a)(2)(B)), and Section 2 of the Voting Rights Act of 1965 (42 U.S.C.A. § 1973(a)). The case is before the Court on Plaintiffs' Motion for Preliminary Injunction [2][23].

I. Background

A. The Parties

Plaintiff Common Cause/Georgia is a chapter of Common Cause, Inc. (Compl. ¶ 1(a).) Common Cause is a non-partisan citizen lobby organized as a not-for-profit corporation under the laws of the District of Columbia, and is devoted to causes such as electoral reform, ethics in government, and the protection and preservation of the rights of all citizens to vote in national, state, and local elections, including educating voters about voting rights and procedures. (*Id.*)

Plaintiff League of Women Voters of Georgia is a non-partisan Georgia non-profit corporation that was founded in 1920. (Compl. ¶ 1(b).) Plaintiff League of Women Voters of Georgia's purpose is to encourage the informed and active participation by citizens in government at all levels, including the protection of the right of all citizens to vote and the education of voters about voting rights and procedures. (*Id.*)

Plaintiff The Central Presbyterian Outreach and Advocacy Center, Inc. is a Georgia non-profit corporation that provides support to people in poverty, including emergency services for basic human needs and assistance in achieving self-sufficiency, including assisting individuals in obtaining photo identification. (Compl. ¶ 1(c).)

Plaintiff Georgia Association of Black Elected Officials, Inc. is an unincorporated association of more than 700 elected officials throughout the State of Georgia who regularly conduct election campaigns and seek the votes of all registered, eligible voters. (Compl. ¶ 1(d).) It also promotes voter registration, education, and participation, preserves minority voting rights, and fights to ensure that no qualified voters are turned away on Election Day for failure to possess a Photo ID card in violation of their right to vote. (*Id.*)

Plaintiff the National Association for the Advancement of Colored People ("Plaintiff NAACP"), through its Georgia State Conference of

Branches, is the nation's oldest civil rights organization. (Compl. ¶ 1(e).) Plaintiff NAACP was formed in 1909 by a multiracial group of activists, and has nationwide membership as well as members and offices in Georgia. (*Id.*) Plaintiff NAACP has advocated for the advancement and protection of voting rights for minorities, and, throughout its history, has fought for access to the ballot, for its members and for others. (*Id.*) It also has fought to ensure that racial minorities, low income people, and economically disadvantaged people have access to the ballot box and an equal opportunity to participate in the political process. (*Id.*)

Plaintiff Georgia Legislative Black Caucus ("Plaintiff GLBC") was formed in 1966 and consists of elected African-American members of the House and Senate of the Georgia General Assembly. (Compl. ¶ 1(f).) Plaintiff GLBC's members, as elected representatives, engage in election campaigns, seek votes of registered, eligible voters, and also seek to make certain that the right to vote of all eligible citizens is protected and that no eligible voters are *1330 discouraged or prevented from voting on election day for failure to possess a Photo ID card in violation of their right to vote. (*Id.*)

Plaintiff Concerned Black Clergy of Metropolitan Atlanta, Inc. is a non-partisan, interfaith religious organization of mostly African-American members and laity whose mission is to provide leadership, advocacy, and service to the poor, the homeless, and the helpless in the metropolitan Atlanta area, including protecting their rights as citizens to full participation in the democratic process, including the right to register and vote without undue interference. (Compl. ¶ 1(g).)

Plaintiff Clara Williams is an African-American and duly qualified and registered voter residing in the City of Atlanta and Fulton County, Georgia. (Compl. ¶ 1(h)(ii).) Plaintiff Williams does not possess a Georgia driver's license, passport, or other form of government-issued Photo ID, and cannot readily obtain a Photo ID card from the State Department of Driver Services. (*Id.*)

Defendant Evon Billups is the Superintendent of Elections for the Board of Elections and Voter Registration for Floyd County, Georgia, and is charged with the duty of conducting elections in Floyd County, Georgia, and the City of Rome, Georgia. (Compl. ¶ 2(a)(i).) Plaintiffs have sued Defendant Billups in her individual and official

capacities. (*Id.*)

Defendant Tracy Brown is the Superintendent of Elections for the Board of Elections and Voter Registration for Bartow County, Georgia, and is charged with the duty of conducting elections in Bartow County, Georgia. (Compl. ¶ 2(a)(ii).) Plaintiffs have sued Defendant Brown in her official and individual capacities. (*Id.*)

Defendants Gary Petty, Michelle Hudson, Amanda Spencer, Ron McKelvey, and Nina Crawford are members of the Board of Elections and Voter Registration for Catoosa County, Georgia, and are charged with the duty of conducting elections in Catoosa County, Georgia. (Compl. ¶ 2(a)(iii).) Plaintiffs have sued those Defendants in their official and individual capacities. (*Id.*)

Defendant Judge John Payne is the Superintendent of Elections for the Board of Registrars for Chattooga County, Georgia, and is charged with the duty of conducting elections in Catoosa County, Georgia. (Compl. ¶ 2(a)(iv).) Plaintiffs have sued Defendant Payne in his official and individual capacities. (*Id.*)

Defendant Shea Hicks is the Superintendent of Elections for the Board of Elections and Registrations for Gordon County, Georgia, and is charged with the duty of conducting elections in Gordon County, Georgia. (Compl. ¶ 2(a)(v).) Plaintiffs have sued Defendant Hicks in her official and individual capacities. (*Id.*)

Defendant Jennifer A. Johnson is the Superintendent of Elections for the Board of Elections and Voter Registration for Polk County, Georgia, and is charged with the duty of conducting elections in Polk County, Georgia. (Compl. ¶ 2(a)(vi).) Plaintiffs have sued Defendant Johnson in her official and individual capacities. (*Id.*)

Defendant Sam Little is the Superintendent of Elections for the Board of Elections and Registration for Whitfield County, Georgia, and is charged with the duty of conducting elections in Whitfield County, Georgia. (Compl. ¶ 2(a)(vii).) Plaintiffs have sued Defendant Little in his official and individual capacities. (*Id.*)

Defendant Cathy Cox is the Secretary of State for the State of Georgia, and is Chair of the State Election Board. (Compl. ¶ 2(a)(viii).) Defendant Cox has been designated as the Chief Election Official for *1331 purposes of the federal Help

America Vote Act of 2002, and also is the Chief Election Official for purposes of the National Voter Registration Act of 1933. (*Id.*) Plaintiffs have sued Defendant Cox in her individual and official capacities. (*Id.*)

Plaintiffs allege that the superintendents and board members of the city and county boards of elections named in paragraphs 2(a)(i) through 2(a)(vii) of the Complaint are members of a class that consists of superintendents and members of city and county boards of elections in each of the 159 counties in Georgia, who are so numerous as to make their joinder impracticable. (Compl. ¶ 6.) Plaintiffs seek certification of a defendant class of all superintendents and members of all city and county boards of election in Georgia under Federal Rule of Civil Procedure 23(b)(1) and (b)(2). (*Id.* ¶ 7.)

B. The Georgia Photo ID Requirement

Prior to the 1998 elections, voters in Georgia, like registered voters in a majority of other states, were not required to present identification as a condition of voting. (Compl. ¶ 8.) In 1997, the Georgia General Assembly adopted O.C.G.A. § 21-2-417, which required registered voters in Georgia to identify themselves by presenting one of seventeen forms of identification to election officials as a condition of being admitted to the polls and of being allowed to vote. (State Defs.' Initial Br. Opp'n Pls.' Mot. Prelim. Inj. Ex. 1.) Prior to its amendment in 1997, O.C.G.A. § 21-2-417 permitted, but did not require, registered voters to present a Georgia driver's license or other form of official photographic identification as a method of identification as a condition of voting. (Compl. ¶ 10.) Under the version of O.C.G.A. § 21-2-417 as amended in 1997, voters remained free to use any of eight other methods of identification for voting, including a birth certificate, a social security card, a copy of a current utility bill, a government check, a payroll check, or a bank statement showing the voter's name and address. (State Defs.' Initial Br. Opp'n Pls.' Mot. Prelim. Inj. Ex. 1.) Additionally, voters who did not have, or could not find, one of the seventeen forms of identification specified in former O.C.G.A. § 21-2-417(a), were entitled to be admitted to the polls, to be issued a ballot, and to be allowed to vote simply by signing a statement under oath swearing or affirming that he or she is the person identified on the elector's certificate. (*Id.*)

In 2005, the Georgia General Assembly adopted House Bill 244, or Act 53 ("HB 244"), which amended O.C.G.A. § 21-2-417 to require that all

registered voters in Georgia who vote *in person* in all primary, special, or general elections for state, national, and local offices held on or after July 1, 2005, present a government-issued Photo ID to election officials as a condition of being admitted to the polls and before being issued a ballot and being allowed to vote. Plaintiffs have presented evidence indicating that the Georgia House of Representatives approved the Conference Committee Report on Act 53 by a vote of eighty-nine Republicans and two Democrats, while seventy-two Democrats and three Republicans voted against it. (Decl. of Ron D. Hockensmith ¶ 5 & Ex. 1.) The Senate adopted the Conference Committee Report on Act 53, with thirty-one Republicans and no Democrats voting in favor of the Act and eighteen Democrats and two Republicans voting against the Act. (*Id.*)

Plaintiffs have submitted the Declaration of Margaret S. Smothers, the former Executive Director of the League of Women Voters of Georgia. (Decl. of Margaret S. Smothers ¶ 2.) Ms. Smothers served as the League of Women Voters of Georgia's *1332 lobbyist during the 2005 session of the Georgia General Assembly, and worked on voting rights issues, including the proposals to require Photo ID. (*Id.* ¶¶ 2-3.) Ms. Smothers observed:

4.

One of the objections opponents had to the photo id proposals was that the proposals included no funding for public education to inform registered voters of the new requirements that they present a photo id card in order to have their vote counted. In contrast, when Georgia shifted to electronic voting machines, the budget and staff of the Secretary of State's office was temporarily increased in order to engage in extensive public education efforts to prepare voters for that change. At the March 21, 2005 hearing on HB 244 before the Senate Committee on State and Local Governmental Operations (SLOGO), Randall Evans, who sponsored the bill and who is currently a member of the State Elections Board expressed the opinion that the Secretary of State's office had funds available from its current budget and that the state could rely on the public education efforts of such groups as the NAACP and AARP. Similar statements about the advocacy groups being sufficient to educate the public were made on the Senate floor during the March 29, 2005 debate on the photo id bill.

5.

Advocacy groups opposed to the legislation

suggested the issue be studied prior to the next legislative session to determine if there were in fact a serious number of incidents of voter impersonation. At the SLOGO hearing on March 21, 2005 referred to above, Senator John Wiles, chair of the committee, asked if the groups would prefer the legislation to be enacted in the 2005 session, thus, in his view, providing a year for the groups to conduct public education. It was apparent from this comment that the chair was either unaware or was not concerned that municipal elections are conducted in odd years.

(*Id.* ¶¶ 4-5.)

Defendant Cathy Cox, Georgia's Secretary of State ("Secretary of State Cox"), wrote a memorandum to the members of the Georgia State Senate, asking that the senators consider the "staggering opportunities for voter fraud" that HB 244 would create. (Pls.' Br. Supp. Mot. Prelim. Inj. Ex. A at 1.) Secretary of State Cox observed:

By allowing any person, at any time within 45 days before an election, to vote an absentee ballot by mail--with no ID requirement and no requirement to state one of the current conditions for voting absentee ((O.C.G.A. § 21-2-380)--such as being out of town on election day, having a disability, being over 75 years old, etc.), you would be opening a gaping opportunity for fraud. At virtually every meeting of the State Elections Board during the past 10 years, we have dealt with cases involving fraud or election law violations in handling or voting absentee ballots. HB 244 removes all restrictions on voting by mail, and thus makes it quite simple for someone inclined to commit fraud to do so.

This completely contradicts the reasons stated for another measure contained in HB 244--the Photo ID requirement. If the authors are indeed concerned about voter fraud, they would not likely authorize the easiest--and most prevalent form--of election law violations: unregulated voting by mail. In the past 9 years, neither my staff nor I can recall a single case or complaint of a voter impersonating another voter at the polls--the issue sought to be corrected by mandatory photo identification. And had this been occurring, some *1333 voter surely would have complained upon finding that someone else had voted under their name. It hasn't happened.

I urge you to fully consider all the changes proposed by HB 244. This bill started out as the "housekeeping" legislation proposed by my office, but other bills--HB 597 and SB 84--have now been merged into it. The bill attempts to solve a

problem that does not exist while expanding the opportunity for fraud in the area that has long been the most vulnerable to this type of abuse--the mailed absentee ballot.

(*Id.* at 1-2.)

On April 8, 2005, Secretary of State Cox wrote a letter to Governor Perdue expressing reservations about the Photo ID requirement contained in HB 244, and urging Governor Perdue to veto the bill. In her April 8, 2005, letter, Secretary of State Cox observed:

"It is my strong belief that the picture identification requirement in House Bill 244 is (1) unnecessary, (2) creates a very significant obstacle to voting on the part of hundreds of thousands of Georgians, including the poor, the infirm and the elderly who do not have drivers licenses because they are either too poor to own a car, are unable to drive [a] car, or have no need to drive a car, (3) very unlikely to receive pre-clearance under the Voting Rights Act by the Department of Justice, (4) violates Art. II, section I paragraph I of the Georgia Constitution by adding a condition on the right to vote that is not contained in the constitution and (5) imposes an undue burden on a fundamental right of all citizens, the right to vote, in violation of both the state and federal constitutions."

(*Id.* at 1.)

Secretary of State Cox also expressed her belief that the Photo ID requirements of House Bill 244 are unnecessary:

One of the primary justifications given by the Legislature for the passage of the photo identification provisions of House Bill 244--the elimination of voter ID fraud at the polls--is an unfounded justification. I cannot recall one documented case of voter fraud during my tenure as Secretary of State or Assistant Secretary of State that specifically related to the impersonation of a registered voter at voting polls. Our state currently has several practices and procedures in existence to ensure that such cases of voter fraud would have been detected if they in fact occurred, and at the very least, we would have complaints of voters who were unable to vote because someone had previously represented himself or herself as such person on that respective Election Day. As a practical matter, there is no possibility that vote fraud of this type would have gone undetected if it had in fact occurred because there is a list of registered voters at each polling place that is checked off as each person votes. If the impersonator voted first, and the legitimate voter came to the polling place later in the day and tried

to vote, he or she would be told that they had already "voted" and would not be allowed to vote a second time in the same day. It is reasonable to suspect that a voter who cared enough to show up at the polls to cast a ballot would almost certainly have complained--but there have been no such complaints. If the opposite occurred, and the legitimate person came to the polls first and cast his ballot, the impersonator who showed up later would not be allowed to vote for the same reason and the attempted fraud would have been prevented.

In addition, this state has adopted severe criminal sanctions for the type of voter impersonation that is purportedly *1334 of concern and it is evident that such penalties have been a sufficient deterrent. In essence, there is no voter fraud problem currently in existence that House Bill 244 addresses. Additionally, the concern for this type of voter fraud has not prompted other states to approve legislation as restrictive as House Bill 244. Forty-two of those states provide for other valid forms of identification besides photo identification. Of the other seven states, not one is as restrictive as the legislation recently enacted in our state. If this type of voting fraud was a national trend, other states would likely be adopting legislation as restrictive as House Bill 244.

In contrast to the lack of voter fraud relating to impersonation of voters at polls during my tenure, the State Election Board has reviewed numerous cases of voter fraud relating to the use of absentee ballots. However, the Legislature, in adopting House Bill 244 grossly expanded the opportunities for absentee voting by mail without any photographic identification requirement whatsoever, even though absentee ballots pose more of a threat of voting fraud than people voting in a polling location in their community. As a result, the type of voter fraud that *has* frequently occurred in our state is not addressed, and in fact is enhanced by the expansion of vote-by-mail opportunities. In sum, the justification for House Bill 244 is but a pretext.

(Pls.' Br. Supp. Mot. Prelim. Inj. Ex. B at 1-2.) Secretary of State Cox also observed that the Photo ID requirements created substantial obstacles to many Georgia voters:

Requiring someone who is otherwise registered and fully qualified to vote to present a government issued picture identification at the polling place as a condition of voting places a very real burden on many people, and especially upon the poor and elderly who do not own or cannot drive a car and therefore do not have drivers' licenses. It is

estimated by the League of Women Voters and the AARP that an estimated 152,664 individuals over the age of 60 who voted in the 2004 presidential election do not have a Georgia driver's license and are likely not to have other photo identification. For such voters to obtain identification is often an unnecessarily burdensome task, particularly if such voters are in retirement communities and assisted living facilities, or live in rural areas.

In addition, for many of the poorest residents of our state, photographic identification is not just a matter of unnecessary documentation that has no direct bearing on their day to day lives (they often have no need to drive or travel, or otherwise engage in activities that require a license), but is a burden of cost, economy and time. Although seemingly nominal, the \$8.00 fee for an identification card may be a cost that many of our poor residents are unable to bear. Given the fact that the United State[s] Supreme Court has held that a \$1.50 poll tax is an unconstitutional burden on the ability [of] an individual to vote (*Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966)), an \$8.00 fee for an identification card required by the state would also seemingly be unconstitutional, even if such fee may be waived by the state in the event that a voter swears that he or she is indigent. In fact, to require that someone swear and affirm they are indigent when they are above the level of indigence but nonetheless too poor to afford the cost of an identification card, is both an affront to that person as well as an unlawful requirement that he or she swear to something *1335 that is not true. In addition, there are other costs related to obtaining an identification [card] which the state does not have the ability to waive. For an individual working on an hourly wage, the time it takes to travel to a DMVS (which may be an unreasonable distance away from the resident[']s home or office), wait in the lengthy lines that result from only having 56 DMVS offices in the state (according to the list of locations posted on www.dmv.ga.gov) and then the return commute, results in actual lost wages. For the state to require this of our citizens, some of whom cannot afford to take such time off, is an unnecessary burden related to the exercise of that person's right to vote.

The geography of state DMVS offices poses a significant burden on many residents who would be required to obtain identification in order to vote. Given this state has only 56 DMVS offices, citizens without cars who reside in 103 of the 159 counties in Georgia must travel outside their home counties to obtain a state-issue[d] picture ID in

order to vote. Nor is there a single location to obtain such an ID in the city of Atlanta. (*Id.* at 2-3.) Additionally, Secretary of State Cox expressed her belief that HB 244 violated article II, section 1, paragraph 2 of the Georgia Constitution because it imposed a qualification on voters that was not listed in the Georgia Constitution. (*Id.* at 4.) Finally, Secretary of State Cox expressed her belief that the Photo ID requirement imposed an undue burden on the fundamental right of citizens to vote:

Our federal and state courts have consistently recognized the right to vote as one of the most fundamental rights of our citizens. Wesberry v. Sanders, 376 U.S. 1, 84 S.Ct. 526, 11 L.Ed.2d 481 (1964). The right to vote is "preservative" of other rights, and is one that bears the strictest of scrutiny and it is the fundamental nature of this right which cannot be burdened by state actions. Harper v. Virginia State Bd. of Elections, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966), Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964). The United States Supreme Court, in Dunn v. Blumstein, 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972), recognized the close constitutional review required with respect to any restriction on the right to vote. In particular, the Supreme Court held in Dunn that "before the right [to vote] can be restricted, the purpose of the restriction and the assertedly overriding interests served by it must meet strict constitutional scrutiny." In addition, our state Supreme Court has also held that "substantive due process requires that state infringement on a fundamental right be narrowly tailored to serve a compelling state interest." State of Ga. v. Jackson, 269 Ga. 308, 496 S.E.2d 912 (1998). Our Supreme Court has also held that "when it is established that the legislation 'manifestly infringes upon a constitutional provision or violates the rights of the people' that the statute should be declared unconstitutional." Cobb County School District v. Barker, 271 Ga. 35, 518 S.E.2d 126 (1999). The intersection of those two precedents presents two clear questions. First, acknowledging that the right to vote is a fundamental right, is House Bill 244 narrowly tailored to serve a compelling state interest? Second, is it established that the photo identification requirements of House Bill 244 do not manifestly infringe upon the rights of the people? Based on the foregoing facts referenced above, the answer to both of these questions is no. (*Id.* at 5.)

On April 22, 2005, Governor Sonny Perdue signed HB 244, and the Photo ID *1336 requirement of HB

244 became effective on July 1, 2005, subject to pre-clearance by the United States Department of Justice. (Compl. ¶ 15.) The Photo ID requirement of HB 244 is codified in O.C.G.A. § 21-2-417, which now provides:

(a) Except as provided in subsection (c) of this Code section, each elector shall present proper identification to a poll worker at or prior to completion of a voter's certificate at any polling place and prior to such person's admission to the enclosed space at such polling place. Proper identification shall consist of any one of the following:

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

(b) Except as provided in subsection (c) of this Code section, if an elector is unable to produce any of the items of identification listed in subsection (a) of this Code section, he or she shall be allowed to vote a provisional ballot pursuant to Code Section 21-2-418 upon swearing or affirming that the elector is the person identified in the elector's voter certificate. Such provisional ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in subsection (a) of this Code section within the time period for verifying provisional ballots pursuant to Code Section 21-2-419. Falsely swearing or affirming such statement under oath shall be punishable as a felony, and the penalty shall be distinctly set forth on the face of the statement.

(c) An elector who registered to vote by mail, but did not comply with subsection (c) of Code Section 21-2-220, and who votes for the first time in this state shall present to the poll workers either one of the forms of identification listed in subsection (a)

of this Code section or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of such elector. If such elector does not have any of the forms of identification listed in this subsection, such elector may vote a provisional ballot pursuant to Code Section 21-2-418 upon swearing or affirming that the elector is the person identified in the elector's voter certificate. Such provisional ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in this subsection within the time period for verifying provisional ballots pursuant to Code Section 21-2-419. Falsely swearing or affirming such statement under oath shall be punishable as a felony, and the penalty shall be distinctly set forth on the face of the statement.

O.C.G.A. § 21-2-417.

On August 26, 2005, the Department of Justice granted pre-clearance to Georgia's *1337 Photo ID requirement. (State Defs.' Initial Br. Opp'n Pls.' Mot. Prelim. Inj. Ex. 3.)

At the same time that the General Assembly voted to require the presentation of a Photo ID for voting, the General Assembly also voted to amend O.C.G.A. § 40-5-103(a) to double the minimum fee for a Photo ID card from \$10 to \$20 for a five-year Photo ID, and to authorize a new ten-year Photo ID card for \$35. (Compl. ¶ 16.) O.C.G.A. § 40-5-103(a) presently provides:

(a) Except as provided in subsections (b) and (c) of this Code section, the department shall collect a fee of \$20.00 for a five-year card and a fee of \$35.00 for a ten-year card, which fee shall be deposited in the state treasury in the same manner as other motor vehicle driver's license fees.

(b) The department shall collect a fee of \$5.00 for the identification card for all persons who are referred by a nonprofit organization which organization has entered into an agreement with the department whereby such organization verifies that the individual applying for such identification card is indigent. The department shall enter into such agreements and shall adopt rules and regulations to govern such agreements.

(c) The department shall not be authorized to collect a fee for an identification card from those persons who are entitled to a free veterans' driver's license under the provisions of Code Section 40-5-36.

(d) The department shall not be authorized to collect a fee for an identification card from any

person:

(1) Who swears under oath that he or she is indigent and cannot pay the fee for an identification card, that he or she desires an identification card in order to vote in a primary or election in Georgia, and that he or she does not have any other form of identification that is acceptable under Code Section 21-2-417 for identification at the polls in order to vote; and

(2) Who produces evidence that he or she is registered to vote in Georgia.

This subsection shall not apply to a person who has been issued a driver's license in this state.

(d) The commissioner may by rule authorize incentive discounts where identification cards are renewed by Internet, telephone, or mail.

O.C.G.A. § 40-5-103.

The Communications Office of Georgia prepared a press release as to HB 244 stating that after the effective date of HB 244, only the following forms of Photo ID will be acceptable: (1) a Georgia Driver's license; (2) a State Identity Card; (3) a passport; (4) a Government Employee ID card; (5) a military ID card; and (6) a tribal ID card. (Pls.' Br. Supp. Mot. Prelim. Inj. Ex. F.) According to the same press release, the following forms of previously acceptable identification will no longer be accepted by election officials as valid forms of voter identification: (1) a birth certificate; (2) a Social Security Card; (3) a Certified Naturalization Document; (4) a current utility bill; (5) a bank statement; (6) a government check or paycheck; or (7) other government documents. (*Id.*) The information also includes a statement from Senator Cecil Stanton indicating that the Legislature wanted to " 'protect the integrity of the [voting] process" ' when it enacted the Photo ID law. (*Id.* at 2.)

The new Photo ID requirement applies only to registered voters who vote in person. (Oct. 12, 2005, Hr'g Tr.) The General Assembly imposed no similar Photo ID requirement on absentee voters, except *1338 those voting absentee for the first time after registering by mail. (*Id.*)

After adopting HB 244, Georgia became one of only two states that requires registered voters to present a Photo ID as an absolute condition of being admitted to the polls and being allowed to cast a ballot in federal, state, and local elections. (Compl. ¶ 17.) Thirty states do not require registered voters to present any form of identification as a condition of admission to the polls or to cast a ballot. (*Id.*) Twenty states require voters to present some form of

identification of the polls. (*Id.*) Of those states requiring identification, only two states, Georgia and Indiana, require that voters present a Photo ID as the sole method of identification as a condition of voting. (*Id.*; Oct. 12, 2005, Hr'g Tr.)

C. Obtaining a Photo ID Card

The State of Georgia issues photo identification cards ("Photo ID cards") at its Department of Driver Services ("DDS") offices. (Decl. of Alan Watson ¶ 7 & Ex. C.) As of October 1, 2005, the DDS had fifty-six full-time customer service centers and two part-time customer service centers in Georgia. (*Id.*) Georgia has 159 counties, and individuals who reside in some counties, particularly counties in south and middle Georgia, may have lengthy drives to their nearest DDS service centers. (*Id.* Ex. C.)

No DDS service center is located within the Atlanta, Georgia, city limits or within the Rome, Georgia, city limits. (Watson Decl. Ex. C.) Fulton and DeKalb counties, however, have DDS customer service centers located at (1) 2801 Candler Road, Decatur, Georgia 30034; (2) 537 Shannon Mall, Union City, Georgia 30291; (3) 8610 Roswell Road, Suite 710, Sandy Springs, Georgia 30350; and (4) 8040 Rockbridge Road, Lithonia, Georgia. (*Id.* ¶ 8.) Floyd County, where Rome, Georgia, is located, has a full-time DDS customer service center located at 3386 Martha Berry Highway. (*Id.* ¶ 9.)

Individuals who wish to renew a valid Georgia driver's license or Photo ID card may do so via the Internet. (Watson Aff. ¶ 18.) The DDS makes accommodations for disabled applicants who appear at a DDS service center to obtain a driver's license or Photo ID card. (*Id.* ¶ 17.) DDS policy directs that those applicants be brought to the front of the line, given a "Q-Matic" ticket, and provided with a seat. (*Id.*) The DDS employees then serve the disabled applicants in the order in which their number is called. (*Id.*)

DDS also has a mobile issuance bus known as the Georgia Licensing on Wheels ("GLOW") Bus. (Watson Decl. ¶ 10.) During September 2005, the GLOW Bus visited twenty-five locations. (*Id.* ¶ 10 & Ex. D.) During those visits, the DDS issued a total of 122 free Photo ID cards for voting purposes, ninety-one five-year Photo ID cards, thirteen ten-year Photo ID cards, sixty-one five-year driver's licenses, nine ten-year driver's licenses, and nine veteran's driver's licenses, and also processed two address changes. (*Id.*) In addition to the schedule for the

GLOW bus established by the DDS, any group may sponsor the GLOW bus for an appearance in a particular location or community by making arrangements with the DDS. (*Id.* ¶ 11.)

Plaintiffs have presented evidence indicating that DDS employees gave inconsistent information in response to inquiries concerning the locations and dates for an appearance of the GLOW bus at Turner Field in Atlanta and for an appearance of the GLOW bus in downtown Atlanta. (Aff. of Jennifer Owens ¶ ¶ 3- 4.) Plaintiffs also have presented evidence indicating that the GLOW bus has steps for access and is not accessible for purposes of the Americans with Disabilities Act, and that *1339 individuals who are confined to wheelchairs cannot enter the bus. (*Id.* ¶ 6.) The photography and computer equipment on the GLOW bus is not mobile and cannot be removed from the bus to service individuals who cannot enter the bus. (*Id.*)

Defendants have presented evidence indicating that all individuals who wish to obtain a Photo ID card must complete an application and pay an applicable fee. (Decl. of Alan Watson ¶ 3.) If an applicant wishes to obtain a Photo ID card for voting purposes but cannot afford the card, a DDS employee will provide an affidavit to the applicant to complete. (*Id.*) The affidavit requires the applicant to swear or affirm that: (a) he or she is eligible to receive the Photo ID card free of charge because he or she is indigent and cannot pay the fee for the Photo ID card; (b) he or she desires a Photo ID card to vote in a primary or election in Georgia; and (c) he or she does not have any other form of identification that is acceptable under O.C.G.A. § 21-2-417 for voter identification purposes; (d) he or she is registered to vote in Georgia or is applying to register as part of his or her application for a Photo ID card; and (e) he or she does not have a valid driver's license issued by the State of Georgia. (*Id.* ¶ 4 & Ex. A.)

Defendants have presented evidence indicating that the DDS "considers the policy regarding the issuance of a free identification card for voting purposes to be completely nondiscretionary: if the applicant completes the Affidavit, the applicant is automatically eligible for a free photographic identification [card] for voting purposes." (Watson Aff. ¶ 5.) Defendants' evidence indicates that the DDS "makes no effort to verify the provisions of these completed affidavits relating to the applicant's eligibility for a free identification card for voting purposes and does not question the applicant." (*Id.*) According to Defendants, "[i]n short, any applicant

who completes such an affidavit will receive a free photographic identification card for voting." (*Id.*)

After HB 244 passed, the DDS trained its district managers concerning the above policy and the process for issuing free Photo ID cards for voting purposes. (Watson Decl. ¶ 6.) In turn, district managers trained their employees in the field offices. (*Id.*) Additionally, DDS sent a written notice concerning the policy and procedure for issuing free Photo ID cards for voting to all of its employees. (*Id.* & Ex. B.) Since the DDS began issuing the Photo ID cards for voting purposes, the DDS has received no complaints that individuals who wished to obtain the cards, whether free or paid, were denied the cards. (*Id.* ¶ 12.)

Defendants have presented evidence that as of July 30 or July 31, 2005, 5,674,479 Georgians possessed unexpired driver's licenses and 731,600 Georgians possessed unexpired Photo ID cards. (Watson Aff. ¶ 13.) When applying for licenses or Photo ID cards at the DDS service centers, applicants also may choose to register to vote under Georgia's "Motor Voter" law. (*Id.*)

In 2005, the fee for driver's licenses and Photo ID cards was \$15.00 for four years. (Watson Aff. ¶ 15.) In 2005, the Georgia legislature changed the law to set a \$20.00 fee for each driver's license and Photo ID card, and to provide that those driver's licenses and Photo ID cards would be valid for a term of five years. (*Id.*) The new law also provides that Georgians may purchase a ten-year driver's license or Photo ID card for \$35.00. (*Id.*) Prior to 2005, the Georgia legislature had not increased the fees for driver's licenses or Photo ID cards in thirteen years. (*Id.*)

Defendants have presented evidence indicating that the fee charged for driver's *1340 licenses and Photo ID cards is directly related to the costs of producing and issuing the driver's licenses and Photo ID cards. (Watson Aff. ¶ 16.) For the fiscal year ending June 30, 2004, the DDS conducted a total of 3,344,823 transactions involving producing and issuing driver's licenses and Photo ID cards, obtaining a total revenue of \$42,304,316.06 while spending \$47,018,808.73 of its budget for the fiscal year. (*Id.*)

The DDS's website explains how to apply for a Photo ID card. (Pls.' Br. Supp. Mot. Prelim. Inj. Ex. C.) The website states that applicants for a Photo ID card must furnish proof that they reside in Georgia and provide a valid Georgia residence address by

presenting one of the following: (1) a utility bill with a valid Georgia residence address; (2) a bank statement with a valid Georgia residence address; (3) a rental contract or receipt with a valid Georgia residence address; (4) an employer verification; or (5) a Georgia license issued to the applicant's parent, guardian, or spouse. (*Id.*) The website further states that first-time applicants for a Photo ID card must provide an acceptable form of personal identification that includes the applicant's full name and month, day, and year of birth. (*Id.*) Acceptable forms of personal identification include: (1) "[o]riginal birth certificate (State issued) State Vital Statistics (Hospital birth certificates are not acceptable)"; (2) "[c]ertified copy of birth certificate (issued from Vital Statistics with affixed seal)"; (3) "[c]ertificate of birth registration"; (4) certified naturalization records; (5) an immigration ID card from Immigration and Naturalization; or (6) a valid passport. (*Id.*)

Plaintiffs also have submitted information from the Department of Vital Statistics' website concerning the process for obtaining a certified copy of a birth certificate. (Pls.' Br. Supp. Mot. Prelim. Inj. Ex. D.) To obtain a certified copy of a birth certificate, an applicant must provide "a photocopy of your valid photo ID, such as: driver's license, state issued ID card, or employer issued photo ID." (*Id.* at 1.) An applicant must pay a \$10 search fee. (*Id.* at 2.)

The DDS and its predecessor, the Department of Motor Vehicles, only began collecting social security numbers three years ago, when they issued driver's licenses and Photo ID cards for four years. (Watson Aff. ¶ 19.) Consequently, DDS has collected only three-quarters of the social security numbers for individuals holding driver's licenses and social security cards. (*Id.*) Consequently, matching a list of social security numbers for registered voters with the DDS's list of social security numbers to determine the identity of registered voters who hold a driver's license or a Photo ID card is not possible.

D. Declarations of Would-Be Voters

Plaintiffs have submitted a number of declarations or affidavits of voters. The majority of the declarations state that the voters are not indigent, but do not have \$20 to spend for a Photo ID card that they do not need except for purposes of voting. (Decl. of Annie Johnson ¶ 6; Decl. of Betty Kooper ¶ 5; Decl. of Cheryl D. Simmons ¶ 5; Decl. of Clarence Harp ¶ 5; Decl. of Eva Jeffrey ¶ 4; Decl. of George Cliatt ¶ 6; Decl. of Katherine Jackson ¶ 5; Decl. of L.

Dewberry ¶ 5; Decl. of Luanna S. Miller ¶ 5; Decl. of Mary Cliatt ¶ 6; Decl. of Norma Pechman ¶ 5; Decl. of Ronnie Gibson ¶ 5; Decl. of Rosa Brown ¶ 8; Decl. of Ruth L. Butler ¶ 5; Decl. of Willie Boye ¶ 5.) A number of the voters do not drive or cannot afford a car. (A. Johnson Decl. ¶ 6; B. Kooper Decl. ¶ 5; C. Simmons Decl. ¶ 5; C. Harp Decl. ¶ 5; Decl. of Eleanor Whittenburg ¶ 2; E. Jeffrey Decl. *1341 ¶ 4; Decl. of Irene Laster ¶ 6; K. Jackson Decl. ¶ 5; L. Dewberry Decl. ¶ 5; Decl. of Lawrence Dorn ¶ 5; L. Miller Decl. ¶ 5; M. Cliatt Decl. ¶ 5; Decl. of Minnie Bridges ¶ 5; Decl. of Patricia Lane ¶ 4; Decl. of Pearl Kramer ¶ 5; R. Gibson Decl. ¶ 5; R. Brown Decl. ¶ 7; R. Butler Decl. ¶ 5; T. Jackson Decl. ¶ 5; W. Boye Decl. ¶ 5.)

Most of the voters do not have a driver's license, passport, tribal Photo ID, or other form of government-issued ID because they have no need for one. (A. Johnson Decl. ¶ 4; B. Kooper Decl. ¶ 4; C. Simmons Decl. ¶ 4; Decl. of Clara Williams ¶ 6; C. Harp Decl. ¶ 4; E. Whittenburg Decl. ¶ 4; E. Jeffrey Decl. ¶ 3; Decl. of Exie Brown ¶ 4; G. Cliatt Decl. ¶ 4; I. Laster Decl. ¶ 4; Decl. of Jason Benford ¶ 3; K. Jackson Decl. ¶ 4; L. Dewberry Decl. ¶ 4; L. Dorn Decl. ¶ 4; L. Miller Decl. ¶ 4; M. Cliatt Decl. ¶ 4; M. Bridges Decl. ¶ 4; N. Pechman Decl. ¶ 4; P. Lane Decl. ¶ 4; P. Kramer Decl. ¶ 4; R. Gibson Decl. ¶ 4; R. Brown Decl. ¶ 4; R. Butler Decl. ¶ 4; T. Jackson Decl. ¶ 5; W. Boye Decl. ¶ 4.) Quite a few of the voters are African-American. (A. Johnson Decl. ¶ 4; C. Williams Decl. ¶ 4; G. Cliatt Decl. ¶ 5; I. Laster Decl. ¶ 5; M. Cliatt Decl. ¶ 5; P. Lane Decl. ¶ 1; R. Brown Decl. ¶ 3.) Many of the voters are over sixty-five years old. (A. Johnson Decl. ¶ 1 (seventy-five years old); B. Kooper Decl. ¶ 1 (ninety years old); I. Laster Decl. ¶ 1 (eighty-eight years old); C. Williams Decl. ¶ 1 (sixty-eight years old); E. Brown Decl. ¶ 1 (eighty-two years old); G. Cliatt Decl. ¶ 1 (seventy-four years old); L. Miller Decl. ¶ 1 (eighty-four years old); M. Cliatt Decl. ¶ 1 (eighty-seven years old); N. Pechman Decl. ¶ 1 (eighty-four years old); P. Kramer Decl. ¶ 1 (eighty years old); R. Brown Decl. ¶ 1 (appears to be ninety-three years old); R. Butler Decl. ¶ 1 (eighty-nine years old).)

Several of the voters have physical or mental disabilities that make it difficult for them to travel to a DDS service center, to walk for long distances, or to stand in line. (A. Johnson ¶ 6 (physical disability); E. Whittenburg Decl. ¶ 2 (legally blind and uses walker to assist in walking); E. Brown Decl.

¶ 5 (confined to wheelchair); G. Cliatt Decl. ¶ 6 (poor health); I. Laster Decl. ¶ 6 (physical disability); J. Benford Decl. ¶ 5 (mental difficulties); L. Miller Decl. ¶ 5 (legally blind); M. Cliatt Decl. ¶ 6 (physical disability and confined to wheelchair); M. Bridges Decl. ¶ 5 (physical and visual impairment); P. Kramer Decl. ¶ 5 (physical impairment); R. Brown Decl. ¶ 7 (same).) Others have to rely on family members or friends for transportation, or cannot obtain transportation to a DDS service center. (E. Whittenburg Decl. ¶ 2 (relies on family for transportation; closest family member lives thirty-five miles away); E. Brown ¶ 6 (closest DDS service center eleven miles away; family members rarely available to transport her); J. Benford Decl. ¶ 5 (cannot obtain transportation to DDS service center); L. Dorn Decl. ¶ 5 (same).) Another voter would have difficulty taking off from work to go to a DDS service center to obtain a Photo ID. (L. Dewberry Decl. ¶ 5.)

Other voters had problems obtaining necessary information, such as birth certificates or valid driver's licenses from other states, required for issuing a Photo ID card. (E. Whittenburg Decl. ¶ 5 (assisted living resident would have to arrange for transportation to health department and pay \$10 for birth certificate); I. Laster Decl. ¶ 6 (born in 1917 and it was not customary to deliver birth certificate in community at that time); P. Lane Decl. ¶ ¶ 5-6 (could not get Photo ID at four DDS service center because she lacked documentation from Virginia's Department of Motor Vehicles); R. Brown Decl. ¶ 6 *1342 (has no birth certificate).) One voter could not get a Photo ID card because the State of North Carolina could not find her birth certificate, but was issued a letter that was good enough to get a passport from the federal government--yet not good enough to get a Photo ID card. (Decl. of Ruth White ¶ ¶ 5-7.) Other voters had problems because their legal names did not match the names they used for voter purposes or the names on their birth certificates. (Decl. of Amanda Clifton ¶ 4 (divorce decree does not state intent to change name); C. Williams Decl. ¶ 4 (informally adopted and birth certificate name does not match voter registration).)

A declaration from George H. Carley, an Associate Justice of the Georgia Supreme Court, describes a lengthy wait at a DDS service center to renew a driver's license. (Decl. of George H. Carley ¶ 2 (describing standing in line at DDS service center for more than three hours to renew driver's license).) Another judge, Henry M. Newkirk, described taking his parents, ages eighty-one and eighty-two, to a

DDS service center and standing in line for two hours to hold their places. (Decl. of Henry M. Newkirk ¶¶ 2-3.) He indicated that his parents would not have been able to stand in the line for so long because of their physical ailments, and could not have negotiated the process successfully without assistance. (*Id.* ¶¶ 4-5.) [FN1] Martin Crafter, a candidate for the Ft. Valley City Commission, described having to travel twenty miles to Warner Robbins to obtain a replacement driver's license, and stated that he had to request transportation from someone else to travel to the DDS service center. (Decl. of Marvin Crafter ¶¶ 2-4.)

FN1. During the October 12, 2005, preliminary injunction hearing, the Court overruled the State Defendants' objections to the declarations presented by Justice Carley and Judge Newkirk. The Court concluded that those declarations did not violate applicable ethical rules, and that Justice Carley likely would take the appropriate action if this case came before the Georgia Supreme Court at some point.

E. Census Data

Plaintiffs have presented data from the 2000 Census to support their claim of vote denial. According to that data, 4.4 percent of African-American households in Georgia have a male householder and no wife present, with children under eighteen years old, as compared to 2.7 percent of Caucasian, non-Hispanic households in Georgia. (Pls.' Br. Supp. Mot. Prelim. Inj. Ex. E at 2.) Additionally, 30.1 percent of African-American households in Georgia have a female householder with no husband present and children under eighteen years old, as compared to 7.1 percent of Caucasian, non-Hispanic households in Georgia. (*Id.*)

According to the Census data, 18.5 percent of African-Americans in Georgia who are over age twenty-five have no high school diploma, as compared to 11.8 percent of Caucasian, non-Hispanic individuals over age twenty-five in Georgia. (Pls.' Br. Supp. Mot. Prelim. Inj. Ex. E at 3.) 9.0 percent of African-Americans in Georgia who are over age twenty-five have less than a ninth-grade education, as compared to 5.5 percent of Caucasian, non-Hispanic individuals in Georgia who are twenty-five years and older. (*Id.*) Further, according to the data, 17.7 percent of African-American households in Georgia have no vehicle, as compared to 4.4 percent of Caucasian, non-Hispanic households in Georgia. (*Id.*)

at 9.)

F. Declarations of Georgia Elections Officials

1. Shea Hicks

Shea Hicks is the Chairperson of the Gordon County Board of Elections and *1343 Voter Registration. (Decl. of Shea Hicks ¶ 2.) Ms. Hicks has served in that capacity since 1991. (*Id.*) In her capacity as Chairperson, she supervises all Gordon County elections, as well as elections for municipalities in Gordon County such as Fairmount, Ranger, Resaca, and Plainville. (*Id.*) The Gordon County Board of Elections also assists the City of Calhoun with its elections when the City of Calhoun requests such assistance. (*Id.*) The City of Calhoun has requested assistance from the Gordon County Board of Elections for the November 8, 2005, election. (*Id.*)

Ms. Hicks' office has not received complaints that voters cannot obtain the identification needed for in-person voting. (S. Hicks Decl. ¶ 3.) Ms. Hicks testified that the great majority of voters in Gordon County already use either a driver's license or a State-issued identification card to identify themselves at the polls. (*Id.*)

After the Photo ID requirement passed and obtained preclearance from the Justice Department, the Gordon County Board of Elections ordered new election materials from the Elections Division of the Secretary of State's Office (the "Elections Division"). (S. Hicks Decl. ¶ 4.) Those materials included voter certificates, which list the proper forms of identification for in-person voting, and posters for the polling places listing the forms of acceptable identification for in-person voting. (*Id.*) The Gordon County Board of Elections also attended training sessions conducted by the Elections Division. (*Id.*) Those sessions included training on the new Photo ID requirement. (*Id.*) The Gordon County Board of Elections has scheduled poll manager and poll worker training sessions for various dates during the next two weeks. (*Id.* ¶ 6.)

The Gordon County Board of Elections has made efforts to educate the public concerning the Photo ID requirement by providing information to the newspaper. (S. Hicks Decl. ¶ 4.) That information appeared in the local newspaper during the past weekend. (*Id.*)

Gordon County has the following elections scheduled for November 8, 2005:(1) a county-wide

Special Local Option Sales Tax ("SPLOST") referendum; (2) a Fairmount city council election; and (3) elections for the Calhoun Board of Education and Calhoun City Council. (S. Hicks Decl. ¶ 5.) Ms. Hicks believes that issuing a preliminary injunction against the Photo ID requirement for the November 8, 2005, elections would cause tremendous confusion among election officials, poll workers, and voters. (*Id.* ¶ 7.) Ms. Hicks believes that the Gordon County Board of Elections cannot order and receive new voter certificates and poll posters in time for those elections, and states that the Gordon County Board of Elections does not have a sufficient supply of the certificates or posters reflecting the former identification requirements. (*Id.*) Additionally, Ms. Hicks believes that holding additional training for poll managers and poll workers would be necessary. (*Id.*)

Finally, Ms. Hicks opines that it would not be reasonable or feasible to require poll workers to compare the signatures on the voter certificates to the voter registration cards to verify the identity of voters. (S. Hicks Decl. ¶ 8.) According to Ms. Hicks, no such mechanism is in place and implementing one would be very costly. (*Id.*) Ms. Hicks also believes that such verification at the polls would be very time-consuming given the short amount of time available for verifying the signatures and the number of voters. (*Id.*)

2. Lynn Bailey

Lynn Bailey is the Executive Director of the Richmond County Board of Elections. (Decl. of Lynn Bailey ¶ 2.) Ms. Bailey has *1344 served in that capacity since 1993. (*Id.*) In her capacity as Executive Director, she supervises all Richmond County elections, as well as elections for municipalities in Richmond County such as Augusta, Blythe, and Hephzibah. (*Id.*)

The Richmond County Board of Elections held a special election on September 20, 2005, to fill the unexpired term of State Senator Charles Walker. (Bailey Aff. ¶ 3.) According to Ms. Bailey, the changes made by the Photo ID requirement were "a nonissue." (*Id.*) She recalled that voters did not seem confused and that poll workers seemed to administer the new procedures properly. (*Id.*) Ms. Bailey testified that most of the voters showed the type of identification that was shown most often under the previous law--a driver's license or a State-issued identification card. (*Id.*)

According to Ms. Bailey, 12,826 people voted at the polls during the September 20, 2005, special election. (Bailey Decl. ¶ 4.) 12,813 of those individuals produced Photo ID at the polls. (*Id.*) The thirteen voters who did not produce a Photo ID at the polls voted provisional ballots. (*Id.*) Only two of those thirteen voters returned with a Photo ID within forty-eight hours. (*Id.*) The Richmond County Board of Elections does not know why the other eleven voters did not return, and it never heard anything else from those voters. (*Id.*)

Before the September 20, 2005, election, the Richmond County Board of Elections ordered new election materials from the Elections Division. (Bailey Decl. ¶ 5.) Those materials included voter certificates, which list the proper forms of identification for in-person voting, and posters for the polling places listing the forms of acceptable identification for in-person voting. (*Id.*) The Richmond County Board of Elections also attended training sessions conducted by the Elections Division. (*Id.*) Those sessions included training on the new Photo ID requirement. (*Id.*) The Richmond County Board of Elections also conducted poll worker training prior to the September 20, 2005, election. (*Id.*) Finally, the Richmond County Board of Elections has scheduled additional poll worker training for October 17 through October 19, 2005. (*Id.* ¶ 7.)

Before the September 20, 2005, election, the Richmond County Board of Elections made efforts to educate the public concerning the Photo ID requirement by speaking to neighborhood groups, by using the media, and by educating the candidates. (Bailey Decl. ¶ 5.) The Richmond County Board of Elections also booked the GLOW bus to allow voters to obtain a Photo ID, and the GLOW bus was stationed in Richmond County on September 6 and 7, 2005. (*Id.*) The Richmond County Board of Elections has requested that the GLOW bus return to Richmond County before the November 8, 2005, election. (*Id.* ¶ 7.)

Richmond County has the following elections scheduled for November 8, 2005:(1) an election to fill the offices of Mayor and five City Commission positions for the City of Augusta; (2) an election to fill the post of Marshal for the Civil and Magistrate Court; (3) a special election to fill the unexpired term of State Representative Henry Howard, who recently died; (4) a special election to fill an unexpired term in Board of Education District 9; (5) a SPLOST vote; and (6) municipal elections for

Blythe and Hephzibah. (Bailey Decl. ¶ 6.) Ms. Bailey believes that issuing a preliminary injunction against the Photo ID requirement for the November 8, 2005, elections would cause tremendous confusion among election officials, poll workers, and voters. (*Id.* ¶ 8.) Ms. Bailey believes that the Richmond County Board of Elections cannot order and receive new voter certificates and poll posters in time for *1345 those elections, and states that the Richmond County Board of Elections does not have a sufficient supply of the certificates or posters reflecting the former identification requirements. (*Id.*) Additionally, Ms. Bailey believes that holding additional training for poll managers and poll workers would be necessary. (*Id.*) Finally, Ms. Bailey states that the Richmond County Board of Elections would have to re-educate the public concerning the former identification requirements. (*Id.*)

Ms. Bailey opines that it would not be reasonable or feasible to require poll workers to compare the signatures on the voter certificates to the voter registration cards to verify the identity of voters. (Bailey Decl. ¶ 10.) According to Ms. Bailey, no such mechanism is in place and implementing one would be very costly. (*Id.*) Ms. Bailey also believes that such verification at the polls would be very time-consuming given the short amount of time available for verifying the signatures and the number of voters. (*Id.*)

Finally, Ms. Bailey is aware of speculation that people voted as other people under the former law. (Bailey Decl. ¶ 9.) According to Ms. Bailey, the Richmond County Board of Elections has never found substantiated evidence to support that speculation. (*Id.*) In any event, Ms. Bailey believes that evidence of voter impersonation would be difficult to find, because there is no way to track an impersonator after the impersonator leaves the polling place. (*Id.*)

3. Gary Smith

Gary Smith is the Director of Elections for the Forsyth County Board of Elections. (Decl. of Gary Smith ¶ 2.) Mr. Smith has served in that capacity since January 1, 2002. (*Id.*) In his capacity as Director of Elections, he supervises all Forsyth County elections, as well as elections for municipalities in Forsyth County such as Cumming. (*Id.*)

Mr. Smith opines that in-person voter impersonation

would be easy to accomplish, as any person can buy a list of electors and determine who ordinarily does not vote. (Smith Decl. ¶ 4.) The imposter then can go to vote in place of someone who ordinarily does not vote. (*Id.*) According to Mr. Smith, without Photo ID or a reasonable method of comparing signatures on registration cards to signatures on voter certificate, there is no real opportunity to prevent such fraud. (*Id.*)

Mr. Smith states that he recently reported six fraudulent voter registrations to the Forsyth County District Attorney's Office. (Smith Decl. ¶ 6.) According to Mr. Smith, the Photo ID requirements assist the Forsyth County Board of Elections in preventing those voters who have registered fraudulently from voting. (*Id.*) Mr. Smith opines that the opportunity for fraud existed under the prior law. (*Id.* ¶ 7.) Mr. Smith observes that limiting the forms of acceptable identification is helpful to the Forsyth County Board of Elections poll workers. (*Id.* ¶ 8.) Mr. Smith notes that many of the poll workers do not know the voters by sight. (*Id.* ¶ 9.)

Mr. Smith's office has not received complaints that voters cannot obtain the identification needed for in-person voting. (Smith Decl. ¶ 11.) Mr. Smith testified that the great majority of voters in Forsyth County already use either a driver's license or a State-issued identification card to identify themselves at the polls. (*Id.*)

Mr. Smith believes that issuing a preliminary injunction against the Photo ID requirement for the November 8, 2005, elections would cause tremendous confusion among election officials, poll workers, and voters. (Smith Decl. ¶ 10.) Mr. Hicks believes that the various Boards of Elections *1346 cannot order and receive new voter certificates and poll posters in time for those elections, and states that the Boards of Elections do not have time to hold additional training for poll managers and poll workers would be necessary. (*Id.*)

Mr. Smith opines that it would not be reasonable or feasible to require poll workers to compare the signatures on the voter certificates to the voter registration cards to verify the identity of voters. (Smith Decl. ¶ 5.) According to Mr. Smith, no such mechanism is in place and implementing one would be very costly. (*Id.*) Mr. Smith also believes that such verification at the polls would be very time-consuming given the short amount of time available for verifying the signatures and the number of voters. (*Id.*)

4. Lynn Ledford

Lynn Ledford is the Elections Supervisor for Gwinnett County, Georgia, and has served in that capacity for three years. (Decl. of Lynn Ledford ¶ 2.) Gwinnett County is the second-largest county in Georgia and is one of the fastest-growing counties in the United States. (*Id.*) Gwinnett County has approximately 341,000 registered voters and has more municipalities than any other county in Georgia. (*Id.*)

In her capacity as Elections Supervisor, Ms. Ledford supervises all Gwinnett County elections, and also serves as the official registrar of voters for municipalities in Gwinnett County. (Ledford Decl. ¶ 3.)

After the Photo ID requirement passed and obtained preclearance from the Justice Department, Gwinnett County held a runoff election on September 27, 2005, to fill the unexpired term of Phyllis Miller. (Ledford Decl. ¶ 4.) That election involved seventeen voting precincts. (*Id.* ¶ 6.) According to Ms. Ledford, the changes resulting from Georgia's new Photo ID requirement were a "non-issue." (*Id.* ¶ 5.) Specifically, Ms. Ledford recalled that voters did not seem confused, and poll workers properly administered the new requirements. (*Id.*) According to Ms. Ledford, most voters showed the type of identification that they previously showed most often--a driver's license or state-issued Photo ID card. (*Id.*) No voter cast a provisional ballot for lack of proper Photo ID. (*Id.*)

Prior to the September 27, 2005, election, Gwinnett County ordered new election materials, revised the manual used by poll officials, and sent e-mails and made telephone calls to poll managers to educate the poll managers and poll workers. (Ledford Decl. ¶ 6.)

Gwinnett County has elections scheduled for November 8, 2005. (Ledford Decl. ¶ 6.) Those elections involve twelve municipalities, including Auburn, Berkeley Lake, Braselton, Buford, Dacula, Duluth, Lawrenceville, Lilburn, Loganville, Norcross, Snellville, and Sugar Hill. (*Id.* ¶¶ 6-7.)

Gwinnett County already has obtained supplies of voter certificates, which list the proper forms of identification for in-person voting, and posters for the polling places listing the forms of acceptable identification for in-person voting for the November 8, 2005, election. (Ledford Decl. ¶ 8.) Gwinnett

County has made efforts to educate the public concerning the Photo ID requirement by using media outlets and by speaking at public engagements. (*Id.*)

Ms. Ledford believes that issuing a preliminary injunction against the Photo ID requirement for the November 8, 2005, elections would cause tremendous confusion among election officials, poll workers, and voters. (Ledford Decl. ¶ 9.) Ms. Ledford believes that Gwinnett County cannot order and receive new voter certificates and poll posters in time for those elections, *1347 and states that Gwinnett County does not have a sufficient supply of the certificates or posters reflecting the former identification requirements. (*Id.*) Additionally, Ms. Ledford believes that holding additional training for poll managers and poll workers would be necessary, and that it also would be necessary to re-educate the public concerning the change in the identification requirement. (*Id.*)

Ms. Ledford opines that it would not be reasonable or feasible to require poll workers to compare the signatures on the voter certificates to the voter registration cards to verify the identity of voters. (Ledford Decl. ¶ 10.) According to Ms. Ledford, no such mechanism is in place and implementing one would be very costly. (*Id.*) Ms. Ledford also believes that such verification at the polls would be very time-consuming given the short amount of time available for verifying the signatures and the number of voters. (*Id.*)

5. Harry MacDougald

Harry MacDougald is a member of the Fulton County Board of Registration and Election ("FBRE"). (Decl. of Harry MacDougald ¶ 1.) As a member of the FBRE, Mr. MacDougald receives and reviews written reports from FBRE staff, information regarding voter fraud trends and indicia, complaints from voters who experience difficulty registering or voting, and reports of fraudulent voter registration and voting in Fulton County. (*Id.*) Fulton County is the largest county in Georgia, and has the largest number of registered voters. (*Id.* ¶ 2.) The FBRE is the superintendent of all Fulton County elections, and also administers elections under contract for several municipalities in Fulton County, including the City of Atlanta and the City of Roswell. (*Id.*)

Mr. MacDougald states that during his service on the FBRE, he has observed numerous problems with fraudulent voter registration applications. (MacDougald Decl. ¶ 3.) According to Mr.

MacDougald, during the 2004 election cycle, numerous press accounts of fraudulent voter registration applications surfaced around the United States. (*Id.*) Mr. MacDougald states that he was aware of reports of fraudulent registration applications or investigations into fraudulent registration applications in at least eleven states, including Georgia, Florida, Ohio, Nevada, Colorado, Wisconsin, California, Oregon, Washington, Pennsylvania, and South Carolina. (*Id.*) Mr. MacDougald states that some of the same groups accused of registration fraud in other states were active in Georgia. (*Id.*)

According to Mr. MacDougald, the FBRE received a total of 2,456 voter registration applications submitted to the Secretary of State's office by an organization called The Georgia Coalition for the People's Agenda. (MacDougald Decl. ¶ 3.) The FBRE also received a smaller batch of voter registration applications from an organization called Head Count. (*Id.*) The transmittal from the Secretary of State's office noted that the applications were suspicious, and recommended that the FBRE use verification procedures. (*Id.*) The FBRE's staff examined the applications carefully and reported that all, or nearly all, of the applications appeared fraudulent. (*Id.*) Specifically, many of the applications were written in the same handwriting, had invalid social security numbers, or had invalid addresses. (*Id.*)

In 2004, the FBRE received 2,456 voter registrations that appeared to be fraudulent. (MacDougald Decl. ¶ 4.) The FBRE referred those matters to the Fulton County District Attorney, as well as to the United States Attorney for the Northern District of Georgia. (*Id.*) Although the Fulton County District Attorney apparently *1348 did not respond to the FBRE's referral, the United States Attorney's Office opened an investigation into the matter. (*Id.*)

FBRE also sent out "missing information" letters to 8,112 applicants for voter registration during 2004, including the 2,456 applications discussed in the preceding paragraph. (MacDougald Aff. ¶ 5.) The FBRE sends "missing information" letters to applicants for voter registration whose applications do not contain required information or whose applications contain "irregular" information. (*Id.*) In theory, applicants who receive the "missing information" will supply the missing information to the FBRE office, and will be duly registered to vote. (*Id.* ¶ 6.) If the FBRE receives no response to a "missing information" letter, the FBRE does not

process the application. (*Id.*)

In response to its 8,112 "missing information" letters sent in 2004, the FBRE received only fifty-five responses sufficient to process the applications and add the voters to the rolls, for a response rate of 0.678 percent and a non-response rate of 99.32 percent. (MacDougald Decl. ¶ 7.) Ten of the responses received indicated fraud by stating that the individuals who received the "missing information" letters had never registered to vote. (*Id.*) The family of one of those individuals responded that the individual had died. (*Id.*) Meanwhile, the United States Postal Service returned 1,362 of the 8,112 "missing information" letters as undeliverable. (*Id.*) 6,685 of the individuals who received "missing information" letters never responded. (*Id.*)

According to Mr. MacDougald, another group of individuals succeeded in registering to vote in the latter part of 2004, but likely were not valid voters. (MacDougald Decl. ¶ 8.) In 2004, the FBRE had a record number of new registrations and mailed out precinct cards to newly registered voters. (*Id.*) The FBRE had 45,907 new registrations between the deadline for registering to vote in the primary election and the deadline for registering to vote in the general election. (*Id.*) The FBRE mailed precinct cards to all of the 45,907 new registrants, and the United States Postal Service returned 3,071 of those cards as undeliverable. (*Id.*) 971 of those 3,071 registrants whose precinct cards were returned voted in the general election. (*Id.*)

Mr. MacDougald opined that in light of the above information indicating that the FBRE received 8,057 suspect registrations that it could not process because of missing information and that the FBRE received 3,071 precinct cards for newly registered voters returned as undeliverable, the FBRE received a total of 11,128 applications for voter registration that were suspect or problematic "in a serious way." (MacDougald Decl. ¶ 9.) The suspect or problematic voter applications constituted 6.71 percent of the total registration applications processed in Fulton County before the 2004 election. (*Id.*)

Mr. MacDougald is not aware of any complaints to the FBRE made by voters who cannot obtain the Photo ID required to vote in person at the polls. (MacDougald Decl. ¶ 12.) According to Mr. MacDougald, the "great majority" of Fulton County voters already use a driver's license or state-issued Photo ID card to vote at the polls. (*Id.*)

6. Declaration of Ann Hicks

Ann Hicks serves as an Assistant Director in the Elections Division, and has worked in the Elections Division for twenty-six years. (Decl. of Ann Hicks ¶ 2.) Ms. Hicks' duties include supervising six employees, assisting the Director of the Elections Division with the Division's budget, revising and ordering printed election forms, ordering other election materials *1349 used by counties and municipalities for conducting elections, assisting counties with entry of election supply orders and with obtaining approval for shipment of those orders, entering election supply orders for most municipalities, assisting county and municipal elections officials and other parties with numerous election-related questions, and training county and municipal registrars concerning election procedures. (*Id.*) The Elections Division regularly assists county election officials and municipal election officials ("local election officials") with various tasks related to elections. (*Id.* ¶¶ 3-4.)

Local elections officials order election supplies, including voter certificates and poll posters advising voters of the required forms of identification, through the Elections Division. (A. Hicks Decl. ¶ 5.) County elections officials order their supplies electronically, while municipalities that conduct their own elections must telephone in their supply orders, which are entered by Elections Division staff. (*Id.*) The Elections Division also regularly provides training sessions for local election workers who, in turn, train their poll workers prior to elections. (*Id.* ¶ 6.)

After the passage of HB 244, Elections Division staff immediately began training local elections officials throughout Georgia concerning the new law so that the local elections officials could train their poll workers before the elections scheduled for August 30, 2005, September 20, 2005, September 27, 2005, and November 8, 2005. (A. Hicks Decl. ¶ 7.) The training also included instruction concerning the new Photo ID requirement for in-person voting and the removal of restrictions for absentee voting. (*Id.*) Specifically, the Elections Division conducted the following training: (1) training for county elections officials through the Georgia Election Officials Association on May 1 through May 4, 2005, which included nearly 400 participants; (2) training for municipal elections officials in June 2005 and July 2005 at four sites around the states, which included nearly 600 participants; (3) an additional training session for municipal elections officials at the University of Georgia held on September 20, 2005;

(4) training for voter registrars through the Voter Registrar's Association of Georgia on August 7 through August 10, 2005, which included over 400 participants; and (5) training for newly-created boards of election in September 2005. (*Id.* ¶ 8.) In total, the Elections Department trained 2,000 participants during the past four months. (*Id.*)

After the Justice Department granted preclearance of the Photo ID requirement, approximately thirty-four municipalities held elections on September 20, 2005. (A. Hicks Decl. ¶ 9.) Further, Gwinnett County held a runoff election on September 27, 2005. (*Id.*)

The Elections Division distributed new supplies, including voter certificates and poll posters, to all counties and municipalities that it knew would hold elections on September 20, 2005. (A. Hicks Decl. ¶ 10.) Because the Photo ID requirement did not receive preclearance until after business hours on Friday, August 26, 2005, the Elections Division was very concerned about its ability to provide new forms and posters to all of the local elections boards and municipalities that planned to hold elections on September 20, 2005. (*Id.*)

At least 350 Georgia counties and municipalities will hold elections on November 8, 2005. (A. Hicks Decl. ¶ 11.) According to Ms. Hicks, a preliminary injunction against the Photo ID requirement would cause confusion. (*Id.* ¶ 12.) Specifically, the Elections Division could not hold new training with local elections officials so that those officials, in turn, could train their poll workers. (*Id.*) According to Ms. *1350 Hicks, many local elections officials already have conducted their poll worker training for the November 8, 2005, election and would not have sufficient time to conduct more training. (*Id.*) Ms. Hicks believes that a preliminary injunction also would cause confusion among elections officials, poll workers, and voters, especially in jurisdictions that already have held elections using the Photo ID requirement. (*Id.* ¶ 14.)

The Elections Division also is in the process of distributing supplies to local elections officials who will hold elections on November 8, 2005. (A. Hicks Decl. ¶ 13.) According to Ms. Hicks, the Elections Division needs at least one month to process orders for elections supplies and to distribute those supplies. (*Id.*)

As of August 1, 2005, the Elections Division's records indicated that 4,816,904 individuals were registered to vote in Georgia. (A. Hicks Decl. ¶ 15)

& Ex. D.)

G. Testimony of Secretary of State Cox

a. Secretary of State Cox's Responsibilities

Secretary of State Cox is Georgia's Secretary of State. (Decl. of Cathy Cox ¶ 2; Oct. 12, 2005, Hr'g Tr.; Dep. of Cathy Cox at 8.) Secretary of State Cox also serves as the Chair of the State Election Board. (Cox Decl. ¶ 2; Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 9.) The State Election Board consists of five members, including Secretary of State Cox, a representative from the Georgia Democratic Party, a representative from the Georgia Republican Party, a representative from the Georgia Senate, and a representative from the Georgia House of Representatives. (Oct. 12, 2005, Hr'g Tr.) Secretary of State Cox is the principal official in the State Government in charge of elections and for purposes of the Help America Vote Act ("HAVA") and the National Voter Registration Act. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 9.)

b. Reports of Voter Fraud

During the nine years in which Secretary of State Cox has been affiliated with the Secretary of State's Office, that office has not received a report of voter impersonation involving a scenario in which a voter appears at the polls and votes as another person, and the actual person later appears at the polls and attempts to vote as himself. (Cox Decl. ¶ 5; Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 14, 16, 47.) Secretary of State Cox does not dispute that under the previous law, it was possible for the above voter impersonation scenario or another form of in-person voter fraud to occur. (Cox Decl. ¶ 5.)

Further, Secretary of State Cox and her staff are not physically present in all 159 counties and the various municipalities on election days. (Cox Decl. ¶ 5; Oct. 12, 2005, Hr'g Tr.) Secretary of State Cox therefore acknowledges that issues related to in-person voter fraud may arise that are not reported to her office. (Cox Decl. ¶ 5; Oct. 12, 2005, Hr'g Tr.) According to Secretary of State Cox, local election officials are in the best position to know of such incidents. (Cox Decl. ¶ 5; Oct. 12, 2005, Hr'g Tr.)

The State Election Board has received a number of complaints of irregularities with respect to absentee ballots. (Oct. 12, 2005, Hr'g Tr.) In fact, at most of its meetings, the State Election Board discusses complaints of fraud and irregularities in absentee

voting. (*Id.*) Secretary of State Cox also is aware of a previous incident in Dodge County, Georgia, involving vote buying and selling of absentee ballots. (*Id.*) The Dodge County incident involved in-person absentee voting. (*Id.*)

*1351 According to Secretary of State Cox, Georgia has procedures and practices in place to detect voter fraud. (Oct. 12, 2005, Hr'g Tr.) Those procedures include verifying the voter's correct address, as well as the voter's name, during the check-in process for in-person voters. (*Id.*) Georgia also imposes criminal penalties for voter impersonation. (*Id.*) Most violations of Georgia election laws are punishable as felonies. (*Id.*) No evidence indicates that the criminal penalties do not sufficiently deter in-person voter fraud. (*Id.*)

The integrity of the voter list also is extremely important in preventing voter fraud. (Oct. 12, 2005, Hr'g Tr.) The *Atlanta Journal-Constitution* published an article indicating that Georgia had experienced 5,412 instances of voter fraud during a twenty-year period. (Pls.' Ex. 11; Oct. 12, 2005, Hr'g Tr.) Secretary of State Cox's office undertook an investigation in response to that article. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 40.) The investigation revealed that the specific instance of voter fraud outlined in the *Atlanta Journal-Constitution*, involving a report that Alan J. Mandel had voted after his death, actually did not occur. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 41.) Instead, an individual with a similar name, Alan J. Mandle, had voted at the polls, and the poll worker had marked Alan J. Mandel's name rather than marking Alan J. Mandle, the name of the individual who actually voted. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 41.) Secretary of State Cox's office compared the signature on the voter certificate to the voter registration card of the living individual, and concluded that the living individual, Alan J. Mandle, rather than the deceased Alan J. Mandel, had voted. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 41.)

The Secretary of State's Office subsequently attempted to ensure that voter records were maintained and up to date. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 43.) The Secretary of State's Office sends information concerning dead voters to local elections officials on a monthly basis, and now has the authority to remove the names of deceased voters from the voter rolls if the local elections officials fail to do so in a timely manner. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 43-44.) Secretary of State Cox is not aware of any reports of dead individuals voting since her office received authority to remove the names of

deceased individuals from the voter rolls. (Cox Dep. at 45.)

c. Concerns Regarding HB 244

In her letter to the Georgia State Senate addressing HB 244, Secretary of State Cox expressed concerns that allowing individuals to vote absentee ballots without showing identification and removing the conditions previously required for obtaining absentee ballots opened a gaping opportunity for fraud. (October 12, 2005, Hr'g Tr.; Cox Dep. at 10-12.) Secretary of State Cox indicated that concerns with respect to absentee ballots involved incidents of individuals picking up absentee ballots for other individuals without the required family relationship and individuals removing absentee ballots from voters' mailboxes. (Oct. 12, 2005, Hr'g Tr.) According to Secretary of State Cox, the only restrictions on absentee voting that tended to prevent fraud were the restrictions for obtaining an absentee ballot. (Oct. 12, 2005, Hr'g Tr.)

In her letter to Governor Purdue concerning HB 244, Secretary of State Cox stated her opinion that the Photo ID requirement for in-person voting was unnecessary, created a significant obstacle to voting for many voters, was unlikely to receive preclearance from the Justice Department, violated the Georgia Constitution, and unduly burdened the fundamental *1352 right to vote. (Oct. 12, 2005, Hr'g Tr.; Pls.' Ex. 2; Cox Dep. at 17.) The opinion that Secretary of State Cox expressed in her letter to Governor Purdue remains her personal opinion; however, Secretary of State Cox is obligated to enforce and carry out the Photo ID requirement in her official capacity until the law is declared invalid. (Oct. 12, 2005, Hr'g Tr.)

Secretary of State Cox also requested that Governor Purdue seek the opinion of the Attorney General before approving HB 244. (Oct. 12, 2005, Hr'g Tr.; Pls.' Ex. 2; Cox Dep. at 20.) Secretary of State Cox is not aware that Governor Purdue has sought an opinion from the Attorney General concerning HB 244, and is not aware of any opinion issued by the Attorney General concerning the Photo ID requirement. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 20.)

d. Voter Registration

Secretary of State Cox is aware of efforts to submit fraudulent voter registrations. (Oct. 12, 2005, Hr'g Tr.) Those efforts occurred both before and after

Georgia enacted its Photo ID requirement. (*Id.*)

Georgia currently has no requirement that a person seeking to register to vote present a Photo ID. (Oct. 12, 2005, Hr'g Tr.) HB 244 did not address voter registration. (*Id.*)

In 2004, however, Georgia made some changes to its voter registration law to bring the law into conformity with HAVA. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 26-27.) The law now provides that applicants should provide some type of identification when they register to vote. (Oct. 12, 2005, Hr'g Tr.) That identification may include one of the seventeen forms of identification required for in-person voting prior to July 1, 2005, and need not necessarily be a Photo ID. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 26.) First-time voters who have registered by mail must provide a Photo ID to vote absentee. (*Id.*) Voters who registered by mail and provided some information concerning their identity, however, are not required to provide a Photo ID to vote absentee. (*Id.*) Additionally, if a voter does not present identification when registering by mail, but the State can verify certain information provided by the voter through a State database, such as the voter's date of birth, the voter need not present a Photo ID to vote absentee. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 26.)

e. Absentee Ballots and Absentee Voting

HB 244 expanded the opportunity for voters to obtain absentee ballots. (Oct. 12, 2005.) Prior to July 1, 2005, voters seeking to obtain absentee ballots had to aver that they met certain requirements. (*Id.*) After July 1, 2005, those requirements no longer apply for purposes of obtaining absentee ballots. (*Id.*)

To obtain an absentee ballot, a voter must send in a request to the local registrar providing his or her name, address, and an identifying number, or must appear in person at the registrar's office and provide such information. (Oct. 12, 2005, Hr'g Tr.) Local elections officials are supposed to compare the signature on the request to the signature on the voter's registration card. (*Id.*) If the signatures match, the local elections officials will send an absentee ballot to the address listed on the voter's registration. (*Id.*) A voter who wishes to vote an absentee ballot need not provide a Photo ID unless that voter registered by mail, did not provide identification, and is voting for the first time by absentee ballot. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 27.)

After receiving an absentee ballot, the voter must complete the ballot and return *1353 it to the registrar, either by hand-delivery to the registrar's office by the voter or certain relatives of the voter, or by mail. (Oct. 12, 2005, Hr'g Tr.) Even if an absentee ballot contains a postmark indicating that the voter mailed it on an earlier date, elections officials will not count the absentee ballot if the ballot is not received in the registrar's office by 7:00 p.m. on the day of the applicable election. (*Id.*) Exceptions to this rule exist for voters who are members of the military or reside overseas. (*Id.*)

An absentee ballot that arrives in the registrar's office should be returned in two envelopes--an inner blank "privacy" envelope and an outer envelope that contains an oath signed by the voter. (Oct. 12, 2005, Hr'g Tr.) Local elections officials compare the signature on the oath contained on the outer envelope to the signature on the voter's registration card to verify the voter's identity. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 35.) The signature verification procedure is the only safeguard currently in place in Georgia to prevent imposters from voting by using absentee ballots. (Oct. 12, 2005, Hr'g Tr.) The verification process is done manually. (*Id.*) Absentee ballots are submitted to the local registrars' offices over a forty-day period. (*Id.*) However, if fifty percent of voters decided to vote by absentee ballot in any given election, local elections officials would have a difficult time completing the necessary signature verifications. (*Id.*)

Once a voter returns an absentee ballot to the registrar's office, the voter cannot change that ballot. (Oct. 12, 2005, Hr'g Tr.) The voter, however, has the right to notify the registrar that the voter intends to cancel the absentee ballot and vote in person. (*Id.*)

In the November 2004 general election, 422,490, or approximately ten percent, of Georgia's 4,265,333 registered voters voted absentee ballots. (Pls.' Ex. 4 at 1.) 46,734, or approximately seven percent, of Georgia's 697,420 registered African-American female voters voted absentee ballots, as compared with 189,143, or approximately twelve percent, of Georgia's 1,548,916 registered Caucasian female voters. (*Id.*) 26,144, or approximately six percent, of Georgia's 467,835 registered African-American male voters voted absentee ballots, as compared with 150,722, or approximately eleven percent, of Georgia's 1,376,368 registered Caucasian male voters. (*Id.*)

f. Signature Comparison for In-Person Voting

Presently, elections officials do not compare signatures on voter certificates of in-person voters to signatures on voter registration cards. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 36-37.) The voter registration cards are not physically present at the polling places. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 36-37.) Secretary of State Cox testified that it would be possible to send voter registration cards to polling places, but that comparing signatures on voter certificates to signatures on voter registration cards for in-person voters would be time-consuming. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 37.)

g. Voters Without Photo ID

A number of Georgia voters are elderly, have no driver's licenses, and have no need for a state-issued Photo ID card other than for voting purposes. (Oct. 12, 2005, Hr'g Tr.) Further, a number of Georgia voters who are elderly or have low incomes do not have automobiles or use mass transit, and would have difficulty obtaining Photo ID to vote. (*Id.*) Secretary of State Cox does not have information concerning the number of Georgia voters who lack Photo ID. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 23.) Secretary of State Cox also has received no correspondence concerning *1354 significant problems with the new Photo ID requirement or concerning significant numbers of voters who have not been allowed to vote because of the Photo ID requirement. (*Id.*)

An individual who votes in person but does not present a Photo ID may vote a provisional ballot. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 27-28.) Elections officials, however, will not count the provisional ballot unless the voter returns to the registrar's office within forty-eight hours and presents a Photo ID. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 27-28.) Secretary of State Cox has no information indicating that voters have cast a significant number of provisional ballots in the elections conducted after the Photo ID requirement received preclearance. (*Id.*)

h. Training by Elections Division

After the Photo ID requirement received preclearance from the Justice Department, Secretary of State Cox ensured that the Elections Division conducted necessary training, distributed necessary supplies, and did everything possible to ensure that the Photo ID requirement was carried out in every election, including the elections held on August 26, 2005, September 20, 2005, September 27, 2005, and

November 8, 2005. (Cox Decl. ¶ 7; Oct. 12, 2005, Hr'g Tr.) The Elections Division also provided information to the public concerning the Photo ID requirement via the website for the Secretary of State's Office and through other public information efforts. (Cox Decl. ¶ 7; Oct. 12, 2005, Hr'g Tr.)

i. Connection to Local Elections Officials

Local elections officials for counties are connected to the Secretary of State's Office through a mainframe computer. (Oct. 12, 2005, Hr'g Tr.) The Secretary of State's Office has the capability of e-mailing information concerning a preliminary injunction order to the various county elections officials. (*Id.*) The Secretary of State's Office does not have that capacity for municipal elections officials; however, in many cases, county elections officials also manage elections for municipalities within their counties. (*Id.*)

j. Effect of a Preliminary Injunction

Secretary of State Cox believes that a preliminary injunction precluding Georgia from applying the Photo ID requirement in the November 8, 2005, elections likely would cause confusion for election officials, poll workers, and voters, especially in jurisdictions that already have conducted elections under the new law. (Cox Decl. ¶ 8; Oct. 12, 2005, Hr'g Tr.) Additionally, the Elections Division would have to reprint and distribute new election forms and materials for the jurisdictions conducting November 8, 2005, elections in a very short period of time. (Cox Decl. ¶ 8; Oct. 12, 2005, Hr'g Tr.) Secretary of State Cox anticipates that such a preliminary injunction would result in some local election officials applying the Photo ID requirement, some local election officials applying the former law, and others applying a variation of the laws. (Cox Decl. ¶ 8.)

H. Procedural Background

On September 19, 2005, Plaintiffs filed this lawsuit. Plaintiffs assert that the Photo ID requirement violates the Georgia Constitution, is a poll tax that violates the Twenty-fourth Amendment and the Equal Protection Clause, unduly burdens the fundamental right to vote, violates the Civil Rights Act of 1964, and violates Section 2 of the Voting Rights Act.

On September 19, 2005, Plaintiffs requested that the Court schedule a preliminary injunction hearing. On

that same day, the Court entered an Order scheduling *1355 a preliminary injunction hearing for October 12, 2005. (Order of Sept. 19, 2005.)

On October 6, 2005, Plaintiffs filed a formal Motion for Preliminary Injunction. On October 7, 2005, Secretary of State Cox filed a Motion to Dismiss Individual Capacity Claims. On October 11, 2005, individual Plaintiff Tony Watkins filed a Stipulation of Dismissal Without Prejudice of his claims. Finally, on October 12, 2005, Plaintiffs filed their First Amendment to Complaint, which addresses the issue of standing for the organizational Plaintiffs.

On October 12, 2005, the Court held a hearing with respect to Plaintiffs' Motion for Preliminary Injunction. During the October 12, 2005, hearing, the parties presented evidence and arguments in support of their respective positions. The Court concludes that the Motion for Preliminary Injunction now is ripe for resolution by the Court.

II. Standing

Defendants argue that Plaintiffs lack standing to pursue this lawsuit. The Court addresses the issue of standing before turning to the merits of Plaintiffs' Motion for Preliminary Injunction.

Article III of the federal Constitution limits the power of federal courts to adjudicating actual "cases" and "controversies." U.S. Const. art. III, § 2, cl. 1. "The most significant case-or-controversy doctrine is the requirement of standing." *Nat'l Alliance for Mentally Ill, St. Johns Inc. v. Bd. of County Comm'r's*, 376 F.3d 1292, 1294 (11th Cir.2004). "In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." *Id.* (quoting *Warth v. Seldin*, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975)).

[1] The party invoking federal jurisdiction has the burden of proving standing. *Nat'l Alliance for the Mentally Ill*, 376 F.3d at 1294. At least three different types of standing exist: taxpayer standing, individual standing, and organizational standing. *Id.* To establish those types of standing, a plaintiff must "demonstrate that he has suffered injury in fact, that the injury is fairly traceable to the actions of the defendant, and that the injury will likely be redressed by a favorable decision." *Id.* at 1295 (citing *Bennett v. Spear*, 520 U.S. 154, 162, 117 S.Ct. 1154, 137 L.Ed.2d 281 (1997)) (internal quotation marks omitted). For purposes of this Order, the Court

focuses on whether the organizational Plaintiffs have standing to pursue this action. [FN2]

[FN2]. One of the individual Plaintiffs, Tony Watkins, dismissed his claims without prejudice prior to the October 12, 2005, hearing, apparently because he did not wish to submit to a deposition. Defendants argue that the remaining individual Plaintiff, Clara Williams, lacks standing because she has a MARTA card that would qualify as a Photo ID card under the new Photo ID requirement and because she could vote by absentee ballot. In light of the need to issue a ruling quickly, and in light of the Court's decision *infra* concerning Plaintiffs' Section 2 claims, the Court does not address Defendants' arguments pertaining to Plaintiff Williams at this point.

[2][3] " 'An association has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.' " *Nat'l Alliance for the Mentally Ill*, 376 F.3d at 1296 (quoting *1356 *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 120 S.Ct. 693, 704, 145 L.Ed.2d 610 (2000)). Here, Plaintiffs' First Amendment to Complaint adds a new paragraph 1(i) to their Complaint that states:

Common Cause, the League, the Central Presbyterian and Advocacy Center, Inc., Georgia Association of Black Elected Officials, Inc., The National Association for the Advancement of Colored People (NAACP), Inc., GLBC, and the Concerned Black Clergy of Metropolitan Atlanta, Inc., (in the aggregate, the "Non-Profit Plaintiffs"), are non-profit organizations composed of members who would have standing to sue in their individual right for the allegations set forth in the Complaint, the interests which each of the Non-Profit Plaintiffs and their members seek to protect in the Complaint are germane to the purpose of each of the Non-Profit Plaintiffs, and neither the claim or the relief sought requires participation by the individual members of the Non-Profit Plaintiffs.

(First Am. to Compl.) The Court concludes that Plaintiffs' allegations satisfy the organizational standing requirements, for purposes of Plaintiffs' Motion for Preliminary Injunction.

III. Plaintiffs' Motion for Preliminary Injunction

To obtain a preliminary injunction, a movant must show: (1) a substantial likelihood of ultimate success on the merits; (2) the preliminary injunction is necessary to prevent irreparable injury; (3) the threatened injury outweighs the harm the preliminary injunction would inflict on the non-movant; and (4) the preliminary injunction would serve the public interest. *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1306 (11th Cir.1998). In the Eleventh Circuit, "[a] preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant clearly established the burden of persuasion' as to the four requisites." *Id.* (quoting *All Care Nursing Serv., Inc. v. Bethesda Mem'l Hosp., Inc.*, 887 F.2d 1535, 1537 (11th Cir.1989)) (internal quotation marks omitted) (alterations in original).

A plaintiff seeking to enjoin enforcement of a state statute bears a particularly heavy burden. "[P]reliminary injunctions of legislative enactments--because they interfere with the democratic process and lack the safeguards against abuse or error that come with a full trial on the merits-- must be granted reluctantly and only upon a clear showing that the injunction before trial is definitely demanded by the Constitution and by the other strict legal and equitable principles that restrain courts." *Bankwest, Inc. v. Baker*, 324 F.Supp.2d 1333, 1343 (N.D.Ga.2004) (quoting *Northeastern Fla. Chapter of the Ass'n of Gen. Contractors of Am. v. City of Jacksonville*, 896 F.2d 1283, 1285 (11th Cir.1990)).

A. Substantial Likelihood of Success on the Merits

1. Claims Under the Georgia Constitution

Plaintiffs allege that the Photo ID requirement violates article II, section 1, paragraph 2 of the Georgia Constitution. Article II, section 1, paragraph 2 of the Georgia Constitution provides: "Every person who is a citizen of the United States and a resident of Georgia as defined by law, who is at least 18 years of age and not disenfranchised by this article, and who meets minimum residency requirements as provided by law shall be entitled to vote at any election by the people. The General Assembly shall provide by law for the registration of electors." Ga. Const. art. II, § 1, ¶ 2. Article II, section 1, paragraph 3 of the Georgia Constitution sets forth the following exceptions to the right to register to vote:

*1357 (a) No person who has been convicted of a felony involving moral turpitude may register,

remain registered, or vote except upon completion of the sentence.

(b) No person who has been judicially determined to be mentally incompetent may register, remain registered, or vote unless the disability has been removed.

Ga. Const. art. II, § 1, ¶ 3.

Plaintiffs argue that the new Photo ID requirement violates the Georgia Constitution because it denies certain Georgia citizens the right to vote. According to Plaintiffs, the Georgia Constitution lists only two grounds for denying a Georgia citizen who is registered to vote the right to vote: (1) having a conviction for a felony involving moral turpitude; or (2) having a judicial determination of being mentally incompetent to vote. Plaintiffs contend that the Georgia legislature simply has no power to regulate voting outside the areas of defining residency and establishing registration requirements.

Defendants argue that any claim that the State Defendants are violating Georgia law is barred by the Eleventh Amendment. Defendants quote *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 104 S.Ct. 900, 79 L.Ed.2d 67 (1984), for the proposition that the Eleventh Amendment bars federal courts from enforcing state law either prospectively or retroactively. According to Defendants, because Georgia state courts are the correct arbiters on the meaning of state law, "it would be a 'gross intrusion' ' for this Court to grant a preliminary injunction on the basis of Plaintiffs' claims arising under the Georgia Constitution claims. (State Defs.' Br. Opp'n Pls.' Mot. Prelim. Inj. at 56.)

Defendants also argue that even if Eleventh Amendment immunity does not exist, Plaintiffs cannot succeed because the constitutionality of a Georgia statute is presumed, and " 'all doubts must be resolved in favor of its validity.' " (*Id.* at 57 (citations omitted).) According to Defendants, the General Assembly did not prescribe qualifications for voters when enacting the Photo ID law; instead, they were attempting to regulate the voting process itself. Defendant argue that the in-person Photo ID requirement is a "time, place, or manner" regulation, and that the Georgia Constitution does not require that citizens be permitted to vote in person nor does it state that citizens have an absolute right to be free from any regulation of in-person voting. (*Id.* at 59.)

Before the Court can consider Plaintiffs' claims regarding the Georgia Constitution, the Court must determine whether the Eleventh Amendment to the

United States Constitution bars those claims. *McClendon v. Ga. Dept. of Cmty. Health*, 261 F.3d 1252, 1257 (11th Cir.2001); *Silver v. Baggiano*, 804 F.2d 1211, 1213 (11th Cir.1986).

The Eleventh Amendment to the Constitution provides that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend. XI. The Supreme Court has made clear that this language also bars suits against a state by its own citizens. *DeKalb County School Dist. v. Schrenko* 109 F.3d 680, 687 (1997) (citing *Hans v. Louisiana*, 134 U.S. 1, 10 S.Ct. 504, 33 L.Ed. 842 (1890)). "In short, the Eleventh Amendment constitutes an 'absolute bar' to a state's being sued by its own citizens, among others." *Id.* (citing *Principality of Monaco v. Mississippi*, 292 U.S. 313, 329, 54 S.Ct. 745, 78 L.Ed. 1282 (1934)).

[4][5] "[A]bsent its consent, a state may not be sued in federal court unless Congress has clearly and unequivocally abrogated *1358 the state's Eleventh Amendment immunity by exercising its power with respect to rights protected by the Fourteenth Amendment." *Id.* at 688 (quoting *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 99, 104 S.Ct. 900, 79 L.Ed.2d 67 (1984) ("*Pennhurst II*")). "Congress may not nullify a state's immunity with respect to alleged violations of state law." *Id.* "For that reason, a federal court may not entertain a cause of action against a state for alleged violations of state law, even if that state claim is pendent to a federal claim which the district court could adjudicate." *Id.* (citing *Pennhurst II*, 465 U.S. at 117-23, 104 S.Ct. 900). In *Pennhurst II*, the United States Supreme Court explained that:

[a] federal court's grant of relief against state officials on the basis of state law, whether prospective or retroactive, does not vindicate the supreme authority of federal law. On the contrary, it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law. Such a result conflicts directly with the principles of federalism that underlie the Eleventh Amendment.

Pennhurst II, 465 U.S. at 106, 104 S.Ct. 900.

[6] Because Plaintiffs' suit is against State officials, rather than the State itself, a question arises as to whether the suit is actually a suit against the State of Georgia. "The Eleventh Amendment bars a suit

against state officials when 'the state is the real, substantial party in interest.' " Id. at 101, 104 S.Ct. 900 (quoting Ford Motor Co. v. Dept. of Treasury, 323 U.S. 459, 464, 65 S.Ct. 347, 89 L.Ed. 389 (1945)). A state is the real party in interest when the judgment sought would "restrain the Government from acting, or compel it to act." Id. at 101 n. 11, 104 S.Ct. 900 (quoting Dugan v. Rank, 372 U.S. 609, 620, 83 S.Ct. 999, 10 L.Ed.2d 15 (1963)) (internal quotation marks and citations omitted).

[7] The injunction Plaintiffs seek here would restrain the State from attempting to enforce the Photo ID requirement imposed by HB 244. The Court therefore finds that the State of Georgia is the real party in interest. Further, the Court finds that Plaintiffs' claim--that the Act violates two sections of the Georgia Constitution--clearly is a cause of action against a state for alleged violations of state law. The Court therefore concludes that this portion of Plaintiffs' Complaint is barred by the Eleventh Amendment. [FN3]

FN3. The Court notes that Plaintiffs' claims under the Georgia Constitution do not fall within the Ex Parte Young exception to the States' Eleventh Amendment immunity from suit. Ex Parte Young, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908). The Young doctrine, as interpreted by later Supreme Court cases, provides that a suit for prospective relief that challenges a state official's conduct as being contrary to the supreme authority of the United States is not a suit against the State and therefore is not barred by the Eleventh Amendment. Pennhurst, 465 U.S. at 102, 104 S.Ct. 900 (citing Young, 209 U.S. at 160, 28 S.Ct. 441; Edelman v. Jordan, 415 U.S. 651, 666-67, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974)). Plaintiffs' claims under the Georgia Constitution, which challenge the enforcement of a state law as being contrary to a state constitution, do not implicate the supreme authority of the United States. Therefore, the Young exception to the Eleventh Amendment's bar on suits against a State does not apply to allow the Court to consider those claims.

For the reasons discussed above, the Eleventh Amendment precludes the Court from entertaining Plaintiffs' claims asserted under the Georgia Constitution. The Court therefore concludes that Plaintiffs have failed to show a substantial likelihood

*1359 of success with respect to those claims. [FN4]

FN4. The Court will not dismiss Plaintiffs' claims arising under the Georgia Constitution in this Order because the case is not before the Court on a motion to dismiss those claims. The Court will address Secretary of State Cox's Motion to Dismiss Individual Capacity Claims in a separate Order to be issued at a later date.

2. Undue Burden on the Right to Vote

The Supreme Court has made it clear that voting is a fundamental right, Burdick v. Takushi, 504 U.S. 428, 433, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992), under the Fourteenth Amendment in the context of equal protection, Kramer v. Union Free Sch. Dist. No. 15, 395 U.S. 621, 629, 89 S.Ct. 1886, 23 L.Ed.2d 583 (1969). Indeed, in Wesberry v. Sanders, 376 U.S. 1, 84 S.Ct. 526, 11 L.Ed.2d 481 (1964), the Court observed:

No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right.

376 U.S. at 17-18, 84 S.Ct. 526. Similarly, in Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964), the Court stated:

Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.

377 U.S. at 561-62, 84 S.Ct. 1362.

[8] "[A] citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction." Dunn v. Blumstein, 405 U.S. 330, 336, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972). The equal right to vote, however, is not absolute. Id. at 336, 92 S.Ct. 995. Instead, states can impose voter qualifications and can regulate access to voting in other ways. Id. at 336, 92 S.Ct. 995. Under the United States Constitution, states may establish the time, place, and manner of holding elections for Senators and Representatives. U.S. Const. art. I, § 4, cl. 1. Those qualifications and access regulations, however, cannot unduly burden or abridge the right

to vote. Tashjian, 479 U.S. at 217, 107 S.Ct. 544 ("[T]he power to regulate the time, place, and manner of elections does not justify, without more, the abridgment of fundamental rights, such as the right to vote.") (citing Wesberry v. Sanders, 376 U.S. 1, 84 S.Ct. 526, 11 L.Ed.2d 481 (1964)); Dunn, 405 U.S. at 359-60, 92 S.Ct. 995 (striking down Tennessee's durational residency requirement for voting of one year in state and three months in county); Beare v. Briscoe, 498 F.2d 244, 247-48 (5th Cir.1974) (invalidating provisions of Texas Constitution and implementing statute requiring persons who wished to vote in any given year to register each year during registration period beginning on October 1 and ending on January 31 of following year) (per curiam). In particular, the Supreme Court has observed that the wealth or the ability to pay a fee is not a valid qualification for voting. Harper v. Va. State Bd., of Elections, 383 U.S. 663, 666-68, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966) (citations omitted; footnote omitted).

A number of Supreme Court cases have set forth standards for determining whether a state statute or regulation concerning voting violates the Equal Protection *1360 clause. In Dunn, the Supreme Court stated that a court must examine: "the character of the classification in question; the individual interests affected by the classification; and the governmental interests asserted in support of the classification." Dunn, 405 U.S. at 335, 92 S.Ct. 995. Another Supreme Court case indicates that the Court should " 'consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification.' " Kramer, 395 U.S. at 626, 89 S.Ct. 1886. Those cases apply strict scrutiny when examining state statutes or regulations that limit the right to vote. Id. at 627, 89 S.Ct. 1886 ("[I]f a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest."); see also Hill v. Stone, 421 U.S. 289, 298, 95 S.Ct. 1637, 44 L.Ed.2d 172 (1975) ("in an election of general interest, restrictions on the franchise of any character must meet a stringent test of justification").

In a more recent line of cases, the Supreme Court has not necessarily applied the strict scrutiny test automatically to regulations that relate to voting. Burdick, 504 U.S. at 433-34, 112 S.Ct. 2059; Tashjian v. Republican Party, 479 U.S. 208, 213, 107 S.Ct. 544, 93 L.Ed.2d 514 (1986) (quoting Anderson

v. Celebrezze, 460 U.S. 780, 789, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983)). Indeed, the Supreme Court observed in Burdick:

Election laws will invariably impose some burden upon individual voters. Each provision of a code, "whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects-at least to some degree-the individual's right to vote and his right to associate with others for political ends." Consequently, to subject every voting regulation to strict scrutiny and to require that the regulation be narrowly tailored to advance a compelling state interest, as petitioner suggests, would tie the hands of States seeking to assure that elections are operated equitably and efficiently.

Accordingly, the mere fact that a State's system "creates barriers ... tending to limit the field of candidates from which voters might choose ... does not of itself compel close scrutiny."

Instead, ... a more flexible standard applies. A court considering a challenge to a state election law must weigh "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights."

Under this standard, the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights. Thus, as we have recognized when those rights are subjected to "severe" restrictions, the regulation must be "narrowly drawn to advance a state interest of compelling importance." But when a state election law provision imposes only "reasonable, nondiscriminatory restrictions" upon the First and Fourteenth Amendment rights of voters, "the State's most important regulatory interests are generally sufficient to justify" the restrictions.

*1361 Burdick, 504 U.S. at 433-34, 112 S.Ct. 2059 (citations omitted).

Defendants argue that the Photo ID requirement simply regulates the manner of voting, and that requiring a Photo ID for in-person voting is a reasonable means of achieving the legitimate state interest of regulating voting and preventing in-person vote fraud. According to Defendants, the Photo ID requirement is not a severe restriction on voting because it prevents no one from voting. Defendants

argue that anyone may vote by absentee ballot under HB 244's more relaxed absentee voting requirements. Defendants state that even voters who register by mail may vote for the first time via absentee ballot without showing a Photo ID, and that such voters simply must include a utility bill, a bank statement, or other form of identification permitted by HAVA with their absentee ballots as a means of voter identification. (Oct. 12, 2005, Hr'g Tr.)

According to Defendants, at most, the Photo ID requirement prevents some individuals who wish to vote in person from doing so until they obtain proper identification. Defendants also contend that those individuals without a Photo ID may obtain one free of charge from a State DDS Office, the State's GLOW Bus, or through certain organizations serving indigent clients merely by completing an Affidavit for Identification Card for Voting Purposes ("Affidavit"). Defendants note that although the Affidavit requires the applicant "to swear [] under oath that he or she is indigent and cannot pay the fee," (State Defs.' Initial Br. Opp'n Pls.' Mot. Prelim. Inj. at 48), anyone who desires a non-driver Photo ID card for voting purposes may complete the form and receive the free Photo ID card (Watson Decl. ¶ 5).

Defendants also point out that although opportunities for voter fraud via absentee ballot may exist, the legislature may address one method of voting at a time. In this case, the legislature has chosen to address voting fraud via in-person voting first.

a. Under Strict Scrutiny

[9] There seems to be little doubt that the Photo ID requirement fails the strict scrutiny test: accepting that preventing voter fraud is a legitimate and important State concern, the statute is not narrowly drawn to prevent voter fraud. Indeed, Secretary of State Cox pointed out that, to her knowledge, the State had not experienced one complaint of in-person fraudulent voting during her tenure. In contrast, Secretary of State Cox indicated that the State Election Board had received numerous complaints of voter fraud in the area of absentee voting. Furthermore, the Secretary of State's Office removes deceased voters from the voting rolls monthly, eliminating the potential for voter fraud noted by the *Atlanta Journal-Constitution's* article alleging that more than 5,000 deceased people voted during a twenty-year period.

Further, although Defendants have presented evidence from elections officials of fraud in the area

of voting, all of that evidence addresses fraud in the area of voter registration, rather than in-person voting. The Photo ID requirement does not apply to voter registration, and any Georgia citizen of appropriate age may register to vote without showing a Photo ID. Indeed, individuals may register to vote by producing copies of bank statements or utility bills, or without even producing identification at all. The Photo ID law thus does nothing to address the voter fraud issues that conceivably exist in Georgia.

Rather than drawing the Photo ID law narrowly to attempt to prevent the most prevalent type of voter fraud, the State *1362 drafted its Photo ID requirement to apply only to absentee voters and to apply only to absentee voters who had registered to vote by mail without providing identification who were voting absentee for the first time. By doing so, the State, in theory, left the field wide open for voter fraud by absentee voting. Under those circumstances, the Photo ID requirement simply is not narrowly tailored to serve its stated purposes--preventing voter fraud. *See Dunn*, 405 U.S. at 343, 92 S.Ct. 995 ("Statutes affecting constitutional rights must be drawn with 'precision,' and must be 'tailored to serve their legitimate objectives. And if there are other, reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose 'less drastic means.' ") (citations omitted). Further, the State has a number of significantly less burdensome alternatives available to prevent in-person voting fraud, such as the voter identification requirements it previously used and numerous criminal statutes penalizing voter fraud, to discourage voters from fraudulently casting ballots or impersonating other voters.

For the reasons discussed above, the Court finds that the Photo ID requirement is not narrowly tailored to serve the State's interest in preventing voter fraud, and that a number of significantly less burdensome alternatives exist to address the State's interest. Consequently, the Court concludes that Plaintiffs have a substantial likelihood of succeeding on the merits of their Equal Protection Clause claim under a strict scrutiny analysis.

b. Under *Burdick*

Even if the Court applies the *Burdick* test, Plaintiffs still have a substantial likelihood of succeeding on the merits of their Equal Protection Clause claim. Specifically, "the character and magnitude of the asserted injury to the rights protected by the First and

Fourteenth Amendments that the plaintiff seeks to vindicate" outweighs "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights." *Burdick*, 504 U.S. at 433-34, 112 S.Ct. 2059.

i. The Asserted Injury

For the reasons discussed below, the Court concludes that the character and magnitude of the asserted injury to the right to vote is significant. Many voters who do not have driver's licenses, passports, or other forms of photographic identification have no transportation to a DDS service center, have impairments that preclude them from waiting in often-lengthy lines to obtain licenses, or cannot travel to a DDS service center during the DDS's hours of operation because the voters cannot take off time from work. It is beyond dispute that the DDS service centers, particularly those in suburban areas near Atlanta, frequently have lengthy lines, and that obtaining a driver's license or Photo ID at a DDS service center often may require several hours of one's time. Many voters who are elderly, disabled, or have certain physical or mental problems simply cannot navigate the lengthy wait successfully--even if the DDS allows those voters to sit and wait until a DDS worker calls their numbers.

Further, DDS service centers are not located in every Georgia county. Some of the service centers, particularly in south and middle Georgia, are so widely spaced that the service centers may be a lengthy drive away from many of the citizens those centers service. Most of the DDS service *1363 centers are located in largely rural areas where mass transit likely is not available, and registered voters who have no need for a driver's license but do not have another form of Photo ID simply may not be able to obtain transportation to a DDS service center.

The Court acknowledges that the DDS has a mobile licensing unit, the GLOW bus. The fact remains, however, that the DDS has only one GLOW bus and Georgia has 159 counties. It therefore is not reasonable to expect that the GLOW bus can travel to all of Georgia's counties and the communities contained within those counties to service a significant number of voters who lack Photo IDs prior to the November 8, 2005, elections. Further, unless some effort is made to notify the public that the GLOW bus will be in a particular area on a particular date, many voters simply would not know

of the GLOW bus alternative or would not be able to make arrangements for transportation to take them to the GLOW bus. As Plaintiffs' evidence indicates, even calling the DDS to request information concerning the GLOW bus's schedule of appearances may result in a voter receiving inconsistent information.

In any event, Plaintiffs have presented evidence indicating that the GLOW bus has steps for entering the bus and is not wheelchair-accessible. Many of the voters who do not possess Photo IDs are elderly or disabled and are wheelchair-bound or have difficulty walking or navigating steps. The GLOW bus simply is not a feasible alternative for those voters, as the voters cannot enter the GLOW bus and the GLOW bus's photographic and computer equipment apparently cannot be moved outside the bus to service the voters.

Still other voters do not have the \$20 or \$35 to pay for a Photo ID card, although they may not qualify as "indigent" for purposes of the fee waiver provision. Although Defendants contend that any voter who needs a Photo ID card for voting and who does not have another form of Photo ID may obtain a Photo ID card for free simply by completing an Affidavit, which the DDS does not question, the evidence fails to indicate that the State has made efforts to publicize the DDS's "no questions asked" policy to voters or that DDS employees tell DDS customers that policy. The Affidavit requires a voter to sign the following statement:

I hereby swear or affirm that I am eligible for a free identification card for voting purposes pursuant to O.C.G.A. § 40-5-103(d). I am eligible for this card because:

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

A voter who reads the Affidavit without knowing the DDS's "no questions asked" policy most likely would believe that he or she actually must be indigent and lack funds to pay for an Photo ID card before he or she could obtain a card for free. Such a voter might not even bother completing the Affidavit, for

fear that signing a statement under oath that is not true and submitting the Affidavit to a State agency would result in penalties. Thus, the availability of free Photo ID cards *1364 simply does not reduce the burden that the Photo ID requirement imposes on the right to vote. [FN5]

FN5. In any event, the Court finds it ironic that the State seeks to prevent one type of lying--fraudulent in-person voting--yet the State points to a DDS policy that apparently allows voters who want Photo ID cards to "lie" about their financial status as support for its argument that the Photo ID requirement does not unduly burden the right to vote.

The State Defendants argue that the Photo ID requirement does not deprive voters of the right to vote, as voters can vote via absentee ballot without producing any Photo ID at all in most instances. Most voters, however, likely are unaware that they can vote via absentee ballot without a Photo ID, and the State has not demonstrated that it has publicized the fact that a Photo ID is not necessary to vote via absentee ballot.

Further, HB 244 also changed the law governing absentee voting to eliminate the conditions previously required for obtaining an absentee ballot, which had been in effect for some time. Counsel for the State Defendants, in response to the Court's question concerning publication of the new absentee voting requirements, stated that the State has not publicized the new requirements for absentee voting any more or less than the State publicizes any other change in election law. Secretary of State Cox testified that the absentee voting rules in effect prior to the passage of HB 244 required voters to aver that they met one of several specified requirements to obtain an absentee ballot. Absent more information indicating that the State made an effort to inform Georgia voters concerning the new, relaxed absentee voting procedures, many Georgia voters simply may be unaware that the rules have changed. Those voters therefore still may believe that they must satisfy one of the former requirements to obtain an absentee ballot. Voters who cannot satisfy the former requirements likely will not even attempt to obtain an absentee ballot. Consequently, the Court simply cannot assume that Georgia voters who do not have a Photo ID will make the arrangements necessary to vote via the absentee voting process.

In any event, as Secretary of State Cox pointed out,

an absentee ballot is only counted if it is received by the registrar in the voter's jurisdiction by 7:00 p.m. the day of the elections. Even absentee ballots postmarked by that date but delivered after 7:00 p.m. on election day are not counted. The only method voters have of ensuring that their vote is counted is to show up at their polling precinct on election day and vote in person or to hand-deliver their absentee ballot to the registrar in their jurisdiction before 7:00 p.m. on election day. [FN6]

FN6. The second method assumes voters know that they may hand-deliver absentee ballots and that voters know where to deliver those ballots. Many voters simply may believe that they can hand-deliver their absentee ballots to a polling place, which is not a viable alternative. Furthermore, many absentee voters do not drive or otherwise lack transportation. Although many organizations provide free transportation to the polls on election day, the availability of free transportation to the registrar's office likely is limited or nonexistent.

The absentee voting process also requires that voters plan sufficiently enough ahead to request an absentee ballot, to have the ballot delivered from the registrar's office via the United States Postal Service, to complete the ballot successfully, and to mail the absentee ballot to the registrar's office sufficiently early to allow the United States Postal Service to deliver the absentee ballot to the registrar by 7:00 p.m. on election day. The majority of voters--particularly those voters who lack Photo ID--would not plan sufficiently *1365 enough ahead to vote via absentee ballot successfully. In fact, most voters likely would not be giving serious consideration to the election or to the candidates until shortly before the election itself. Under those circumstances, it simply is unrealistic to expect that most of the voters who lack Photo IDs will take advantage of the opportunity to vote an absentee ballot.

For the reasons discussed above, the Court finds that absentee voting simply is not a realistic alternative to voting in person that is reasonably available for most voters who lack Photo ID. The fact that voters, in theory, may have the alternative of voting an absentee ballot without a Photo ID thus does not relieve the burden on the right to vote caused by the Photo ID requirement. [FN7]

FN7. Defendants argue that no constitutional right to vote in person exists, citing Oregon's

policy of having elections conducted entirely by mail. Oregon's voting by mail structure differs significantly from Georgia's voting procedures. One major difference between Georgia's Photo ID requirement and Oregon's policy of conducting mail elections that is particularly noteworthy is that Oregon's policy places the same burden on every voter. Here, Georgia's Photo ID requirement places the burden of voting absentee on the very class of voters who will be least likely to navigate that method of voting successfully.

Additionally, the State argues that voters who do not have Photo ID will not be "turned away" from the polls; rather, those voters may vote a provisional ballot and return within forty-eight hours with a Photo ID. In support of this argument, the State points to the September 20, 2005, special election in Richmond County, where thirteen people without a Photo ID voted via provisional ballot and only two of those individuals returned with a Photo ID within the requisite forty-eight hour period to verify their identity and have their ballots counted. Given the difficulty of obtaining a Photo ID discussed above, it is highly unlikely that many of the voters who lack Photo ID and who would vote via provisional ballots could obtain a Photo ID card within the forty-eight hour period. Indeed, although many organizations are more than happy to transport individuals to polling places on election day, it is unlikely that those organizations or any other organization or individual would be able or willing to provide transportation to DDS service centers to allow voters of provisional ballots to obtain Photo ID cards. The ability to vote a provisional ballot thus is an illusion. Further, many voters may not even attempt to vote a provisional ballot in person because they do not have a Photo ID, and they believe that they cannot make the necessary arrangements to obtain a Photo ID within forty-eight hours after casting their votes.

The right to vote is a delicate franchise. Indeed, the Court notes that Plaintiff Watkins declined to pursue his claim when he was informed that Defendants planned to depose him. [FN8] Given the fragile nature of the right to vote, and the restrictions discussed above, the Court finds that the Photo ID requirement imposes "severe" restrictions on the right to vote. In particular, the Photo ID requirement makes the exercise of the fundamental right to vote extremely difficult for voters currently without acceptable forms of Photo ID for whom obtaining a Photo ID would be a hardship. Unfortunately, the

Photo ID requirement is most likely to prevent Georgia's elderly, poor, and African-American voters from voting. For those citizens, *1366 the character and magnitude of their injury--the loss of their right to vote--is undeniably demoralizing and extreme, as those citizens are likely to have no other realistic or effective means of protecting their rights.

FN8. Counsel for Plaintiff Watkins indicated during an October 5, 2005, telephone conference with the Court that Plaintiff Watkins likely would choose not to participate in this litigation if the Court did not grant a request for a protective order to prevent Defendants from deposing him.

ii. State Interest

The State and the State Defendants assert that the Photo ID requirement is designed to curb voting fraud. Undoubtedly, this interest is an important one. Unfortunately, the fact that the interest asserted is important and is legitimate does not end the Court's inquiry.

iii. Extent to Which the State's Interest In Preventing Voter Fraud Makes It Necessary to Burden the Right to Vote

Finally, the Court must examine the extent to which the State's interest in preventing voter fraud makes it necessary to burden the right to vote. As discussed above, the Photo ID requirement is not narrowly tailored to the State's proffered interest of preventing voter fraud, and likely is not rationally based on that interest. Secretary of State Cox testified that her office has not received even one complaint of in-person voter fraud over the past eight years and that the possibility of someone voting under the name of a deceased person has been addressed by her Office's monthly removal of recently deceased persons from the voter roles. Further, the Photo ID requirement does absolutely nothing to preclude or reduce the possibility for the particular types of voting fraud that are indicated by the evidence: voter fraud in absentee voting, and fraudulent voter registrations. The State imposes no Photo ID requirement or absolute identification requirement for registering to vote, and has removed the conditions for obtaining an absentee ballot imposed by the previous law. In short, HB 244 opened the door wide to fraudulent voting via absentee ballots. Under those circumstances, the State Defendants' proffered interest simply does not justify the severe burden that the Photo ID requirement places on the right to vote. For those

reasons, the Court concludes that the Photo ID requirement fails even the *Burdick* test.

c. Summary

For the reasons discussed above, the Court finds that under either the strict scrutiny or *Burdick* test, Plaintiffs have a substantial likelihood of succeeding on the merits of their claim that the Photo ID requirement unduly burdens the right to vote. Consequently, this factor counsels in favor of granting a preliminary injunction.

3. Poll Tax

[10] Plaintiffs next argue that the Photo ID requirement imposes a poll tax on Georgia voters. Plaintiffs point out that voters who do not have a Georgia driver's license, a passport, or another valid form of Government-issued identification must pay \$20 to obtain a five-year Photo ID card or \$35 to obtain a ten-year Photo ID card. Plaintiffs contend that even though the Photo ID requirement does not use the term "poll tax," the fee for the Photo ID card is a tax and is not a user fee. Even if the Photo ID card fee is not a tax as defined under Georgia law, Plaintiffs contend that the State cannot evade the requirements of the Fourteenth and Twenty-Fourth Amendments by labeling something as a "fee" when, in reality, it is a tax on the right to vote.

The Twenty-Fourth Amendment to the United States Constitution provides: "The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors *1367 for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax." U.S. Const. amend. XXIV. The Twenty-Fourth Amendment thus applies to elections for certain federal officials.

Plaintiffs contend that the \$20 fee for a five-year Photo ID card or the \$35 fee for a ten-year Photo ID is a poll tax because voters who do not have other acceptable forms of Photo ID must obtain the Photo ID card to cast their votes in person at the polls. Although Defendants point out that the DDS can waive the Photo ID card fee for voting under certain circumstances, Plaintiffs argue that this fee waiver provision is illusory. In any event, Plaintiffs argue that the possibility that a small number of voters can avoid paying the cost for a Photo ID card does not make the Photo ID scheme constitutionally

permissible; it still places a burden on the right to vote.

For the following reasons, the Court finds that Plaintiffs have a substantial likelihood of success on their poll tax claim. In *Harman v. Forssenius*, 380 U.S. 528, 85 S.Ct. 1177, 14 L.Ed.2d 50 (1965), the Supreme Court struck down a Virginia requirement that a federal voter either pay the customary poll taxes as required for state elections or file a certificate of residence. The Supreme Court reasoned that the requirement to file a certificate of residence imposed a material requirement solely upon those who refused to surrender their right to vote in federal elections without paying the poll tax, and, consequently, the requirement violated the Twenty-Fourth Amendment. 380 U.S. at 541-42, 85 S.Ct. 1177. The Supreme Court stated:

It has long been established that a State may not impose a penalty upon those who exercise a right guaranteed by the Constitution. "Constitutional rights would be of little value if they could be ... indirectly denied," or "manipulated out of existence." Significantly, the Twenty-fourth Amendment does not merely insure that the franchise shall not be "denied" by reason of failure to pay the poll tax; it expressly guarantees that the right to vote shall not be "denied or abridged" for that reason. Thus, like the Fifteenth Amendment, the Twenty-fourth "nullifies sophisticated as well as simple-minded modes" of impairing the right guaranteed. "It hits onerous procedural requirements which effectively handicap exercise of the franchise" by those claiming the constitutional immunity.

Thus, in order to demonstrate the invalidity of § 24-17.2 of the Virginia Code, it need only be shown that it imposes a material requirement solely upon those who refuse to surrender their constitutional right to vote in federal elections without paying a poll tax. Section 24-17.2 unquestionably erects a real obstacle to voting in federal elections for those who assert their constitutional exemption from the poll tax. As previously indicated, the requirement for those who wish to participate in federal elections without paying the poll tax is that they file in each election year, within a stated interval ending six months before the election, a notarized or witnessed certificate attesting that they have been continuous residents of the State since the date of registration (which might have been many years before under Virginia's system of permanent registration) and that they do not presently intend to leave the city or county in which they reside prior to the

forthcoming election. Unlike the poll tax bill which is sent to the voter's residence, it is not entirely clear how one obtains the *1368 necessary certificate.... This is plainly a cumbersome procedure. In effect, it amounts to annual re-registration which Virginia officials have sharply contrasted with the "simple" poll tax system. For many, it would probably seem far preferable to mail in the poll tax payment upon receipt of the bill. In addition, the certificate must be filed six months before the election, thus perpetuating one of the disenfranchising characteristics of the poll tax which the Twenty-fourth Amendment was designed to eliminate. We are thus constrained to hold that the requirement imposed upon the voter who refuses to pay the poll tax constitutes an abridgement of his right to vote by reason of failure to pay the poll tax.

The requirement imposed upon those who reject the poll tax method of qualifying would not be saved even if it could be said that it is no more onerous, or even somewhat less onerous, than the poll tax. For federal elections, the poll tax is abolished absolutely as a pre-requisite to voting, and no equivalent or milder substitute may be imposed. Any material requirement imposed upon the federal voter solely because of his refusal to waive the constitutional immunity subverts the effectiveness of the Twenty-fourth Amendment and must fall under its ban.

380 U.S. at 540-42, 85 S.Ct. 1177 (citations omitted; footnote omitted).

Similarly, in *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966), the Supreme Court struck down Virginia's poll tax requirement for state elections, finding that the poll tax violated the Equal Protection Clause. The Court stated:

We conclude that a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard. Voter qualifications have no relation to wealth nor to paying or not paying this or any other tax. Our cases demonstrate that the Equal Protection Clause of the Fourteenth Amendment restrains the States from fixing voter qualifications which invidiously discriminate. Thus without questioning the power of a State to impose reasonable residence restrictions on the availability of the ballot, we held ... that a State may not deny the opportunity to vote to a bona fide resident merely because he is a member of the armed services... Previously we had said that neither homesite nor occupation "affords a

permissible basis for distinguishing between qualified voters within the State." We think the same must be true of requirements of wealth or affluence or payment of a fee.

383 U.S. at 666-67, 86 S.Ct. 1079 (citations omitted). The Court further observed:

[W]e must remember that the interest of the State, when it comes to voting, is limited to the power to fix qualifications. Wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process. Lines drawn on the basis of wealth or property, like those of race, are traditionally disfavored. To introduce wealth or payment of a fee as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor. The degree of the discrimination is irrelevant. In this context—that is, as a condition of obtaining a ballot—the requirement of fee paying causes an "invidious" discrimination that runs afoul of the Equal Protection Clause.

Id. at 668, 86 S.Ct. 1079.

After the enactment of the Photo ID requirement, voters who do not have other acceptable forms of Photo ID must obtain Photo ID cards to be able to vote in person *1369 at the polls. Voters who choose not to obtain Photo ID cards, or who are unable to obtain Photo ID cards for one reason or another, are free to vote via absentee ballot. As discussed *supra* Part III.A.2., however, absentee voting is unavailable to many voters who do not have forms of Photo ID—either because those voters are unaware of their eligibility to vote via absentee ballot or because the voters are unable to navigate the absentee voting process successfully. As a practical matter, therefore, the majority of voters who do not have other acceptable forms of Photo ID must obtain a Photo ID card to cast their votes successfully and to ensure that their votes will be counted.

The fee for a Photo ID card is \$20 for a five-year card and \$35 for a ten-year card. Because, as a practical matter, most voters who do not possess other forms of Photo ID must obtain a Photo ID card to exercise their right to vote, even though those voters have no other need for a Photo ID card, requiring those voters to purchase a Photo ID card effectively places a cost on the right to vote. In that respect, the Photo ID requirement runs afoul of the Twenty-fourth Amendment for federal elections and violates the Equal Protection Clause for State and municipal elections. [FN9]

FN9. See John Victor Berry, *Take the Money and Run: Lame-Ducks "Quack" and*

Pass Voter Identification Provisions, 74 U. Det. Mercy L.Rev. 291, 304, 314 (1997) (noting that "[t]he Attorney General of Michigan made the observation [with respect to a Michigan voter identification law] that: 'Requiring purchased photo identification is a reprise of the notorious poll tax scheme used in the past to prevent voting;' ' and that "the ability to obtain certain types of photo identification costs money, which is unconstitutional in light of Harper, as a qualification based on affluence").

Defendants argue that the DDS service centers will waive the fee for a Photo ID card if a voter who does not have another acceptable form of Photo ID needs the Photo ID card for voting purposes and if the voter completes an Affidavit. The Affidavit requires the voter to sign the following statement:

I hereby swear or affirm that I am eligible for a free identification card for voting purposes pursuant to O.C.G.A. § 40-5-103(d). I am eligible for this card because:

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

(Watson Decl. Ex. A.) The DDS, however, instructs its employees not to investigate the truth of the representations made by voters who complete the Affidavit. Instead, DDS employees are to issue a Photo ID card to any voter who completes the Affidavit, without asking any questions. As discussed *supra* Part III.A.2., however, many voters may not be aware of that policy, and understandably may be reluctant to sign an Affidavit that requires them to state that they are "indigent and cannot pay the fee for an identification card" when such a statement is not true. Additionally, many voters simply may be too embarrassed over their inability to afford a Photo ID card to request and complete an Affidavit for a free card. Berry, *supra* note 9, at 307. Consequently, very *1370 few voters likely will take advantage of the fee waiver affidavit option. In any event, as Plaintiffs' counsel correctly observes, the fact that some individuals avoid paying the cost for

the Photo ID card does not mean that the Photo ID card is not a poll tax.

Moreover, even if the Court accepts as true Defendants' argument that the fee waiver affidavit option is realistically available for any voter who wishes to use that option, the fee waiver affidavit still runs afoul of the Twenty-fourth Amendment. As the Supreme Court noted in Harman, any material requirement imposed upon a voter solely because of the voter's refusal to pay a poll tax violates the Twenty-fourth Amendment. Harman, 380 U.S. at 542, 85 S.Ct. 1177. A voter who does not have another acceptable form of Photo ID and who wishes to vote must, as a practical matter, obtain a Photo ID card. To obtain a Photo ID card, the voter must arrange for transportation to a DDS service center or the GLOW bus, if that option is available, and must navigate the lengthy waiting process successfully. The voter then must pay the \$20 fee or sign the fee waiver affidavit, which may require the voter to swear or affirm to facts that simply are not true in order to avoid paying the \$20 fee. Under those circumstances, the Court cannot determine that the fee waiver affidavit is not a material requirement, as discussed in Harman. Consequently, the Court finds that the Photo ID requirement imposes a poll tax.

For the reasons discussed above, the Court concludes that the Photo ID requirement constitutes a poll tax. The Photo ID requirement thus violates the Twenty-fourth Amendment with respect to federal elections and violates the Equal Protection Clause with respect to State and municipal elections. Under those circumstances, the Court concludes that Plaintiffs have a substantial likelihood of succeeding on the merits with respect to their poll tax claim.

4. Civil Rights Act of 1964

Alternatively, Plaintiffs contend that Georgia's Photo ID requirement violates the Civil Rights Act of 1964, 42 U.S.C.A. § 1971 by applying different standards to absentee and in-person voters within the same county and by precluding voting due to an omission that is not material to the right to vote under Georgia law. Defendants argue that both of Plaintiffs' claims under § 1971 fail as a matter of law because § 1971 does not furnish a private right of action. Because that argument may dispose of Plaintiffs' § 1971 claims, the Court addresses that argument before turning to the particulars of Plaintiffs' claims.

Defendants rely on language in § 1971(c) stating that "the Attorney General may institute for the

United States, or in the name of the United States, a civil action or other proper proceeding for preventative relief, including an application for a permanent or temporary injunction, restraining order, or other order." (State Defs.' Br. Opp'n Pls. Mot. Prelim. Inj. at 49 (citation omitted).) Defendants rely wholly on the quoted statutory language and cite two cases as additional support for their argument: *Willing v. Lake Orion Community Schools Board of Trustees*, 924 F.Supp. 815, 820 (E.D.Mich.1996), and *Good v. Rov*, 459 F.Supp. 403, 405 (D.Kan.1978). Defendants further contend that even if § 1971 affords Plaintiffs a private right of action, Plaintiffs' claims still fail because the Photo ID requirement does not discriminate on the basis of race, color, or previous condition.

The Eleventh Circuit directly addressed the issue of whether § 1971 could be enforced by a private right of action in *1371 *Schwier v. Cox*, 340 F.3d 1284 (11th Cir.2003). In *Schwier*, the Eleventh Circuit reversed a district court ruling which relied on *McKay v. Thompson*, 226 F.3d 752 (6th Cir.2000), which in turn relied entirely on *Willing*, which in turn relied entirely on *Good*--the two cases cited by Defendants. The Eleventh Circuit held that "the provisions of section 1971 of the Voting Rights Act may be enforced by a private right of action under § 1983." *Schwier*, 340 F.3d at 1297. The Eleventh Circuit's holding is not limited to the fact pattern at issue in *Schwier*, regarding an individual's refusal to disclose his social security account number, and Judges Dubina, Black, and Ryskamp conducted a thorough analysis of the legislative history behind § 1971(c) and the Supreme Court's rationale behind holdings permitting private rights of action to enforce other sections of the Voting Rights Act. *Id.* at 1294-95. The Court is bound to apply *Schwier*, and the Court consequently finds as a matter of law that Plaintiffs may assert a private right of action under § 1971 for the alleged voting rights violations at issue.

a. 42 U.S.C.A. § 1971(a)(2)(A)

First, Plaintiffs argue that Georgia's Photo ID requirement violates 42 U.S.C.A. § 1971(a)(2)(A) by applying different standards in determining whether individuals within the same county or other political subdivision are qualified to vote. 42 U.S.C.A. § 1971(a)(2)(A) provides that "[n]o person acting under color of state law shall," when "determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other

individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote." 42 U.S.C.A. § 1971(a)(2)(A).

Plaintiffs argue that the Photo ID requirement runs afoul of this subsection because the Photo ID requirement applies different standards to voters who reside in the same city or county who vote absentee than it applies to people who vote in person. Plaintiffs note that the Photo ID requirement applies only to voters who vote in person at the polls, while voters who vote absentee by mail do not have to comply with the Photo ID requirement unless they are registering to vote absentee, or are voting absentee for the first time. Additionally, voters who registered by mail and are voting by absentee ballot for the first time may include a utility bill or bank statement with their absentee ballot as a means of voter identification. (Oct. 12, 2005, Hr'g Tr.)

Plaintiffs point out that although the stated purpose of the Photo ID requirement is to prevent voter fraud, the Photo ID requirement does nothing to address the largest sources of potential voter fraud--absentee voting and fraudulent voter registrations. In support of this argument, Plaintiffs cite to correspondence from Secretary of State Cox to Governor Perdue and the Georgia State Senate with respect to HB 244 indicating that over her tenure, she and her staff could not recall a single case or complaint of voter impersonation at the polls. In contrast, her office received numerous complaints of fraudulent absentee voting during the same time period. HB 244, in Secretary of State Cox's opinion, expanded opportunities for absentee voting by mail by eliminating the previous restrictions on obtaining an absentee ballot. Consequently, Plaintiffs contend that the Photo ID requirement, by its plain language, clearly violates 42 U.S.C.A. § 1971(a)(2)(A) because it imposes standards on voters in the same county *1372 or city that differ for absentee voters versus in-person voters.

Defendants contend that HB 244 does not apply different standards in determining whether any individual is qualified under State law to vote in person in any election. Defendants argue that individuals who choose to vote in person are all held to the same standard regardless of their race or color, and that individuals who choose to vote by absentee ballot are all held to the same standard regardless of their race or color.

Plaintiffs cited no case law and provided limited

information in support of this claim at the preliminary injunction hearing. The Court therefore cannot determine at this point that Plaintiffs have a substantial likelihood of succeeding on the merits of this claim. Because Plaintiffs may be able to produce evidence and authority at a later stage of the proceedings that support this claim, the Court reserves a ruling on the merits of a claim for a later date.

b. 42 U.S.C.A. § 1971(a)(2)(B)

Second, Plaintiffs contend that Georgia's Photo ID requirement violates 42 U.S.C.A. § 1971(a)(2)(B), which prohibits a person acting under color of law from "deny[ing] the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election." 42 U.S.C.A. § 1971(a)(2)(B).

Plaintiffs contend that to be qualified to vote in Georgia, a voter need only: (1) be a United States citizen; (2) be a legal resident of the county where he or she seeks to register; (3) be at least 18 years old; and (4) not be serving a sentence for a felony conviction involving moral turpitude or have been found mentally incompetent by a judge. Ga. Const. art. II, § 1. Plaintiffs observe that none of those requirements include presenting a Photo ID, and that a Photo ID therefore cannot be material to determining whether an individual is qualified under State law to vote. In any event, Plaintiffs argue that because the Photo ID requirement does not apply to most absentee voters, the Photo ID requirement cannot be said to be "material" for purposes of 42 U.S.C.A. § 1971(a)(2)(B).

Defendants contest these assertions and argue that Plaintiffs' claim must fail because the Photo ID requirement does not add any condition on voter qualifications and that there is no error or omission on any record that is being used to disqualify any potential voter. Further, Defendants point out that a legislature traditionally has been allowed to reform state law one step at a time and therefore, the General Assembly may address one potential avenue for voter fraud at a time.

Plaintiffs cited no case law and provided limited information in support of this claim at the preliminary injunction hearing. At this point, the

Court simply cannot determine whether Plaintiffs have a substantial likelihood of succeeding on the merits of this claim. Because Plaintiffs may be able to present sufficient evidence and authority to succeed on this claim at a later stage of the proceedings, the Court will not rule on the merits of the claim at this time.

5. Voting Rights Act of 1965

Finally, Plaintiffs argue that the Photo ID requirement violates Section 2 of the Voting Rights Act, 42 U.S.C.A. § 1973(a). That statute provides, in relevant part: "No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State *1373 or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section." 42 U.S.C.A. § 1973(a). 42 U.S.C.A. § 1973(b) sets forth the requirements for establishing a violation of § 1973(a), and states:

A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

42 U.S.C.A. § 1973(b).

Plaintiffs assert a claim of vote denial under § 1973(a), rather than a claim of vote dilution. The Supreme Court, however, has observed that Section 2 of the Voting Rights Act prohibits all forms of voting discrimination, not simply vote dilution. *Thornburg v. Gingles*, 478 U.S. 30, 45 n. 10, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986). After the 1982 amendments to the Voting Rights Act, a plaintiff asserting a violation of Section 2 need not present "proof that the contested electoral practice or mechanism was adopted or maintained with the intent to discriminate

against minority voters." *Id.* at 44, 106 S.Ct. 2752. Instead, the plaintiff must show that "as a result of the challenged practice or structure plaintiffs do not have an equal opportunity to participate in the political processes and to elect candidates of their choice." *Id.* The Supreme Court has observed:

In order to answer this question, a court must assess the impact of the contested structure or practice on minority electoral opportunities "on the basis of objective factors." The Senate Report specifies factors which typically may be relevant to a § 2 claim: the history of voting-related discrimination in the State or political subdivision; the extent to which voting in the elections of the State or political subdivision is racially polarized; the extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting; the exclusion of members of the minority group from candidate slating processes; the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; the use of overt or subtle racial appeals in political campaigns; and the extent to which members of the minority group have been elected to public office in the jurisdiction. The Report notes also that evidence demonstrating that elected officials are unresponsive to the particularized needs of the members of the minority group and that the policy underlying the State's or the political subdivision's use of the contested practice or structure is tenuous may have probative value. The Report stresses, *1374 however, that this list of typical factors is neither comprehensive nor exclusive. While the enumerated factors will often be pertinent to certain types of § 2 violations, particularly vote dilution claims, other factors may also be relevant and may be considered. Furthermore, the Senate Committee observed that "there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other." Rather, the Committee determined that "the question whether the political processes are 'equally open' depends upon a searching practical evaluation of the 'past and present reality,'" and on a "functional" view of the political process.

Id. at 44-45, 106 S.Ct. 2752 (citations omitted; footnote omitted). "The essence of a § 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause

an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives." *Id.* at 47, 106 S.Ct. 2752.

Similarly, in *Johnson v. Governor of the State of Florida*, 405 F.3d 1214 (11th Cir.2005), the United States Court of Appeals for the Eleventh Circuit observed:

Vote denial occurs when a state employs a "standard, practice, or procedure" that results in the denial of the right to vote on account of race. To prevail, a plaintiff must prove that "under the totality of the circumstances, ... the political processes ... are not equally open to participation by [members of a protected class] ... in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." In making this inquiry, courts consider a non-exclusive list of objective factors (the "Senate factors") detailed in a Senate Report accompanying the 1982 amendments.

405 F.3d at 1228 n. 26 (citations omitted) (alterations and omissions in original).

Plaintiffs have presented declarations and Census data in support of their § 2 vote denial claim. Specifically, Plaintiffs point to socio-economic data from the 2000 Census indicating that in Georgia: (1) 17.3 percent of African-American households have an income of less than \$10,000, compared to 7.4 percent of Caucasian, non-Hispanic households; (2) an additional 16.0 percent of African-American households have incomes between \$10,000 and \$19,999, compared to 10.1 percent of Caucasian, non-Hispanic households; (3) 27.5 percent of African-Americans ages twenty-five or older have less than a high school education, including general equivalency degrees, as compared with 17.3 percent of Caucasian, non-Hispanics ages twenty-five or older; (4) 23.1 percent of African-Americans of all ages live below the poverty line, compared to 7.8 percent of Caucasian, non-Hispanic individuals; (5) 24.7 percent of African-Americans ages sixty-five through seventy-four live below the poverty line, as compared to 7.8 percent of Caucasian, non-Hispanic individuals in the same age group; (6) 32.1 percent of African-Americans aged seventy-five and over live below the poverty line, as compared to 12.9 percent of Caucasian, non-Hispanic individuals aged seventy-five or over; (7) 17.7 percent of African-American households have no vehicle available, as compared to 4.4 percent of Caucasian, non-Hispanic households; and (8) only one of the eight Georgia counties with the highest percentage of African-

American residents-- sixty percent or higher--has a DDS service center. Plaintiffs also plan to present data indicating that in Georgia, 11.0 percent of Caucasians, 26.0 percent of African-Americans, and 30.0 percent of *1375 Latinos live below the poverty line. Plaintiffs argue that this evidence is sufficient to show depressed political participation by minorities and to demonstrate that the Photo ID requirement will discourage voting by minority voters.

At this point, however, the Court simply cannot agree with Plaintiffs that the evidence is sufficient to demonstrate that Plaintiffs have a substantial likelihood of succeeding on the merits with respect to their § 2 vote denial claim. The Court therefore is reluctant to grant preliminary injunctive relief to Plaintiffs based on their § 2 vote denial claim. Recognizing that Plaintiffs may be able to produce sufficient evidence at a later stage of the proceedings to support their § 2 vote denial claim, the Court reserves a final ruling on the merits of that claim for a later date.

B. Irreparable Harm

[11] The Court next addresses the second factor for obtaining a preliminary injunction--whether Plaintiffs will suffer irreparable harm if the Court does not enter a preliminary injunction. For the reasons discussed *supra* Part III.A., the Court concludes that the Photo ID requirement unduly burdens the fundamental right to vote, and likely will cause a number of Georgia voters to be unable to cast a vote and to have their votes counted. The Court also concludes that the Photo ID requirement constitutes a poll tax.

Although Defendants argue that the Photo ID requirement will not deprive a single Georgia voter of the right to vote, because voters without Photo IDs can vote absentee ballots, as a practical matter, a significant number of the registered Georgia voters who lack Photo IDs likely are unaware of that alternative or would not be able to navigate the absentee ballot voting process successfully. Voters who lack Photo IDs and are unaware of the absentee voting alternative, yet still desire to vote, must undertake the often difficult and burdensome process of obtaining a Photo ID card. Still others who can navigate this process successfully either must pay a fee for a Photo ID card or sign an Affidavit swearing that they are indigent and do not have the funds to pay for the card--whether or not that statement is true--to obtain a free Photo ID card. The Photo ID

requirement thus has the likely effect of causing a significant number of Georgia voters to forego going to the polls or to forego obtaining and voting an absentee ballot. For the reasons discussed above, the Court finds that Plaintiffs have demonstrated that they or their constituents will suffer irreparable harm if the Court declines to enter a preliminary injunction. This factor therefore weighs in favor of granting Plaintiffs' Motion for Preliminary Injunction.

C. Threatened Injury to Plaintiffs Weighed Against the Damage to the State Caused by a Preliminary Injunction

Next, the Court must weigh the threatened injury to Plaintiffs against the damage to the State caused by a preliminary injunction. Defendants presented evidence that the entry of a preliminary injunction likely will result in confusion for voters, poll workers, and elections officials, and may result in an inconsistent application of the identification requirements. Defendants have pointed out that it will be extremely difficult for the Elections Division to produce new voter certificates and posters and for all local elections officials to receive sufficient numbers of voter certificates and posters for polling locations. Further, Defendants' evidence indicates that local elections officials lack sufficient time to conduct training for poll workers and to educate the public.

*1376 The Court certainly appreciates and understands the inconvenience and expense that entering a preliminary injunction may work upon the State and Defendants. The Court, however, is mindful that the right to vote is a fundamental right and is preservative of all other rights. Denying an individual the right to vote works a serious, irreparable injury upon that individual. Given the right at issue and the likely injury caused by not entering a preliminary injunction, the Court finds that the potential injury to Plaintiffs outweighs the harm to the State and Defendants caused by entering a preliminary injunction. This factor therefore counsels in favor of entering a preliminary injunction.

D. Public Interest

Finally, the Court must determine whether issuing a preliminary injunction will serve the public interest. At the outset, the Court acknowledges that preventing voter fraud serves the public interest by ensuring that those individuals who have registered properly to vote are allowed to vote and to have their votes

counted in any given election. As discussed *supra* Part III.A., however, the current Photo ID requirement simply is not targeted toward eliminating or preventing the only types of voter fraud that are supported by the evidence presented thus far: fraudulent voter registrations and fraudulent absentee voting. Rather, HB 244 opens the door wide for fraudulent absentee voting by removing the conditions for obtaining an absentee ballot. As discussed *supra* Parts III.A.2. and A.3., the Photo ID requirement unduly burdens the right of many properly registered Georgia voters to vote, is a poll tax, and has the likely effect of causing many of those voters to forego voting or of precluding those voters from voting at the polls. Because the right to vote is a fundamental right, removing the undue burdens on that right imposed by the Photo ID requirement serves the public interest. This factor therefore counsels in favor of granting Plaintiffs' Motion for Preliminary Injunction.

E. Summary

In sum, the Court finds that the four factors for granting a preliminary injunction weigh in favor of Plaintiffs. In particular, the Court concludes that Plaintiffs have a substantial likelihood of success on the merits of their claim that the Photo ID requirement unduly burdens the right to vote and a substantial likelihood of success on the merits of their claim that the Photo ID requirement constitutes a poll tax. The Court also finds that Plaintiffs and their constituents will suffer irreparable harm if the Court does not grant a preliminary injunction, and that the threatened harm to Plaintiffs outweighs the injury to Defendants and the State that will result from issuing a preliminary injunction. Finally, the Court finds that entering a preliminary injunction will serve the public interest. Consequently, the Court grants Plaintiffs' Motion for Preliminary Injunction.

In reaching this conclusion, the Court observes that it has great respect for the Georgia legislature. The Court, however, simply has more respect for the Constitution. Because the Court finds that Plaintiffs have a substantial likelihood of succeeding on their claims that the Photo ID requirement unduly burdens the right to vote and constitutes a poll tax, the Court must enter a preliminary injunction against the Photo ID requirement. [FN10]

FN10. The Court acknowledges that its conclusion differs from the decisions reached in *League of Women Voters v. Blackwell*, 340 F.Supp.2d 823 (N.D. Ohio

2004), *Bay County Democratic Party v. Land*, 347 F.Supp.2d 404 (E.D.Mich.2004), and *Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485 (D.Colo. Oct. 18, 2004). All of those cases, however, involved identification requirements that allowed voters to show means of identification other than Photo IDs. Georgia's Photo ID requirement, however, applies to in-person voting and goes one step further than the laws challenged in *Blackwell*, *Bay County Democratic Party*, and *Colorado Common Cause*.

For instance, *Blackwell* involved a challenge to an Ohio law implementing HAVA that required individuals who registered to vote by mail and who did not submit acceptable documentary proof of identity with their voter applications to provide "acceptable documentary proof" of their identities prior to voting. 340 F.Supp.2d at 826. Such proof could include "a current and valid photo identification," or "[a] copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows [the voter's] name and address." *Id.* *Bay County Democratic Party*, in turn, involved a challenge to directives issued to Michigan local elections officials concerning casting and tabulating provisional ballots, as well as a directive pertaining to proof of identity for first-time voters who registered by mail. 347 F.Supp.2d at 410-11. The directive concerning proof of identity for first-time in-person voters who registered by mail was revised to allow those voters to furnish the identification required by HAVA either at the polls or during a six-day period after election day. *Id.* at 434. The HAVA requirements, however, allowed individuals who registered by mail to present a current, valid Photo ID or "a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter." 42 U.S.C.A. § 15483.

Finally, *Colorado Common Cause* also involved identification requirements that permitted voters to show several forms of identification, including: (1) a valid Colorado driver's license; (2) a valid ID card from the Colorado Department of Revenue; (3) a valid United States passport;

(4) a valid government employee Photo ID; (5) a valid pilot's license; (6) a valid United States military Photo ID; (7) a copy of a current utility bill, a bank statement, government check, paycheck, or other government document showing the voter's name and address; (8) a valid Medicaid or Medicare card; (9) a certified copy of a birth certificate; or (10) certified documentation of naturalization. 2004 WL 2360485, at *6. The *Colorado Common Cause* court observed that the identification requirement was intended to reduce voter fraud, and concluded that the identification requirement was reasonably related to the interest proffered by the state and was not unduly burdensome. *Id.* at *10.

The identification requirements used by Ohio, Michigan, and Colorado, however, are of little relevance to the case now before the Court because those requirements are much less stringent than Georgia's Photo ID-only requirement. Each of the requirements challenged in *Blackwell*, *Bay County Democratic Party*, and *Colorado Common Cause* allowed voters to produce alternative forms of identification as well as Photo IDs. If Georgia's voter identification law permitted use of such alternative means of identification for purposes of in-person voting, Plaintiffs likely would not have filed this case. In sum, given the unique nature of Georgia's Photo ID requirement, the Court finds *Blackwell*, *Bay County Democratic Party*, and *Colorado Common Cause* cases unpersuasive. The Court therefore declines to follow those cases.

*1377 IV. Conclusion

ACCORDINGLY, the Court **GRANTS** Plaintiffs' Motion for Preliminary Injunction [2][23], and **ENJOINS** and restricts Defendants individually and in their official capacities from enforcing or applying the 2005 amendment to O.C.G.A. § 21-2-417 (Act No. 53, Section 59), which requires voters to present a Photo ID as a pre-condition to in-person voting in Georgia, to deny Plaintiffs or any other registered voter in Georgia admission to the polls, a ballot, or the right to cast their ballots and to have their ballots counted in any special, general, run off, or referenda election in *1378 the State of Georgia because of their failure or refusal to present a Photo ID.

Motions, Pleadings and Filings (Back to top)

- 4:05cv00201 (Docket) (Sep. 19, 2005)

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EXHIBIT B

July 7, 2005

Mr. John Tanner
Chief, Voting Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Re: Comments to Georgia Submission under Section 5 (#2005-2029)

Dear Mr. Tanner:

We are writing on behalf of individuals and organizations who are advocates for voting rights. They are identified at the end of this letter and on Schedule I attached hereto.

The purpose of this letter is to make known our collective opposition to pre-clearance approval of Georgia House Bill 244,¹ a recently enacted measure, passed by the Georgia Assembly on March 31, 2005 and signed by Governor Perdue on April 22, 2005, amending certain provisions of the Georgia code to require government issued photo identification as a prerequisite for voting in Georgia. It is our understanding that this matter has been submitted to you by the State of Georgia as submission 2005-2029. This letter refers to that submission and the materials provided therewith.

The photo identification requirements found in §§ 24, 25, and 59 of H.B. 244 should fail pre-clearance approval as required by Section 5 of the Voting Rights Act (42 U.S.C. 1973(c)) (the “Act”) because: (1) they carry a retrogressive racial impact that disfranchises minority voters in Georgia; (2) they are unnecessary and their stated purposes are pretextual (3) the circumstances surrounding their enactment suggest that they were enacted with a retrogressive purpose; and (4) the Georgia General Assembly failed to provide measures, such as increasing access to Department of Motor Vehicle Services (“DMVS”) offices, educating the public about the new requirements, or mitigating of the cost and burdens, to ameliorate the racial impact of these provisions.

As you are well aware, Section 5 of the Voting Rights Act requires the Department of Justice to refuse clearance to state legislation affecting voting procedures that either has a discriminatory purpose or would “have the effect of denying or abridging the right to vote on account of race or color.” 42 U.S.C. 1973(c). Georgia bears the burden of

¹ This provision may also be referenced as Georgia Legislative Act 53 (2005). Throughout this letter we will refer to it as “H.B. 244.”

proving that its proposed changes do not violate either prong of Section 5. *Brooks v. State Bd. of Elections*, 775 F. Supp. 1470 (S.D. Ga. 1989), *aff'd* 498 U.S. 916 (1990). Our review of Georgia's submission to the Department leads us to conclude that Georgia has not carried its burden to show that H.B. 244 does not have a racially discriminatory purpose or impact.

Our conclusion that Georgia has failed to carry its Section 5 burden is not without thorough consideration and is difficult to overstate. We draw your attention to the following precedent:

- In 1994 and 1995, the Department of Justice interposed objections to a Louisiana voter identification statute that sought to require first time voters who registered by mail to present photo identification at the poll.
- In 1997, the Attorney General of Michigan issued an official opinion declaring unconstitutional a voter identification statute adopted by the Michigan legislature that was less restrictive than the provisions in H.B. 244.
- Also in 1997, the Federal Election Commission report noted that photo identification entails major expenses and presents an undue and potentially discriminatory burden on citizens exercising their fundamental right to vote.

Currently, Georgia law allows voters to gain entry to polls using non-photo identification, including a valid birth certificate, a valid social security card, certified naturalization documentation, a current utility bill, bank statement, government check, or any government document bearing the name and address of the voter.² Voters who do not have on their person any of these forms of identification may, under current Georgia law, execute a sworn statement that they are qualified to vote.³ If H.B. 244 is cleared by the Department and implemented in Georgia, the permissible forms of identification enabling a person to vote will be reduced from seventeen to six and the possession of an acceptable form of identity card will become an absolute prerequisite to voting, thereby creating a substantial racial impact that disfranchises thousands of Georgia voters.

In order to more clearly state our concerns and our reasons for believing that the relevant provisions of H.B. 244 should not be cleared by the Department of Justice, we submit to you the following:

1. The photo identification requirements carry a retrogressive racial impact that disproportionately disfranchises minority voters in Georgia.

Georgia has not proposed any evidence that H.B. 244 does not inflict a retrogressively racial impact on Georgia's minority electorate. Yet in the face of this silence, there is overwhelming evidence demonstrating retrogressive effects. H.B. 244

² GA. CODE ANN. § 21-2-417.

³ *Id.* at § 21-2-417(b).

retrogressively creates significant new obstacles to voting for tens of thousands of minority Georgia citizens who are either (i) less likely to own a vehicle, thus obviating a primary motivation for obtaining government issued-photo identification, (ii) are unable to travel to a DMVS office in order to obtain identification due to geographic and economic limitations, or (iii) have limited ability or need to obtain a drivers license or photo identification as a result of other economic factors that have disproportional impact on minorities. In particular, we note the following:

- Recent census data shows that African Americans in Georgia are nearly five times less likely than whites to have access to a motor vehicle. *Census Summary File 3 (SF3)*.
- Community services data corroborates this statistic. For instance, the Central Presbyterian Church Outreach and Advocacy Center in downtown Atlanta estimates that over 94% of its clients seeking assistance to obtain photo identification are non-white.⁴
- DMVS locations are the only locations in Georgia in which drivers licenses and photo identifications are generally available to non-military and non-government employee citizens. Georgia has only 56 DMVS offices statewide as compared to 159 counties. As a result, and as the attached map indicates, many of Georgia's citizens in rural areas who do not have accessible transportation may need to travel through two counties to reach a DMVS. Given the statistics relating to access to an automobile by African Americans coupled with the scarcity of DMVS offices in Georgia, African Americans have disparately less access than whites to DMVS locations.
- Georgia recently eliminated the only two DMVS location inside the City of Atlanta, the state's most densely populated urban area, and one which is populated by a substantial number of African American residents. A person living in the downtown, southeast, and southwest portions of Atlanta (which have a substantially high minority population) must now travel 10-15 miles to access a DMVS.
- There are limited transportation alternatives available to individuals who do not have access to motor vehicles. In rural Georgia, where there is no MARTA service and limited bus service, poverty-level residents (a substantial number of whom are minorities) as well as persons with mobility impairments or other disabilities (a significant share of whom are minorities) face even more cumbersome geographic impediments. For instance, a person living in Greene county would have to travel 35 miles to reach a DMVS station. Again, given that African American residents are nearly five times less likely than whites to have access to a car, this distance makes obtaining photo identification a virtually insurmountable barrier to voting.
- Additionally, Georgia's history suggests there are numerous people, born as late as the mid-1950s, who were not issued birth certificates, making it far more difficult for them to get any state license or identification. Though midwifery was

⁴ 2004 Outcome Spreadsheet for the Central Presbyterian Church Outreach and Advocacy Center.

widespread, Georgia did not license midwifery until 1956.⁵ We have been informed of people who were delivered by midwives and who did not have a birth certificate issued. It is certainly a safe assumption that persons born without the attendance of any licensed health care professional were far less likely to get a birth certificate. This is a problem not merely for people born in the early 20th century whose numbers may be dwindling, but also for people as young as age 50.

In addition to posing racially disparate geographic and transportation obstacles to obtaining a photo ID, and thus to voting, H.B. 244 also imposes racially disparate economic barriers to voting. A report by the Kaiser Family Foundation demonstrates that non-whites in Georgia are nearly six times more likely than whites to subsist below the poverty line.⁶ Accordingly, numerous factors relating to economic welfare of minority voters exacerbate the racial impact of H.B. 244.

- Affordable transportation for minority voters is scarce. While MARTA transportation is available in the Atlanta metro area, it costs \$3.50 for a roundtrip ticket; a single mother traveling with two children would pay \$10.50 simply to reach a DMVS from downtown Atlanta.⁷ In many cases, MARTA does not have a station with proximate location to a DMVS station, and thus additional transportation costs may be incurred.
- Aside from transportation, obtaining government issued photo identification poses significant costs. Disregarding the proposed reduced cost of photo identifications for individuals who sign a sworn affidavit that they are indigent (which in its own respect bears a cost of personal pride and self worth) and the aforementioned transportation costs, there are other economic burdens related to obtaining an identification card. In order to obtain a photo identification card, an individual must present verification of his or her full name and date of birth in the form of a certified copy of his or her birth certificate, which varies from \$10.00 to \$45.00, depending on his or her state of birth; a valid passport, which costs \$85.00; certified naturalization records, which cost \$19.95; or a certified copy of court records of adoption or name change, which costs \$1.00 to \$2.00.
- In addition to birth and citizenship data, persons seeking photo identification must also furnish proof of Georgia residence in the form of a utility bill, bank statement, current valid rental contract, or employer verification—all of which presume a minimal level of economic resources. In reality, not all Georgians eligible to vote possess this level of economic sufficiency; and, as the Kaiser Foundation data demonstrates, non-white minorities in Georgia are disparately more likely to fall below the poverty line than whites.

⁵ See Act No. 119, Ga. Laws 1955, p. 252.

⁶ "Georgia Poverty Rate by Race/Ethnicity", available at <http://www.statehealthfacts.kff.org/cgi-bin/healthfacts.cgi?action=profile&area=Georgia&category=Demographics+and+the+Economy&subcategory=People+in+Poverty&topic=Poverty+Rate+by+Race%2FEthnicity>.

⁷ One Atlanta outreach organization, the Central Outreach and Advocacy Center, estimates that it spent over \$4,158 in a seven month period providing MARTA tokens to poor persons seeking photo identification.

- There is also the economic burden of taking time off from employment to obtain a photo identification card. Although Georgia does provide that voters have 2 hours of time pursuant to which an employer must allow an employee to vote, there is no similar requirement with respect to obtaining photo identification. Additionally, the time taken off to obtain a photo identification may be quite lengthy; given the geographic location and the waiting times at DMVS locations this could result in a half or full day of missed work. The photo identification requirement therefore places a further undue economic burden on hourly wage-earners, a disproportionate number of whom are minority voters.

In summary, we believe there are several factors that demonstrate Georgia's photo identification requirements will have a retrogressively disproportionate racial impact. Although we have identified several of these factors, we urge the Department to investigate these and other data supporting the above assertions. In particular, we recommend the Department investigate:

- the racial breakdown of counties with DMVS locations and those without such locations;
- calculations of distance and travel time to DMVS locations from areas with high concentrations of minority voters;
- data regarding use of automobiles and mass transit by racial minorities, their costs and accessibility;
- data regarding costs of information necessary to obtain photo identification;
- statistical information relating to the performance and waiting times for existing DMVS locations;
- data regarding employment statistics relating to hourly wage-earners by racial segment; and
- racial segmentation of persons by socio-economic class, above and below the poverty line, and by classification as indigent.

2. **The photo identification requirements are unnecessary and their stated purposes are pretextual.**

The primary justification for Georgia's photo identification provisions is the elimination of voter ID fraud. This is an unfounded justification. There is no need for the photo identification requirements. Given the racial impact, even if there were a compelling need, the retrogressive impact on minority voters would outweigh any stated benefits. We have identified several justifications for this assessment, including the following:

- The Georgia Secretary of State has asserted that not a single documented case of voter fraud involving impersonation has occurred during her tenure. For your convenience, we have attached a publicly available letter from the Secretary to the

Governor that addresses her concerns on this point as Georgia's chief election officer.

- Georgia already maintains several practices and procedures to ensure that cases of voter fraud would have been detected if they had in fact occurred. At the very least, Georgia would have received complaints from voters who have been denied the opportunity to vote (or were required to complete a provisional ballot) if an imposter had preceded them at the polls.
- The Legislature's purported justification of fraud prevention is undermined by the existence of severe criminal sanctions in Georgia for voter impersonation that have proven to be an effective deterrent.
- The Legislature's asserted justification is further drawn into question by the failure of the Legislature to consider alternative solutions besides the photo identification requirements.
- The failure of the legislature to investigate the existence of fraud by impersonation or to gather data on any racial disparity among those who currently possess a government issued photo identity card.

In essence, there is no voter fraud problem currently in existence in Georgia that H.B. 244 addresses. In contrast to the absence of evidence suggesting a voter impersonation problem, substantial evidence points to problems of fraud in absentee ballots—the one form of voting H.B. 244 exempts from the photo identification requirement and the one form more likely to be used by white than non-white voters. The Georgia Election Board has reviewed numerous cases of voter fraud relating to the use of absentee ballots. In fact, cases related to absentee ballots constitute the largest number of verifiable cases of fraud in Georgia. *See, e.g., U.S. v. McCranie*, 169 F.3d 723 (11th Cir. 1999). However, H.B. 244 grossly expands the opportunities for absentee voting by mail without any photo identification requirement whatsoever. As a result, the type of voter fraud that *has* frequently occurred in Georgia is not addressed in H.B. 244 and, in fact, is enhanced by the expansion of vote-by-mail opportunities promulgated by the statute.

Incredibly, Georgia references *McCranie* as the primary basis of support for the necessity of legislation to prevent voter fraud. But closer scrutiny reveals that *McCranie* does not justify the photo ID requirements because H.B. 244 would not affect the kind of fraud perpetrated in *McCranie*. In *McCranie*, candidates paid voters to vote for them using absentee ballots. H.B. 244 does not require photo identification for absentee voting and thus would do nothing to abate the kind of fraud carried out in *McCranie*. To the extent that Georgia relies on *McCranie* to justify the purpose of H.B. 244, it has failed to meet its § 5 burden.

We believe (i) a critical assessment of the lack of photo identification requirements with respect to absentee ballots coupled with (ii) a review of the racial and economic demographics related to the use of absentee-ballots will be an important and revealing analysis for the Department to undertake. We believe that the Department will conclude, as we have, that Georgia's purported justification for H.B. 244 appears in actuality not to

be oriented to eliminate the problem of voting fraud (since such problem is nonexistent), but, rather, to be a pretextual veil for discriminatory ends. Although we have identified and independently assessed related data to support our beliefs, we urge the Department to analyze the data to support the above assertions. In particular, we recommend the Department investigate:

- the history and statistical survey of incidents of in-person voting fraud based on fraudulent impersonation in Georgia, including complaints and anecdotal evidence;
- the current statutes and regulations deterring voting fraud;
- data regarding the voting methods of Georgia voters segmented by race;
- data regarding the voting methods of Georgia voters segmented by socio-economic class; and
- data regarding the voting methods of Georgia voters segmented by geographic location.

Throughout the legislative process, the General Assembly lacked data regarding the racial make-up of persons who currently possess one of H.B. 244's six types of "acceptable" photo identification. Because census data shows racial disparity among people with access to motor vehicles, allowing the inference that fewer blacks possess drivers licenses than whites, we suggest that the Attorney General request that Georgia provide data regarding racial disparity on all of the forms of identification that would be allowed under H.B. 244. This information will not only demonstrate the current racial impact, but will also show the extent to which the lack of DMVS access will exacerbate the racial impact. No assessment of the impact of H.B. 244 can be made without such information, and the failure to provide such assessment is a failure of the State of Georgia, as submitting authority, to meet its burden of proof.

3. The legislative history of H.B. 244 suggests it was passed with retrogressive intent.

The legislative history of H.B. 244 reveals no specific justification for the photo identification provisions other than a general concern for voter fraud which as we have argued above, is purely pretextual. In fact, although there are limited publicly available documentary records of the deliberations of the Georgia legislative session, the small amount of available written data with respect to the proceedings related to H.B. 244 assert that the consideration of the proposed statute was without serious inquiry into the racial impact of the photo identification requirement. In particular, the Minority Report of Senators on the Senate State and Local Government Committee recorded with the Clerk of the Legislature the following matters which point to the retrogressive intent of the Committee⁸:

- The Committee dealt unfairly with H.B. 244 generally.
- The Committee refused to allow meaningful discussion of the legislation.

⁸ For your convenience, we have attached a copy of the Minority Report to this letter.

- The Committee disregarded the disproportionate effect on minority voters.
- The Committee ignored the issue of absentee ballot fraud.
- The Committee also failed to conduct public hearings where affected voters could raise their concerns.
- In addition to the Minority Report, an investigation of the legislative proceedings reveals that the Legislature as a whole failed to consider alternative solutions to the purported voter fraud problem;
- By neglecting to consider the disparate racial impact or alternative solutions to the alleged fraud problem, the Legislature failed to meet its statutory burden of establishing there was no retrogressive purpose.

Moreover, the photo ID requirements of H.B. 244 were categorically opposed by many minority legislators. For example:

- State Senator Robert Brown opposed H.B. 244 on the grounds that, “[r]ural Georgians will be harmed because only 50 of Georgia's 159 counties have a DMVS, forcing people in rural parts of Georgia to travel significant distances in order to acquire acceptable identification. The elderly are harmed by HB 244, because 36% of all Georgians over the age of 75 do not have a driver's license. [H.B. 244] also disproportionately impacts African-Americans, as more than 10% of African-Americans in Georgia do not own automobiles.”⁹
- State Senator Kasim Reed noted that the bill is “riddled with problems and inconsistencies,” specifically that there are no provisions for voting education. As a result voters will not be informed that they need to obtain acceptable information ahead of election day; they will simply be sent home from the polls.¹⁰ Senator Reed described H.B. 244 as “the most aggressive bill and attack on the rights of minorities and African-Americans that I have seen in my tenure in the House and the Senate.”¹¹
- State Senator Steen Miles informed H.B. 244’s supporters of the consequences of its passage: “you're taking away freedom; you are taking away a pearl, a jewel of democracy . . . [f]or me and African-Americans, this bill is as painful and as hurtful as the swastika is to my Jewish friends.”¹²
- Senate Minority Leader Robert Brown compared the provisions of H.B. 244 to “spitting on the grave of Martin Luther King Jr.”
- Representative David Lucas said that H.B. 244 merits comparison to oppressive methods used to keep minorities out of the polls. “It reminds me of the poll tax.

⁹ Press Release, Senator Robert Brown, Governor Purdue Signs Sonny Hawk Law to Ensure Disenfranchisement of Countless Georgians (Apr. 23, 2005) (on file with author).

¹⁰ Chatham County Democratic Committee, Apr 4, 2005 available at <http://www.chathamdems.com>.

¹¹ Sonji Jacobs and Carlos Campos, *Voter ID Bill Stirs Furor*, ATLANTA J.CONST., Mar. 30, 2005.

¹² Sonji Jacobs and Carlos Campos, *Foes Rip Passage of Voter Rights Bill*, ATLANTA J.CONST., Apr. 1, 2005.

It's basically against older, poor Democrats who don't have a driver's license, the majority of whom are black.”¹³

According to Representative Stan Watson, Chair of the Georgia Legislative Black Caucus (GLBC), house members of the caucus were unanimous in their opposition to the photo identity card requirement, stating that the bill would adversely disenfranchise people of color, the elderly and the people in rural Georgia. (The debate in the house was during consideration of H.B. 597, which was later folded into H.B. 244.) Only one African American legislator – a member who is elected from a district which has a 30.41% African American voting age population – voted for H.B. 244 in either the House or the Senate.¹⁴ Just as *Georgia v. Ashcroft*¹⁵ held that the views of legislators elected from minority districts were significant on the question of whether those districts would be retrogressively impacted, the views of those same legislators are also significant on the question of whether adding an additional voter qualification will be retrogressive because it will depress voting by minority voters. While the shape of districts can determine which candidates win or lose, the photo ID requirement determines who gets to vote, a fundamental issue on which minority legislators have particular experience and insight that should be accorded significance. The General Assembly did not thoroughly evaluate or weigh the views expressed by minority legislators. It is our belief that the Department’s review should consider and accord weight to the views of the minority legislators who have a high degree of visibility as to the retrogressive impact of H.B. 244 in their respective jurisdictions.

The absence of a legitimate purpose in conjunction with the disparate impact evidence presented to the Georgia General Assembly, as well as the clear and intentional disregard of countervailing information and views with respect to the racial impact of the proposed legislation suggests that Georgia may have enacted H.B. 244 with the intent to discriminate against racial minorities. Although we have independently assessed data to support our conclusions, we urge the Department to analyze the data supporting the above assertions. In particular, we recommend the Department investigate:

- the legislative history of H.B. 244, including any available written records of the proceeds;
- a racial analysis of the voting record of legislators on H.B. 244 and a corresponding statistical analysis of the racial composition of their respective districts;
- the alternative solutions to the purported voter fraud problem that were considered by the Legislature;

¹³ Mike Billips, *ID Bill Could Make Georgia Unique in Turning Away Voters*, THE MACON TELEGRAPH, Mar. 19 2005.

¹⁴ Representative Willie Talton, elected from Georgia House District 145, voted for the bill. See <http://georgiareapportionment.uga.edu/reports.html>. Rep. Talton is not a member of GLBC, though invited to be a member.

¹⁵ 539 US 461, 484 (2003).

- the weight the Legislature accorded the African-American legislative opposition;
- interviews with individuals who were involved in committee hearings as witnesses or advocates;
- evidence requested by or submitted to the committees and individual legislators regarding H.B. 244;
- interviews with individuals who publicly requested open hearing on the statute;
- the results of studies commissioned by the legislature, if any, to study the issues of voting fraud and racial impact of H.B. 244¹⁶;
- information gathered and prepared by the office of the Secretary of State for the Georgia General Assembly;
- all correspondence between members of the legislature, the office of the Secretary of State, the Governor and the Lieutenant Governor regarding H.B. 244;
- all public statements made by the Governor, legislators, and public officials related to H.B. 244; and
- all newspaper reports of proceedings of the legislature, including all general commentary and assessments.

4. **The Georgia General Assembly and Governor failed to provide measures to ameliorate the racial impact of H.B. 244.**

Beyond the legislature's failure to fully investigate the racial impact of H.B. 244, the legislature or other State officials took no measures to mitigate the impact on otherwise eligible voters across Georgia. In particular, the State has not taken the following actions to mitigate the racial impact of the legislation:

- In light of the new requirements, there is no legislation that requires the expansion of DMVS offices or services, and, as evidenced by the illustrative map attached to this letter identifying the locations of DMVS locations, there are substantial geographic gaps which require mitigation.
- There is no provision in H.B. 244 or other legislation in which the General Assembly funded public education on the new photo identification requirements. As a result, unsuspecting citizens who are otherwise eligible to vote absent the photo identification could arrive at the polls and be required to deliver proof of photo identification within two days. As noted above, this problem is likely to be exacerbated among minorities in Georgia because they are less likely to already have in their possession voter identification.
- In light of the new requirements, there is no legislation that requires measures to ensure the reliability of its DMVS system, a system which is currently under scrutiny. For example, a recent report told the story of Atlanta Mayor Shirley

¹⁶ It is important to note that in the 2005 legislative session, the legislature appointed over thirty panels to review matters such as making Georgia more attractive to Hollywood film producers. A study of the racial impact of H.B. 244 was not appointed. See Nancy Badertscher, *When in doubt, do a study – Legislature appoints 30-plus panels*, ATLANTA J.CONST., April 25, 2005.

Franklin receiving a DMVS notice threatening to cancel her drivers license because her Social Security number did not match the one on file with the DMVS.¹⁷ Although high profile, the Mayor's experience is not unique. Such anecdotes illustrate the problematic nature of adding requirements to voting eligibility, especially when such requirements depend on the performance of government agencies that are not adequately administered to cope with the added responsibility.

- Although H.B. 244 addressed the cost of procuring photo identification from the DMVS with respect to indigent individuals, this cost adjustment is inadequate and incomplete. In order to obtain the benefit of a free identification card, one must swear he or she is indigent. The affordability of an identification card itself however is not the only cost (as noted above), the cost associated with obtaining a birth certificate or naturalization papers, travel to the DMVS and time away from a job are all financial costs that must be borne by an individual seeking an identification card. And, as noted above, the demographic information currently available indicates a significant racial disparity in the economic impact of the requirements akin to the burden of a poll tax. It is a burden on the right to vote, and the State has not taken any substantive measures to reduce the burden other than the nominal fee waiver for the identification card itself.

The absence of the mitigation of the disparate racial impact of H.B. 244 is a significant cause for concern. Accordingly, we urge the Department to analyze the data supporting the above assertions. In particular, we recommend the Department investigate:

- all statistical and anecdotal assessments of DMVS performance, customer service, history of complaints, notices relating to revoked licenses, and actual revocations; procedures for revoking licenses and other aspects of the administrative functions of DMVS regarding photo identification matters;
- all government studies, reports and recommendations regarding the same;
- all previously publicized plans and processes with respect to voter education regarding the new voter identification statute;
- all cost related aspects of the new requirements, including statistical and anecdotal assessments of costs relating to documentation, transportation, and excuse of absence from employment, particularly in light of the burdens of such costs in a racial and socio-economic context; and
- statistics related to the racial disparity of individuals possessing birth certificates and copies of naturalization documents.

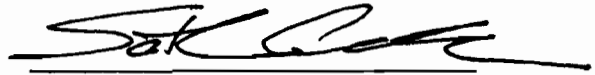
5. Concluding remarks.

Implementing §§ 24, 25, and 59 of H.B. 244 would retrogressively impact the voting rights of minorities in Georgia. It is racially discriminatory and inconsistent with

¹⁷ Ty Tagami, *Snafu Threatens Mayor's License*, ATLANTA J. CONST., May 18, 2005, at B2.

the substance of the Voting Rights Act. Moreover, Georgia has failed to show that this legislation was enacted without a retrogressive purpose. H.B 244 is vigorously opposed by the American Civil Liberties Union, Common Cause/Georgia, National Voting Rights Institute, NAACP, the AARP Georgia, the League of Women Voters, the Lawyers' Committee for Civil Rights Under Law and other public interest organizations, as well as dozens of religious organizations of all faiths. Accordingly, we submit to you in the strongest possible terms, H.B. 244 should be denied pre-clearance under Section 5 of the Voting Rights Act.

Respectfully submitted,



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cc: Alberto R. Gonzales, United States Attorney General
Governor Sonny Perdue
Georgia Attorney General Thurbert Baker
Georgia Secretary of State Cathy Cox

attachments

**Schedule I
Organizations**

AARP Georgia
American Civil Liberties Union of Georgia
American Civil Liberties Union National Voting Rights Project
American Jewish Committee, Atlanta Chapter
Anti-Defamation League, Southeast Region
Asian Pacific American Legal Center
Atlanta Black-Jewish Coalition
Atlanta Business League
Common Cause/Georgia
Demos: A Network for Ideas & Action
Georgia Alliance of African American Attorneys
Georgia Association of Black Elected Officials
Georgia Association of Latino Elected Officials
Georgia Law Center for the Homeless
Georgia Legislative Black Caucus
Georgia Rural Urban Summit
Lawyers' Committee for Civil Rights Under Law
League of Women Voters of Georgia, Inc.
Mexican American Legal Defense and Educational Fund
National Asian Pacific American Legal Consortium
National Council of Jewish Women Georgia
National Voting Rights Institute
People For the American Way Foundation
Project Vote
Service Employees International Union

EXHIBIT C

The Driver License Status of the Voting Age Population in Wisconsin

by John Pawasarat, Employment and Training Institute, University of Wisconsin-Milwaukee, June 2005.

Because one of the most important employment issues facing central city Milwaukee residents is access to a valid drivers license, the UWM Employment and Training Institute has conducted considerable research on drivers license suspension and revocation issues for Milwaukee adults and teenagers and explored the impacts of past and current state policies suspending licenses for failure to pay fines and forfeitures on residents of central city neighborhood. **This research report provides a first-time analysis of drivers license issues based on the racial/ethnicity of drivers and unlicensed adults in Wisconsin.** The importance of possessing a valid drivers license cannot be overstated in Milwaukee's labor market. Annual employer surveys conducted by the Employment and Training Institute for the Private Industry Council of Milwaukee County have found that three-fourths of Milwaukee area job openings are located in Milwaukee County suburbs and the exurban counties of Waukesha, Ozaukee, and Washington counties – usually not easily accessed by public transportation. Research on welfare recipients finding employment showed that possession of a drivers license and car was a stronger predictor of leaving public assistance than even a high school diploma.

For this report, new ETI research on interrelationships between race/ethnicity, income and geography for the drivers license issue is applied to proposals in the Wisconsin Legislature to require state drivers licenses or photo IDs as identification for voting in elections in the state. The report details the impact of the proposed voter identification legislation on the population of adults 18 and older in the State of Wisconsin compared to the population of adults with a current driver license and current address. The number of Wisconsin licensed drivers is taken from the Department of Transportation (DOT) computer database for licensed drivers current as of January 31, 2002 and analyzed by age, race/ethnicity, gender, and geography. The Census 2000 full count (Summary File 1) for Wisconsin and Milwaukee County is used as the base for comparison. Individuals who were 16 or older on April 1, 2000, the reference date of the Census, are compared to the population of drivers with a drivers license 2 years later when they reached legal voting age. Data on Wisconsin DOT photo ID utilization was only available at the state level by age and gender, and this data is incorporated in the analysis where possible.

Findings

1. Many adults do not have either a drivers license or a photo ID. An estimated 23 percent of persons aged 65 and over do not have a Wisconsin drivers license or a photo ID. **The population of elderly persons 65 and older without a drivers license or a state photo ID totals 177,399**, and of these 70 percent are women. While racial data was not available on the state population with photo IDs, 91 percent of the state's elderly without a Wisconsin drivers license are white. **An estimated 98,247 Wisconsin residents ages 35 through 64 also do not have either a drivers license or a photo ID.**
2. Minorities and poor populations are the most likely to have drivers license problems. Less than half (47 percent) of Milwaukee County African American adults and 43 percent of Hispanic adults have a valid drivers license compared to 85 percent of white adults in the Balance of State

(BOS, i.e., outside Milwaukee County). The situation for young adults ages 18-24 is even worse -- with only 26 percent of African Americans and 34 percent of Hispanics in Milwaukee County with a valid license compared to 71 percent of young white adults in the Balance of State.

3. A large number of licensed drivers have had their licenses suspended or revoked, many for failure to pay fines and forfeitures rather than traffic points violations. The drivers license file shows 39,685 individuals in Milwaukee County who have drivers licenses but also recent suspensions or revocations on their licenses. Another 49,804 Milwaukee County adults had a recent suspension/revocation but no license with the DOT. Only 65 percent of adults in Milwaukee County have a current and valid Wisconsin drivers license, compared to 83 percent of adults in the Balance of State.
4. A portion of the population with a drivers license and a recent suspension or revocation may retain their license as an ID for voting and others may secure a state photo ID. These licenses cannot be renewed, however, without clearing up the outstanding fines and fees.
5. Students without a Wisconsin drivers license or a Wisconsin photo ID would need to obtain either one to vote. Those students and young adults living away from home but retaining their permanent home address on their drivers license need to provide proof of residence to vote prior to registration under current laws. Because the drivers license is a valid ID, regardless of address, few if any in this population would have a photo ID with a current address. These individuals may have a Wisconsin or out-of-state drivers license but not one with a current address. At UWM, Marquette University, and the University of Wisconsin-Madison, a total of 12,624 students live in residence halls, but only 280 (2 percent) have drivers licenses with these dorms' addresses. All others require special handling to vote under proposed and current legislation.
6. The population that changes residence frequently is most likely to have a drivers license address that differs from their current residence. This would include lower-income residents who rent and students and young adults living away from home (who are likely to have a drivers license listing an incorrect address or their permanent home address). To illustrate this point, 16 Wisconsin ZIP codes were identified which have the highest concentration of undergraduate students (both in dorms and in apartments). These ZIP codes had 118,075 young voting age adults (ages 18-24) but 83,981 (or 71 percent) 18-24 year olds did not have a drivers license with this current ZIP code address. Over half of the adults of the 18-24 year old age group did not have a drivers license with an address in their current ZIP code for college neighborhoods in Eau Claire, LaCrosse, Madison, Milwaukee, Oshkosh, Platteville, River Falls, Stevens Point, Stout, and Whitewater. All of those without a current address on their drivers license or ID need to provide proof of residence.

I. Drivers License Status for Minorities

The number and percent of minorities who are Wisconsin residents has been increasing, particularly in Southeast Wisconsin. This population is also very young. Minorities are much less likely to have a drivers license and if they do, they are much more likely to have a recent license suspension or revocation. Having a suspension or revocation could result in a large number of licenses not having a current address and licenses not being renewed.

Statewide, the percent of Wisconsin residents with a valid drivers license is 80 percent for males and 81 percent for females. For African-Americans, only 45 percent of males and 51 percent of females have a valid drivers license. Hispanics show 54 percent of males and only 41 percent of females with a valid drivers license.

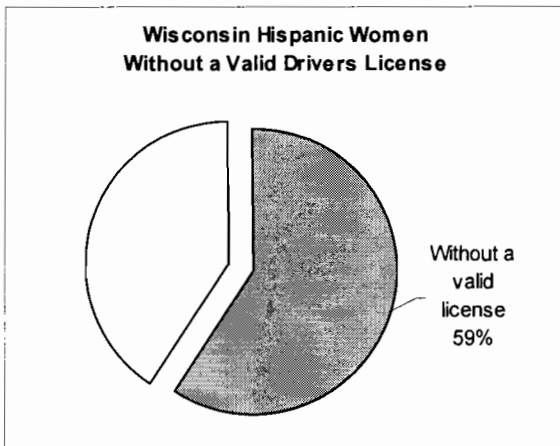
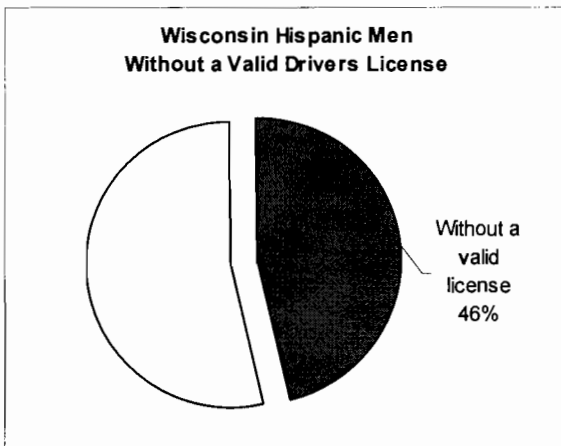
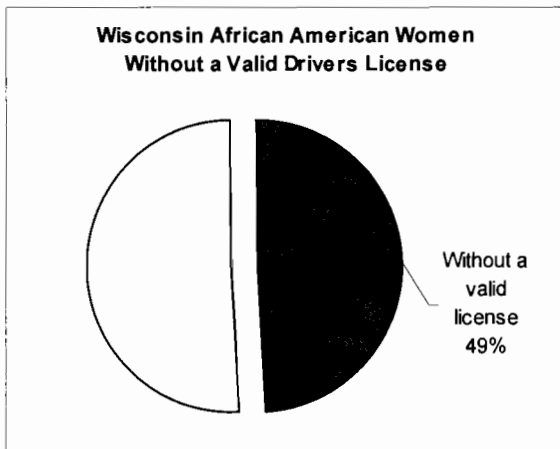
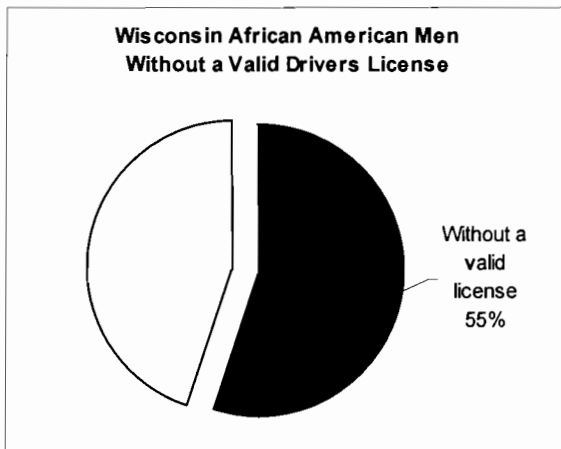
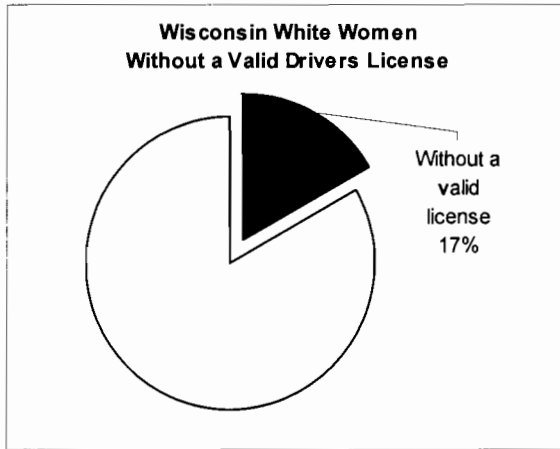
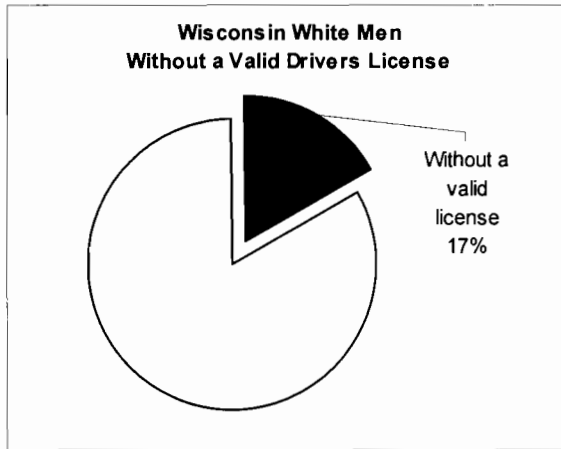
For young adults (ages 18 through 24) even fewer minorities have valid drivers licenses to use for voter identification under the proposed legislation. Statewide, only 22 percent of young African American males and 34 percent of young African American females have a valid license. For young Hispanics, 43 percent of males and only 37 percent of females have a valid license. For whites, 64 percent of males and 75 percent of females have valid licenses.

Many Wisconsin residents have a drivers license with a recent suspension or revocations, and minorities are twice as likely to be in this situation. If these individuals have retained their license, they will be able to use it as an ID for voting purposes. Statewide, an estimated 11 percent of African American adults and 8 percent of Hispanic adults have a license with a current revocation or suspension, compared to 4 percent of whites.

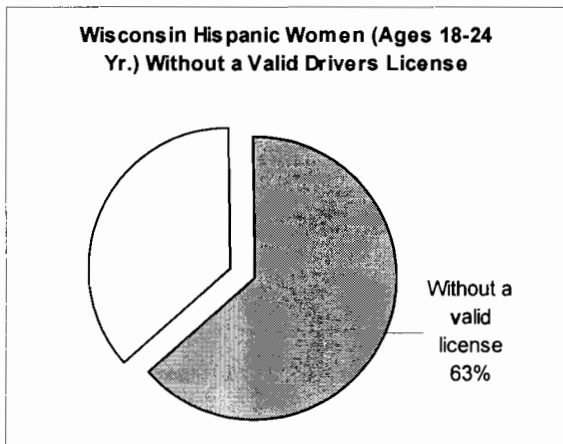
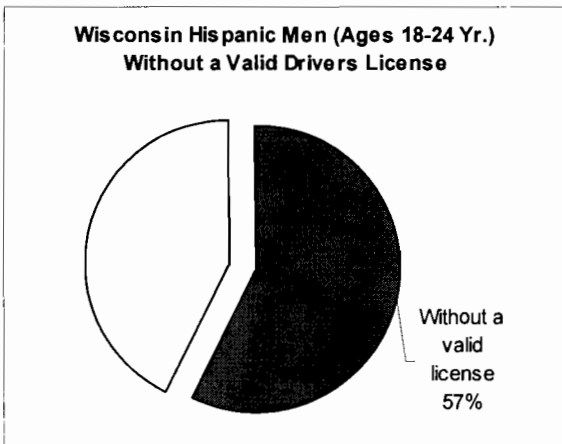
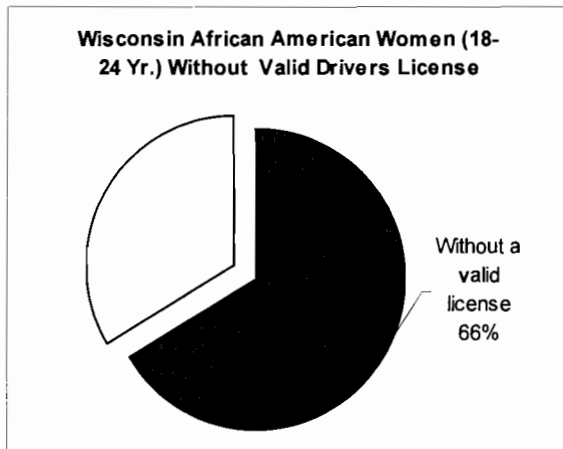
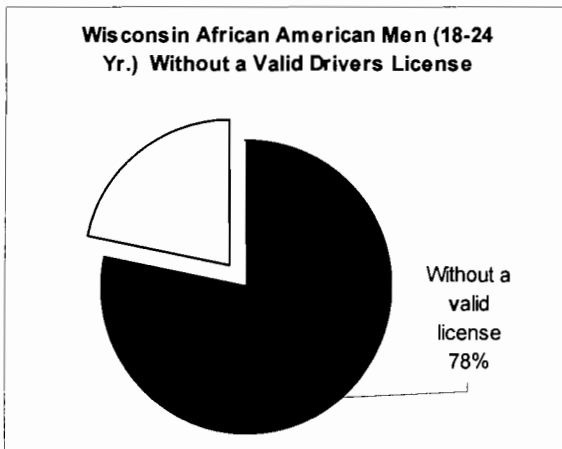
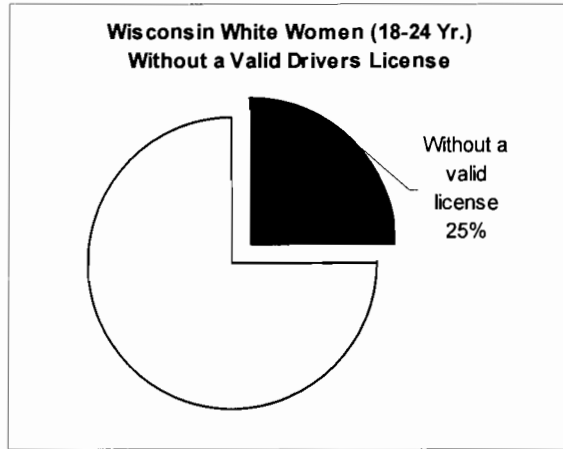
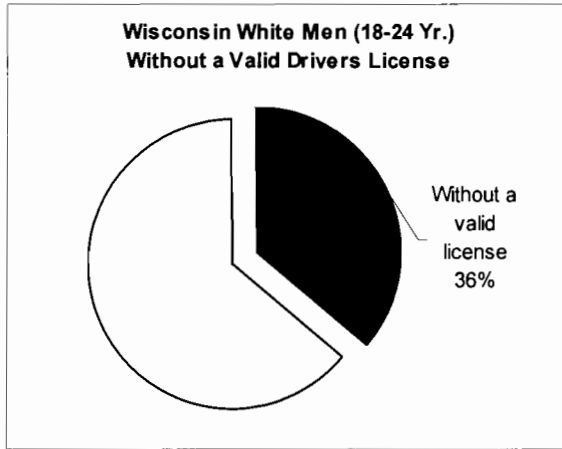
An even larger number have no license but a recent suspension or revocation. An estimated 17 percent of African American adults and 8 percent of Hispanic adults, compared to 1 percent of white adults, fall into this category.

A portion of the population without a drivers license – whether valid or not – will have a photo ID, but without an analysis by race and location, it is not possible to estimate that population.

The graphs below show the percentages of adults of voting age (ages 18 and above) in Wisconsin with valid drivers licenses, without recent suspensions or revocations.



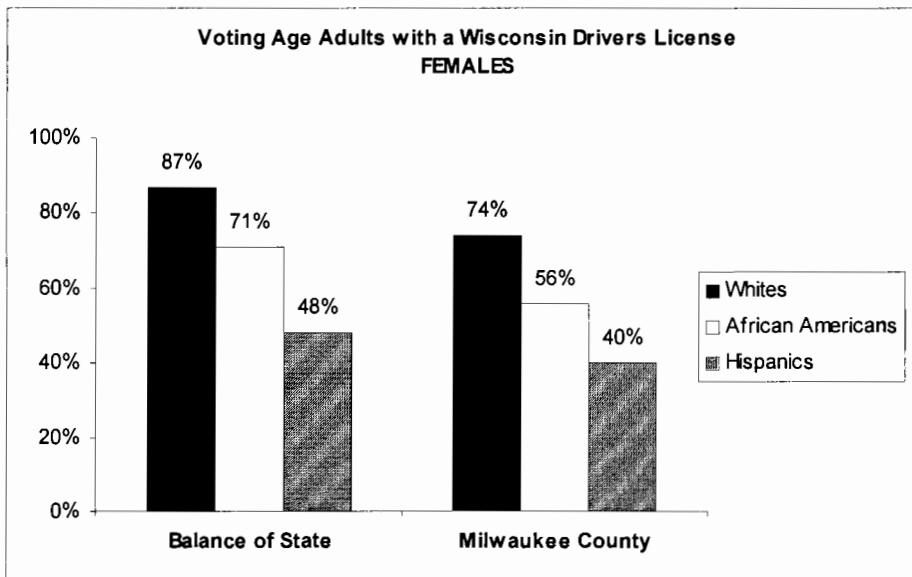
The graphs below show the percentages of **young adults (ages 18 through 24)** in Wisconsin with valid drivers licenses, without recent suspensions or revocations.

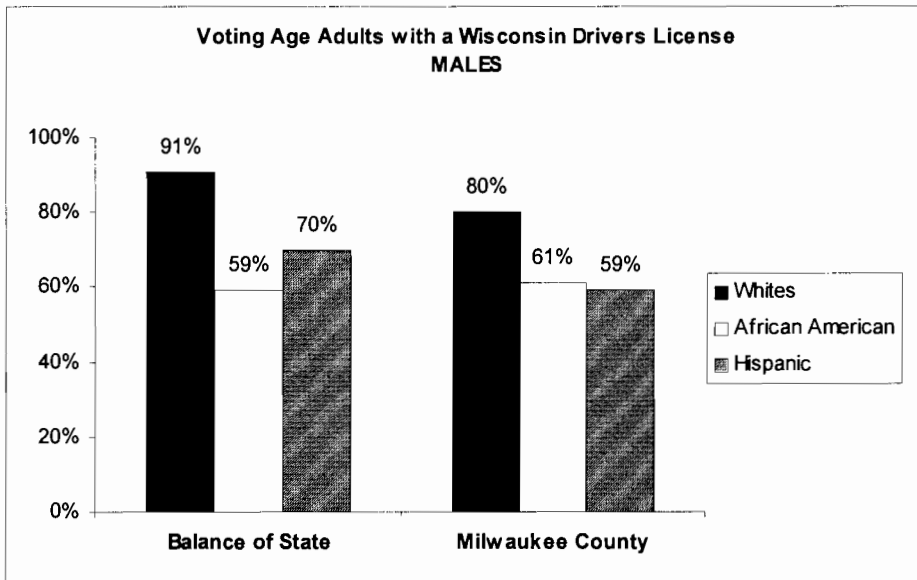


II. Drivers License Status of Milwaukee County Residents

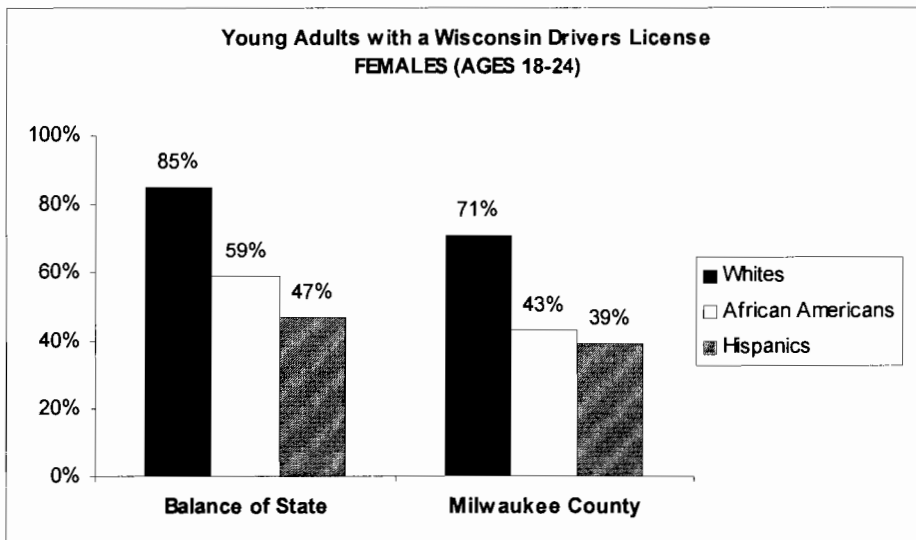
Milwaukee County residents are more than twice as likely to be without a drivers license as adults in the balance of the state. Almost a third (30 percent) of Milwaukee County voting age adults do not have a drivers license compared, to 12 percent of residents in the Balance of State. The county is home to much of the state's African American and Hispanic populations who have lower percentages with a current drivers license. Milwaukee is also home to Marquette University, UWM, and a number of other post-secondary institutions that house significant numbers of non-resident students. Dense urban neighborhoods and extensive mass transit systems may also account for more individuals without a drivers license in Milwaukee County.

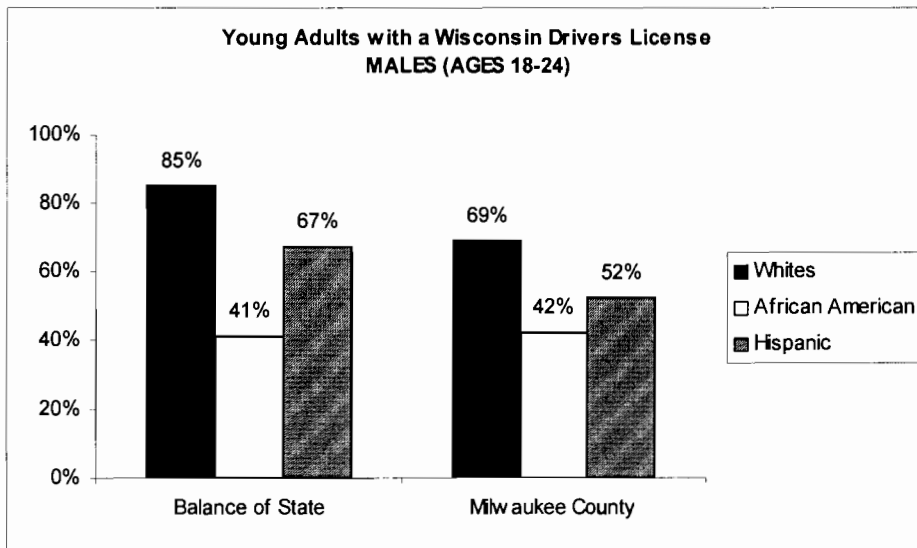
The graphs below (and the tables on pages 21-22) show the differing impacts by race/ethnicity and area of the state (i.e., Milwaukee County and the "balance of the state") that would result from using the drivers license as a voter ID. The combination of race and geography results in some populations having less than half of the percentage of eligible voters based on drivers license ID requirements. This analysis does not include photo ID utilization, as the published state photo ID data is only available by age and gender and at the state level. **In the graphs below all licensed drivers are included, including persons with suspensions and revocations.**





The percentages of young adults with drivers licenses for use as voter IDs is strikingly lower than for the voting age population as a whole. For some minority subpopulations, less than half of young voting age adults show a current drivers license. **In the graphs below all licensed drivers are included, including persons with suspensions and revocations.**





A ZIP code analysis of the percentages of adults of voter age holding drivers licenses shows wide differences within Milwaukee County as well. The tables below show the percentage of Milwaukee County adults with drivers licenses.

The first table shows adults with a valid license. In the 53217 “North Shore” communities of Bayside, Fox Point, Glendale and parts of River Hills, and Whitefish Bay, 92 percent of adult males and females had valid drivers licenses, compared to rates of 40 percent or below on the near northside of Milwaukee (ZIP codes 53205 and 53206) and around Marquette University (53233).

The second table shows adults with any Wisconsin drivers license, whether valid, suspended or revoked. Here, the percentages of males with licenses is 95 percent or above in the “North Shore” (ZIP code 53217), Hales Corners (ZIP code 53130), and Oak Creek (ZIP code 53154). Fewer than half of females in Milwaukee ZIP codes 53233, 53204, 53205, and 53206 had a license.

Voting Age Adults in Milwaukee County with Valid Drivers Licenses

ZIP Code (ZCTA)	Voting Age Males	% of males with a valid drivers license in the ZIP Code	Voting Age Females	% of females with a valid drivers license in the ZIP Code
Milwaukee 53233	7,485	21%	6,471	16%
Milwaukee 53205	2,858	38%	3,854	36%
Milwaukee 53206	8,860	40%	12,555	37%
Milwaukee 53204	15,707	47%	13,113	33%
Milwaukee 53212	9,796	47%	11,827	44%
Milwaukee 53210	8,632	49%	11,713	50%
Milwaukee 53208	10,668	53%	12,992	46%
Milwaukee 53202	11,129	55%	9,217	57%
Milwaukee 53216	9,976	57%	13,577	60%
Milwaukee 53218	11,895	61%	15,734	58%
Milw., Wauwatosa 53225	8,582	62%	10,497	63%
Milwaukee, Brown Deer, Glendale, River Hills 53209	15,447	62%	20,067	63%
Milw., West Milw. 53215	19,384	63%	20,407	52%
Milwaukee 53224	6,247	63%	7,565	63%
Milw., Shorewood, W. Bay 53211	14,669	65%	16,068	64%
W. Allis, Milw., W. Milw. 53214	14,124	65%	14,474	68%
Milw., Brown Deer 53223	10,443	66%	13,060	65%
St. Francis 53235	3,562	67%	3,878	63%
W. Allis, Milw., Greenfield 53227	9,273	74%	10,534	71%
Milwaukee, Greenfield, West Allis, West Milwaukee 53219	12,956	74%	14,995	70%
Milwaukee 53207	14,327	75%	15,028	74%
Milwaukee, Wauwatosa 53222	8,818	76%	11,357	71%
Franklin 53132	12,208	77%	11,121	90%
Wauwatosa, Milwaukee 53226	7,085	77%	8,433	77%
Milwaukee, Greenfield 53221	13,444	78%	15,615	72%
Cudahy 53110	7,007	79%	7,639	75%
Wauwatosa, Milwaukee 53213	9,298	80%	10,974	80%
Greenfield, Milwaukee 53220	9,532	81%	11,319	78%
South Milwaukee 53172	8,001	81%	8,342	83%
Greenfield, Milwaukee 53228	5,295	85%	6,292	80%
Oak Creek 53154	10,832	88%	11,564	87%
Greendale 53129	5,329	88%	6,145	89%
Hales Corners 53130	2,826	89%	3,302	84%
Bayside, Fox Pt., Glendale, River Hills, W. Bay 53217	10,707	92%	12,087	92%
Milwaukee County	336,402	66%	381,816	65%

**Voting Age Adults in Milwaukee County with Drivers Licenses
(Including Valid, Suspended and Revoked Licenses)**

ZIP Code (ZCTA)	Voting Age Males	% of males with a drivers license in the ZIP Code	Voting Age Females	% of females with a drivers license in the ZIP Code
Milwaukee 53233	7,485	25%	6,471	19%
Milwaukee 53205	2,858	49%	3,854	42%
Milwaukee 53206	8,860	55%	12,555	43%
Milwaukee 53204	15,707	58%	13,113	36%
Milwaukee 53212	9,796	61%	11,827	50%
Milwaukee 53210	8,632	64%	11,713	56%
Milwaukee 53208	10,668	65%	12,992	50%
Milwaukee 53202	11,129	61%	9,217	59%
Milwaukee 53216	9,976	72%	13,577	66%
Milwaukee 53218	11,895	75%	15,734	63%
Milw., Wauwatosa 53225	8,582	72%	10,497	67%
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Greenfield, Milwaukee 53220	9,532	88%	11,319	79%
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Hales Corners 53130	2,826	95%	3,302	86%
Bayside, Fox Pt., Glendale, River Hills, W. Bay 53217	10,707	96%	12,087	93%
Milwaukee County	336,402	75%	381,816	68%

III. License Suspensions and Revocations

Wisconsin law permits units of government to suspend a drivers license for failure to pay outstanding fines. In the case of juveniles who fail to pay fines for truancy, curfew violations, underage drinking, jaywalking, etc., a suspension order is placed which prevents the youth from obtaining a license until these fines are paid. The suspensions solely for failure to pay bills make up almost half of the total suspensions in the state. Previous studies of the impact of these suspensions have shown the adverse impact on residents of central city neighborhoods in Milwaukee. Milwaukee County residents are twice as likely to have a suspension in a year than are residents in the balance of the state. Most of this disparity occurs because Milwaukee has the largest concentration of poor young minorities, who show the highest levels of suspensions for failure to pay fines.¹ Review of drivers license files showed 89,489 Milwaukee County residents and 237,434 adults in the Balance of State with recent license suspensions or revocations. Other residents lost their licenses in the past and have not paid the fines and fees required to restore them.

IV. Drivers License Status of Elderly Residents

The population of 177,399 older persons without a Wisconsin drivers license or photo ID would be adversely effected by the voter ID legislation proposed, except for those living in nursing homes and assisted living quarters. Nearly all of those affected appear to be white (91 percent) and most are female (70 percent). The population of those 65 and over totaled 780,947 as of 2002 (based on Census data), while those with a Wisconsin drivers license totaled 560,686 and those with a photo ID and no license totaled 42,862, leaving 177,399 without an ID. Only a small portion (5 percent) of the older population is in a nursing home (38,199 persons statewide as of 2000) and some of these nursing home residents may still have an unexpired Wisconsin drivers license.

V. License Status of College Students in Residence Halls

Students enrolled at post secondary institutions and not currently living at home may face problems when attempting to vote while at school. Most college students do not change their drivers license address when attending school. Student ID's typically do not include addresses, and students in dorms are most often under 21 years of age with no reason to obtain a photo ID from the DOT to prove they are of legal drinking age. Statewide, students living in dormitories in the 2000 Census totaled 51,249.

As shown below, very few University of Wisconsin-Milwaukee, University of Wisconsin-Madison, and Marquette University students 18-24 years of age have a drivers license that lists their dorm as their current address. Fewer than 3 percent of students have a drivers license with their current

¹ See John Pawasarat, **Removing Transportation Barriers to Employment: The Impact of Driver's License Suspension Policies on Milwaukee County Teens** (University of Wisconsin-Milwaukee Employment and Training Institute, 2000) online at www.uwm.edu/Dept/ETI/barriers/teensdot.htm; John Pawasarat and Frank Stetzer, **Removing Transportation Barriers to Employment: Assessing Driver's License and Vehicle Ownership Patterns of Low-Income Populations** (UWM Employment and Training Institute, 1998) online at www.uwm.edu/Dept/ETI/dot.htm; and **Neighborhood Indicators Central City Milwaukee: 1992-Present** online at www.uwm.edu/Dept/ETI/reports/indypage.htm.

residence hall address, while 97 percent could require special handling at the polls under proposed legislation and at the time they register to vote under current legislation.

**University Students in Residence Halls Compared to Licensed Drivers at the Address:
UWM, Marquette University, and UW-Madison**

Residence Hall	Address	With Drivers License at address	Residents Capacity
University of Wisconsin-Milwaukee:			
Sandburg Residence Halls	3400 N. Maryland Ave.	51	2,700
Marquette University (Milwaukee)			
Cobeen Hall	729 N. 11 th Street	8	350
Carpenter Hall	716 N. 11 th Street	3	300
Mashuda Hall	1530 W. Wisconsin Ave.	10	400
McCormick Hall	1530 W. Wisconsin Ave.	9	725
O'Donnell Hall	725 N. 18 th Street	6	300
Schroeder Hall	715 N. 13 th Street	7	650
South Hall	525 N. 17 th Street	1	87
Straz Hall	915 W. Wisconsin Ave.	12	376
(Sub-total, Marquette University)		(56)	(3,188)
University of Wisconsin-Madison			
Adams Hall	1520 Tripp Circle	12	276
Barnard Hall	970 University Ave.	8	138
Bradley Hall	1900 Willow Drive	10	246
Chadbourne Hall	420 N. Park Street	23	687
Cole Hall	625 Elm Drive	8	244
Elizabeth Waters Hall	1200 Observatory Drive	5	473
Friedrick Center	1950 Willow Drive	0	50
Kronshage Hall	1650 Kronshage Drive	11	616
Merit House	919 W. Dayton Street	0	23
Ogg Hall	716 W. Dayton Street	38	950
Sellery Hall	821 W. Johnson Street	21	1,148
Slichter Hall	625 Babcock Drive	7	198
Sullivan Hall	635 Elm Drive	5	257
Tripp Hall	1510 Tripp Circle	8	280
Witte Hall	615 W. Johnson Street	17	1,150
(Sub-total, UW-Madison)		(173)	(6,736)

There are 15 residence halls at the University of Wisconsin-Madison, having a capacity of 6,736 beds. However, the number of licensed drivers with the residence hall addresses totaled 173, or less than 3 percent of the residents. At the Sandburg Residence Halls at UWM, out of 2,700 dorm residents, less than 2 percent of dorm residents had a drivers license with the Sandburg address. Similarly, less than 2 percent of the students living in the Marquette University dorms (or 56 out of 3,188 residents) had a drivers license with their dorm's address. It is not possible, based on published data tables for state photo IDs, to determine how many students have obtained Wisconsin photo IDs or how many have state drivers licenses with a different home address listed.

College students not in dorms may be in a similar situation. Students and young people who move away from home to attend school usually have a drivers license but do not change their license address during college. In many cases younger adults may not change their license address until they find a permanent job except for occasional situations when a current drivers license may be required for another purpose. (For example, the City of Milwaukee overnight parking permits require a current drivers license with the address where the vehicle is parked.)

The Wisconsin DOT drivers license file and Census 2000 (SF3 file) are used to assess the degree to which students do not change their license address in “**student intense ZIP codes**” throughout the state. The U.S. Census data was used to compare the number of 18 through 21 year olds to the number enrolled in undergraduate programs in each Wisconsin ZIP code. The top 16 ZIP codes (ZCTAs, Zip Code Tabulation Areas) where the highest number of undergraduates resided accounted for a total of 96,589 undergraduates and 78,075 young people ages 18 through 21. The 18-21 year old population with a drivers license in these same 16 ZIP codes totaled 15,321, or 20 percent of those 18 through 21 years old. The population in these 16 ZIP codes without a drivers license with their current residence totaled 62,754. When the population of 22 to 24 year olds are included, the number without a drivers license address at the current address totals 83,981. In some ZIP codes 98 to 99 percent of the students do not have a license with their current school address.

**18, 19 and 20 Year Olds in the 2000 Census and With a Drivers License for the ZIP Code
for the Top 16 Student-Intensive ZIP Codes in Wisconsin**

ZIP Code (ZCTA)	Census 2000 population 18-20 yr.	With drivers license at this ZIP Code	Without a drivers license at this ZIP Code	% without a drivers license at this ZIP Code
Madison 53703	5,527	308	5,219	94%
Madison 53706	4,872	56	4,816	99%
LaCrosse 54601	5,880	1,124	4,756	81%
MU-Milwaukee 53233	4,379	109	4,270	98%
Whitewater 53190	4,042	456	3,586	89%
Eau Claire 54701	4,711	1,152	3,559	76%
Oshkosh 54901	4,222	913	3,309	78%
Stevens Point 54481	4,010	1,089	2,921	73%
Stout 54751	3,287	632	2,655	81%
UW-Milwaukee 53211	3,435	1,138	2,297	67%
Platteville 53818	2,286	363	1,923	84%
River Falls 54022	2,493	578	1,915	77%
Madison 53705	2,660	750	1,910	72%
Madison 53715	1,781	135	1,646	92%
Milwaukee 53202	1,307	122	1,185	91%
Eau Claire 54703	2,371	1,345	1,026	43%
Total 16 ZIP Codes	57,263	10,270	46,993	82%

The problem of young adults without drivers licenses at their current address is not limited to the

younger college student population. An analysis of the population of 21-24 year olds in the “student intense ZIP codes” also showed a large number of adults aged 21-24 without a drivers license for the ZIP code. Almost 37,000 young adults, 61 percent of those living in these college area ZIP codes, did not have a drivers license for that ZIP code.

**21-24 Year Olds in the 2000 Census and With a Drivers License for the ZIP Code
for the Top 16 Student-Intensive ZIP Codes in Wisconsin**

ZIP Code (ZCTA)	Census 2000 population 21-24 yr.	<u>With</u> drivers license at this ZIP Code	<u>Without a</u> drivers license at this ZIP Code	<u>% without a</u> drivers license at this ZIP Code
Madison 53703	9,247	2,464	6,783	73%
LaCrosse 54601	5,725	2,938	2,787	49%
Oshkosh 54901	4,669	1,886	2,783	60%
MU-Milwaukee 53233	3,315	563	2,752	83%
UW-Milwaukee 53211	5,037	2,331	2,706	54%
Stevens Point 54481	4,456	1,988	2,468	55%
Whitewater 53190	3,369	928	2,441	72%
Madison 53715	3,197	795	2,402	75%
Eau Claire 54703	4,431	2,220	2,211	50%
Stout 54751	3,365	1,201	2,164	64%
Milwaukee 53202	2,941	1,158	1,783	61%
Platteville 53818	2,105	645	1,460	69%
River Falls 54022	2,442	990	1,452	59%
Madison 53705	3,010	1,681	1,329	44%
Eau Claire 54701	3,198	1,946	1,252	39%
Madison 53706	305	90	215	70%
Total 16 ZIP Codes	60,812	23,824	36,988	61%

VI. The Number of Unlicensed Adults Is Expected to Grow

According to population estimates prepared by the Wisconsin Department of Administration, the population of adults aged 18 or older as counted in the 2000 Census is continuing to grow in the state, in part because as older residents die or move away from Wisconsin, they are being replaced by a much larger population of young adults. For example, the population of 65-year olds in the 2000 Census totaled 36,876, while the population of 17-year olds in Wisconsin totaled 81,360.

The Wisconsin Department of Administration estimates the population of Wisconsin residents 18 or over as of January 1, 2004 to be 4,119,320, or a 124,401 increase over the 2000 Census count. Assuming the same annual growth of the 18 and over population, the January 1, 2005 estimate will be close to 4,152,521, or 157,602 higher than 2000 population count.

VII. Households Without a Vehicle Unlikely to Have Current Licensed Drivers

Census 2000 special tabulation files for the PUMS (Public Use Microdata Sample) offer detailed data on households in Wisconsin. Of particular interest are those households that do not have any vehicles. Statewide, a total of 371,501 persons, aged 18 and over, were reported in households with 0 vehicles (cars or trucks). These persons were heavily concentrated in the City of Milwaukee, where 87,300 adults were in households without vehicles. While many adults in other households may be unlicensed, it is likely that households where there is **no** car or truck owned by any household member would have much higher numbers of persons without current drivers licenses. As shown in the table below, while the City of Milwaukee has 11 percent of the state's adult population, it has 23 percent of the adults living in households without a vehicle.

**Wisconsin Voting Age Adults Without a Vehicle in Their Household
Census 2000 PUMS Files**

<u>Location</u>	Total Voting Age Adult Population:		Adults With NO Vehicle in the Household:	
	<u>Number</u>	<u>% of Total</u>	<u>Number</u>	<u>% of Total</u>
State of Wisconsin	3,990,736	100%	371,501	100%
City of Milwaukee	425,372	11%	87,300	23%
Milwaukee County Suburbs	268,667	7%	23,831	6%

As seen in the tables below, the number of adults without a vehicle in their household varies greatly by subpopulation. Older adults, for example, without vehicles in their household reflect statewide distributions of this age cohort and show less intense concentration in the City of Milwaukee compared to outstate. The numbers of older adults without vehicles in the household are similar for the City of Milwaukee as for the Milwaukee County suburbs.

**Wisconsin Older Adults (Ages 55 and Above) Without a Vehicle in Their Household
Census 2000 PUMS Files**

<u>Location</u>	Total Adult Population (Ages 55+):		Older Population With NO Vehicle in the Household:	
	<u>Number</u>	<u>% of Total</u>	<u>Number</u>	<u>% of Total</u>
State of Wisconsin	1,111,676	100%	149,158	100%
City of Milwaukee	98,902	9%	24,351	16%
Milwaukee County Suburbs	84,872	8%	14,441	10%

Non-white residents show very different patterns of potential impact of drivers license policies on voting. Fully, 60 percent of African American adults in Wisconsin without a car or truck in their household live in the City of Milwaukee.

**Wisconsin African American Voting Age Adults Without a Vehicle in Their Household:
Census 2000 PUMS Files**

<u>Location</u>	Adult African American Population (Ages 18+):		Adult Afr. Americans With NO Vehicle in the Household:	
	<u>Number</u>	<u>% of Total</u>	<u>Number</u>	<u>% of Total</u>
State of Wisconsin	327,073	100%	80,034	100%
City of Milwaukee	170,209	52%	47,858	60%
Milwaukee County Suburbs	15,264	5%	3,104	4%

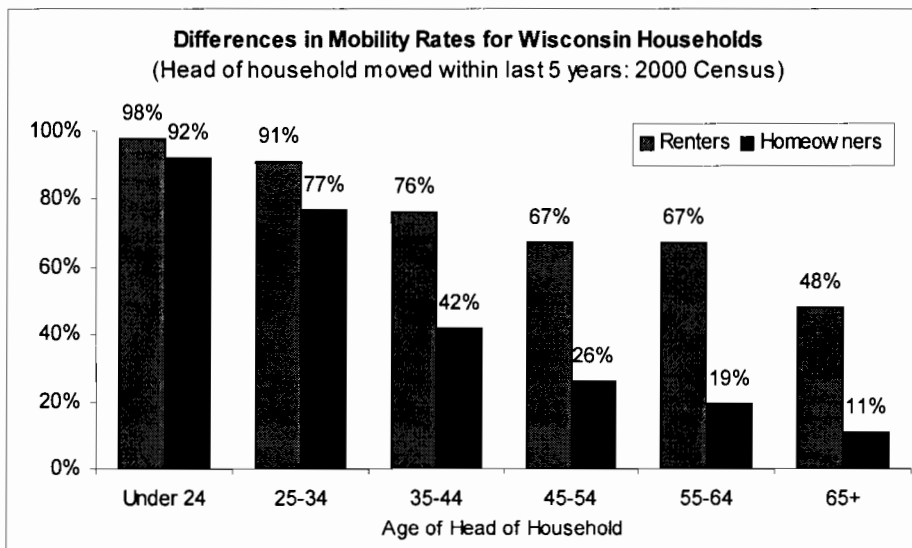
**Wisconsin White Voting Age Adults Without a Vehicle in Their Household:
Census 2000 PUMS Files**

<u>Location</u>	Adult White Population (ages 18+):		Adult White Pop. With NO Vehicle in the Household:	
	<u>Number</u>	<u>% of Total</u>	<u>Number</u>	<u>% of Total</u>
State of Wisconsin	3,663,663	100%	291,467	100%
City of Milwaukee	255,163	10%	39,442	14%
Milwaukee County Suburbs	253,403	7%	20,727	7%

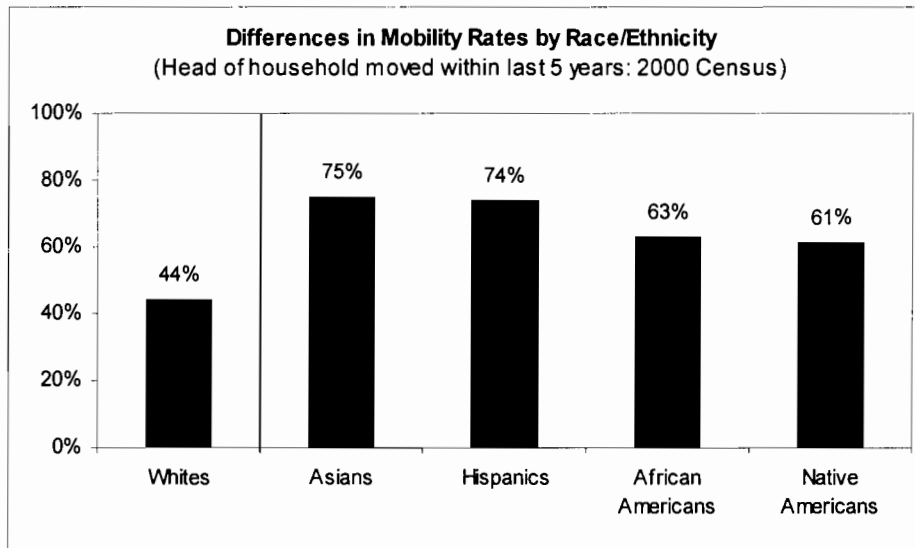
VIII. Subpopulations Without a Current License or Photo ID Address

Many people move to another residence at various times and for various reasons. As a result, some subpopulations will be less likely to have a Wisconsin drivers license or photo ID with a current address. The Wisconsin drivers license is usually valid for eight years, but many citizens move frequently and may not update their license address each time they move. According to the 2000 U.S. Census, 46 percent of Wisconsin households had moved into their current residence since 1995 or after. This moving population involved 962,425 households. Any of these residents who had not updated their drivers license to their current address would require special processing by the local election board or at the polls. Those most effected by proposals to use the drivers license to verify voters' current addresses would include the following:

1. **Renters.** Seventy-six percent of Wisconsin households who are renters changed their residence between January 1995 and March 2000, and many may have moved multiple times. (By comparison, 22 percent of households owning their own home had moved between January 1995 and March 2000.) Almost forty percent of the renting households moved one or more times in the 2-1/4 year period from January 1999-March 2000.



2. **College students.** As detailed above, college students do not usually contact the Department of Transportation each time they move during their college years and instead maintain their permanent home address on their drivers license.
3. **Minorities.** Mobility rates differ substantially by racial/ethnic groups in Wisconsin. According to the 2000 Census, whites are least likely to move with 44 percent of white households having moved in 1995 or after. By comparison, the mobility rates for Native Americans, African Americans, Hispanics, and Asians ranged from 61 to 75 percent.



**Wisconsin Household Heads Who Moved from Jan. 1995 to Mar. 2000 by Race/Ethnicity:
2000 Census**

<u>Race/Ethnicity of Householder</u>	<u>% of Household Heads Who Moved from 1/1995 to 3/2000</u>
Whites	44%
Native Americans	61%
African Americans	63%
Hispanics	74%
Asians	75%

4. **Younger adults.** Mobility rates for Wisconsin adults differ by the age of the householder. Statewide, 97 percent of head of households ages 18-24 had moved in 1995 or after. Older adults showed much lower mobility rates.

Wisconsin Households Heads Who Moved from Jan. 1995 to March 2000: 2000 Census

<u>Age of Householder</u>	<u>% of Household Heads Who Moved from 1/1995 to 3/2000</u>
Under 25 yr.	97%
25-34 years	84%
35-44 years	52%
45-54 years	34%
55-64 years	32%
65 and older	21%

IX. Subpopulations Considered in the Drivers License Analysis

Drawing on its prior research work using institutional databases and its work studying the use of the Wisconsin drivers license for collection of fines and civil forfeitures, the Employment and Training Institute assessed the extent to which the population of licensed drivers compares to the state's estimated eligible voting population. The research identifies subpopulations that are underrepresented in the drivers license file and who may need separate attention at the polling place. Examination of DOT records and U.S. Census counts of the state population show significant **subpopulations without a current license**.

1. **Persons who use mass transit.** In cities, persons who use mass transit and do not own a vehicle may not have or need a drivers license. The City of Milwaukee will have the largest population of unlicensed residents using mass transit.
2. **Lower income residents.** Some lower income households may find the costs of purchasing, maintaining and insuring a vehicle to be prohibitive. Without a car, they have little reason to obtain a drivers license.
3. **Teenagers who don't own their own car and who have not obtained a license.** While many teenagers obtain a drivers license soon after they turn 16, some do not. In some households the teenager may not have access to a car or may have access to alternative transportation from relatives and friends. In Wisconsin drivers license applicants under age 18 are required to show evidence of completion of a driver education course before receiving their probationary license – a requirement that presents an economic impediment in lower-income households, as free drivers education may not be available.
4. **Senior citizens.** Many older adults give up driving for health or economic reasons. While only 5 percent of Wisconsin seniors aged 65 and older are in nursing homes, many others do not drive.
5. **Women.** Females are disproportionately underrepresented in the drivers license file. Rates of licensing are lower for Hispanic women and for older white women.
6. **Bad drivers.** Persons who have lost their drivers license due to suspensions and revocations include those who lost their licenses for repeat speeding offenses, drunk driving (“DWI,” or “driving while intoxicated”), or drug convictions.
7. **Drivers with unpaid fines.** The vast majority of suspended licenses in Wisconsin are for failure to pay municipal and circuit court fines and civil forfeitures (sometimes called “driving while poor”). The suspension of drivers licenses for failure to pay fines falls disproportionately upon citizens of color in the state, who are both disproportionately poor and also are more likely to be subject to racial profiling. In some cases, college students also will be overrepresented in this population. For example, a student fails to pay parking tickets. The agency (municipality, university, etc.) issuing the ticket pays DOT to put a trap on the student's vehicle license. The fine costs escalate and if the student continues driving with an expired plate may result in a traffic citation.

8. **Non-drivers with suspended licenses.** In Wisconsin it is possible to receive a suspended drivers license even if an individual has never had a vehicle-related ticket or problem. Teenagers cited for being out of their homes after curfew, jaywalking, or underage drinking may have a suspension placed on their “drivers license” even though they’ve never actually had a drivers license.
9. **Persons with medical or vision problems.** Individuals may stop driving or never obtain a drivers license for medical reasons if they or their physician believe that they are unable to drive safely. Others may be deemed ineligible to obtain or renew a license based on their failure to pass the vision test.

This report offers a first-time analysis of the drivers license population by age, gender, race and geography. Future research analyzing driver’s license suspension issues by type of offense or collection problem and the race/ethnicity and residence of the driver should provide additional useful information for voting and other policy issues.

Acknowledgments

Research on drivers license suspension and revocation issues is supported by grants from the Greater Milwaukee Foundation and the Helen Bader Foundation. Review comments were provided by the state Department of Transportation staff. Send comments to: John Pawasarat, Director, Employment and Training Institute, University of Wisconsin-Milwaukee, 161 W. Wisconsin Avenue, Suite 6000, Milwaukee, WI 53203. For other drivers license reports, see the Employment and Training Institute website at www.eti.uwm.edu.

CENSUS COUNT AND DRIVERS LICENSE STATUS OF YOUNG ADULTS (AGES 18 – 24) IN WISCONSIN

MILWAUKEE COUNTY

BALANCE OF STATE

U.S. CENSUS, ages 18 thru 24 in 2002		U.S. CENSUS, ages 18 thru 24 in 2002						
	TOTAL	WHITE	BLACK	HISPANIC	TOTAL	WHITE	BLACK	HISPANIC
MALES	48,240	26,151	12,391	6,731	233,423	206,900	6,222	10,027
FEMALES	49,116	26,233	14,269	5,562	220,592	199,522	4,201	7,194
TOTAL	97,356	52,384	26,660	12,293	454,015	406,422	10,423	17,221

18 thru 24 years

18 thru 24 years

VALID WISCONSIN DRIVER LICENSE

VALID WISCONSIN DRIVER LICENSE

	TOTAL	WHITE	BLACK	HISPANIC	TOTAL	WHITE	BLACK	HISPANIC
MALES	19,928	13,917	2,558	2,322	145,681	134,918	1,562	4,825
FEMALES	24,201	16,758	4,299	1,813	163,024	153,173	1,889	2,929
TOTAL	44,129	30,675	6,857	4,135	308,705	288,091	3,451	7,754

18 thru 24 years

18 thru 24 years

PERCENT WITH A VALID WISCONSIN DRIVER LICENSE

PERCENT WITH A VALID WISCONSIN DRIVER LICENSE

	TOTAL	WHITE	BLACK	HISPANIC	TOTAL	WHITE	BLACK	HISPANIC
MALES	41%	53%	21%	34%	62%	65%	25%	48%
FEMALES	49%	64%	30%	33%	74%	77%	45%	41%
TOTAL	45%	59%	26%	34%	68%	71%	33%	45%

CENSUS COUNT AND DRIVERS LICENSE STATUS OF VOTING AGE ADULTS (AGES 18 AND ABOVE) IN WISCONSIN

MILWAUKEE COUNTY

BALANCE OF STATE

U.S. CENSUS, ages 18 and older as of 2002

U.S. CENSUS, ages 18 and older as of 2002

	TOTAL	WHITE	BLACK	HISPANIC	TOTAL	WHITE	BLACK	HISPANIC
MALES	337,802	230,688	64,091	28,678	1,692,811	1,579,255	29,091	41,103
FEMALES	381,237	257,722	84,298	24,632	1,744,759	1,647,897	21,064	30,836
TOTAL	719,039	488,410	148,389	53,310	3,437,570	3,227,152	50,155	71,939

18 YEARS AND OLDER

18 YEARS AND OLDER

VALID WISCONSIN DRIVER LICENSE

VALID WISCONSIN DRIVER LICENSE

	TOTAL	WHITE	BLACK	HISPANIC	TOTAL	WHITE	BLACK	HISPANIC
MALES	222,740	171,809	28,568	13,731	1,399,635	1,336,496	13,365	23,930
FEMALES	244,245	186,636	40,612	8,950	1,469,271	1,403,222	13,182	13,768
TOTAL	466,985	358,445	69,180	22,681	2,868,906	2,739,718	26,547	37,698

18 YEARS AND OLDER

18 YEAR AND OLDER

PERCENT WITH A VALID WISCONSIN DRIVER LICENSE

PERCENT WITH A VALID WISCONSIN DRIVER LICENSE

	TOTAL	WHITE	BLACK	HISPANIC	TOTAL	WHITE	BLACK	HISPANIC
MALES	66%	74%	45%	48%	83%	85%	46%	58%
FEMALES	64%	72%	48%	36%	84%	85%	63%	45%
TOTAL	65%	73%	47%	43%	83%	85%	53%	52%

18-24 Year Olds Without Drivers License at Current ZIP Code
 (16 Student-Intense ZIP Codes in Wisconsin)

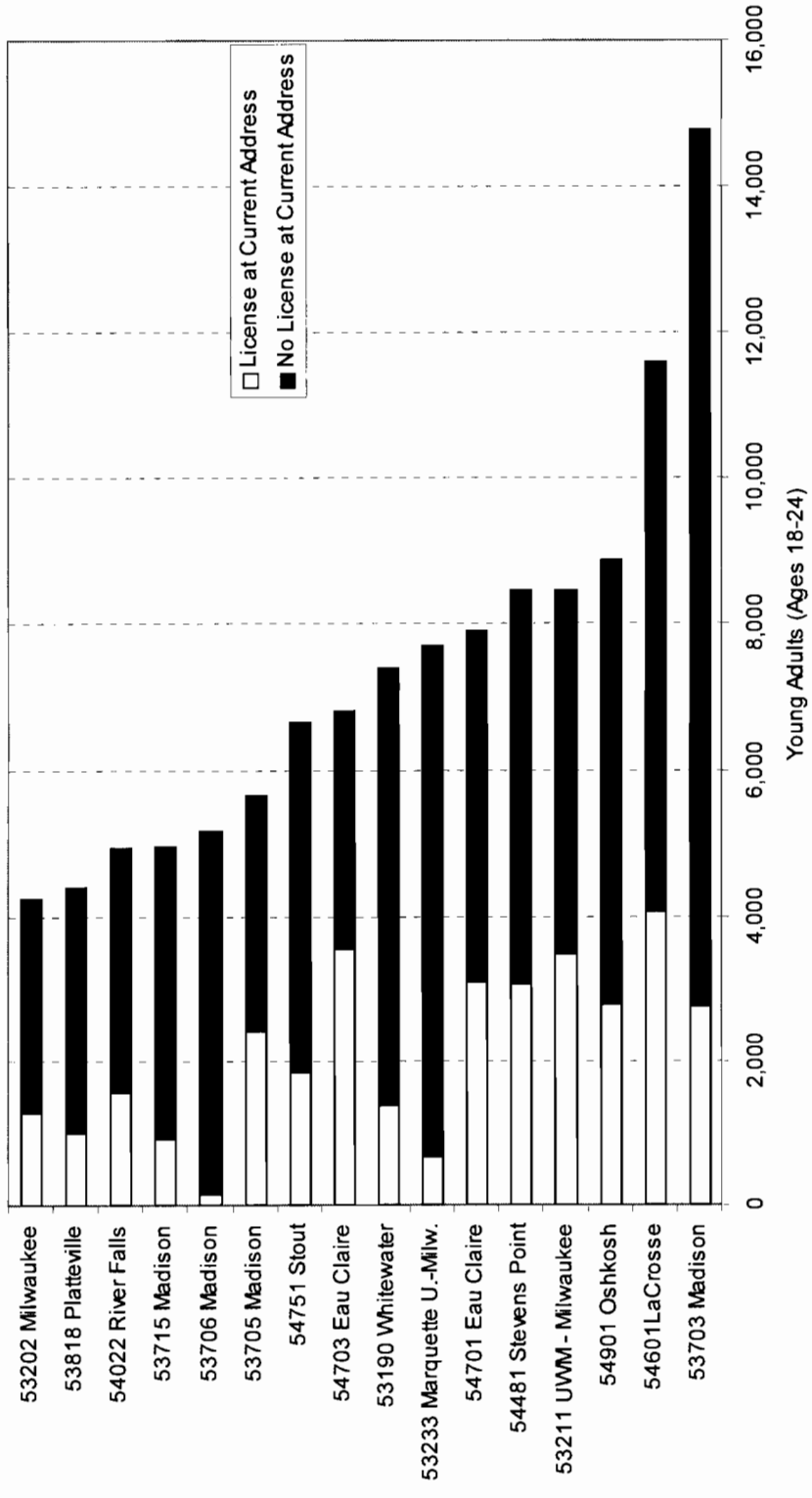


EXHIBIT D



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 7, 2005

The Honorable Christopher S. Bond
United State Senate
Washington, D.C. 20510

Dear Senator Bond:

Thank you for your recent letter regarding the Justice Department's pre-clearance, pursuant to Section 5 of the Voting Rights Act, of the State of Georgia's 2005 amendment to the voter identification requirements in the State election code. As you know, it is our longstanding policy not to disclose any details of our deliberative process or other privileged information. Nevertheless, we welcome the opportunity to respond to the extent we can, as this issue has generated considerable misunderstanding and gross distortions of important facts.

The provisions at issue amended Georgia's existing voter identification statute by reducing the number of acceptable voter identification documents from 17 to 6, and eliminating an affidavit exemption that allowed a voter to show no identification at all. Permissible documents now include: (1) a Georgia drivers license; (2) a photo identification issued by the federal government or by any state or local government; (3) a U.S. passport; (4) an employee photo identification issued by local, state or the federal government; (5) a military photo identification; or (6) a tribal photo identification. If a voter does not bring his or her identification to the polling place, the voter can cast a provisional ballot, which will be counted if the voter presents an acceptable form of identification to election officials within 48 hours. In a separate statutory provision, the State made government-issued photo identification cards free of charge to all Georgians who cannot afford the fee normally assessed for a driver's license or other state identification card.

It is essential to bear in mind at the outset that the role of the Department of Justice in reviewing voting changes submitted by covered jurisdictions pursuant to Section 5 of the Voting Rights Act is quite narrow: our function is merely to examine whether the change is retrogressive, *i.e.*, whether the purpose or effect of the change is to put racial minorities in a position inferior to the one they occupy under the status quo, as compared to non-minorities, *vis a vis* their ability to elect their candidates of choice.

Regrettably, there has been much inaccurate information in many of the public discussions on the new Georgia voter identification requirements. In many respects, the Georgia photo identification requirement is actually quite permissive in that there is no requirement that a voter's identification card have been issued by the State of Georgia or contain a current address. Nor must a driver's license issued by the State of Georgia even be currently valid. The bill simply was intended, according to its proponents, to safeguard against potential voter fraud and

The Honorable Christopher S. Bond

to promote greater public confidence in the integrity and security of the electoral process. It bears noting in this regard that an investigative report by the *Atlanta Journal-Constitution* in November 2000 found that 5,412 votes had been cast in the name of deceased individuals in Georgia elections since 1980 -- some on multiple occasions -- and more than 15,000 dead people remained on the active voting rolls statewide at that time. See Jingle Davis, *Even Death Can't Stop Some Voters Records: Illegally Cast Ballots Not Rare*, *Atlanta Journal-Constitution*, November 6, 2000. There also was evidence from members of the Fulton County Board of Registration and Elections who described receiving thousands of voter registration forms that contained either missing or fraudulent information. In the wake of these reports, the Georgia Legislature felt that reform of its election code was appropriate.

The primary allegation by those who have criticized the Georgia election code amendments is that African-American citizens in the State are less likely than white citizens to have the requisite photo identification because the State's African-American citizens are less likely to own automobiles and do not otherwise have the ability to obtain a state identification card. This is not true. As an initial matter, of course, it is important to remember that drivers' licenses are not the only acceptable form of voter identification under the amended statute; any government-issued photo identification is sufficient. Nor has any party ever claimed that the State discriminates in its issuance of identification. In fact, all individual data indicates that the State's African-American citizens are, if anything, slightly *more* likely than white citizens to possess one of the necessary forms of identification.

The reality in Georgia is that the number of eligible voters who currently hold no photo identification from the Department of Driver Services ("DDS") is extremely small. In addition to those with drivers' licenses, hundreds of thousands of Georgians, most of whom are African-American, hold other DDS photo identification. The most recent data submitted by Georgia show that there are 6,464,319 DDS identification holders of voting age in the State, a figure that is very close to the Census Bureau's projected voting age population of the State of 6,565,095 (as of July 1, 2005), and one that is considerably larger than the almost 4.5 million registered voters in the State. Moreover, as footnote one below points out, the Census estimate includes a large number of individuals who are either ineligible for DDS identification or ineligible to vote. These include roughly 50,000 prisoners as well as 228,000 (as of the year 2000) undocumented aliens. In other words, the number of DDS identification holders is well in excess of the estimated population eligible to possess such identification. This data demonstrates that there simply cannot be a large number of persons in the State who do not have a DDS issued identification.¹

¹ There is no single, statistically valid method for measuring the number of persons, by race, who do not possess qualifying identification. This problem is largely attributable to the difficulty in comparing available Census demographic data with the primary source of data on issued identification cards, which is the government photo identification, licenses and other identification issued by the Georgia Department of Driver Services. The Census includes persons who are ineligible for DDS identification, such as prison inmates and undocumented

The Honorable Christopher S. Bond

DDS has racial data on nearly 60 percent of its license and identification holders. Of those individuals, 28 percent are African-American, a percentage slightly higher than the African-American percentage of the voting age population in Georgia. These data indicate that, of the DDS applicants who register to vote, African-American Georgians hold DDS identification at a *slightly higher* rate than white Georgians.²

While it appears likely that virtually all voters will rely on the DDS identification that they routinely carry with them, some of the other acceptable forms of identification under the amendment appear to be held as frequently, if not more frequently, by African-American Georgians than white Georgians. For example, according to available information from the Regents of the University of Georgia, there were 56,831 African-American students and 154,924 white students enrolled in all state colleges and universities in Georgia in Spring 2005, so that African-American students represented 26.8% of public college students, slightly more than their share of the state voting age population in 2000. Also, according to the 2000 Census, 14.3% of whites and 19.4% of African-American Georgians work for the government at the local, state, or federal level; logically, therefore, African-American voters should have greater access to a government employee identification, which is a perfectly valid form of identification under the election code.

Another critical factor mitigating (if not eliminating entirely) any potential adverse impact of the amended identification requirements on citizens of Georgia -- African-American or white -- is the outreach program launched by the State to ensure easy access to the requisite identification cards. Under this program, known as Georgia Licensing on Wheels ("GLOW"), the State is providing a mobile bus that will travel to locations remote from DDS centers and offer the same services -- *free of charge to those citizens who cannot afford the*

aliens, in its data. The Census also counts persons where they reside on a certain date, which often differs from their driver's license address, particularly for college students and military personnel. These variations, which can be magnified at the county level, prevent many types of statistical analysis, and interfere with others. For example, a superficial gap between voting age population and DDS identification numbers appears in several predominantly African-American counties. Yet upon closer analysis, it is clear that these counties contain large prison facilities, and thus a sizable number of individuals are counted by the Census but are ineligible for a DDS issued identification card and are also ineligible to vote. There are similar superficial gaps in certain college communities, many of whose students hold licenses from their home counties or home states. When these factors are taken into account, this apparent gap disappears.

² DDS does not have racial data on all of the drivers' licenses and identification cards it issues primarily because it only collects such information on individuals who register to vote at the same time they apply for a license or identification card. There are also racial data limitations in some of the older entries in the State's computer database.

The Honorable Christopher S. Bond

license/identification fees -- that would be available at a DDS site.³ The African-American community in Georgia is exceptionally well situated through highly motivated and widespread organizations, including local NAACP branches, to take full advantage of the program. In fact, the GLOW schedule currently is targeting areas that are predominantly African-American in population.⁴

Election data from Georgia as well as other states with voter identification requirements likewise reveals that, contrary to the presumptions of some, voter identification provisions have had no adverse impact on African-American voter turnout. For example, in the November 2000 election, the first presidential election in which Georgia's original identification requirement was in effect, the Census Bureau reported that turnout of eligible African-American voters *increased* from the 1996 election, from 45.6% to 49.6%. White voter turnout, on the other hand, declined slightly from 52.3% to 52.2% after the voter identification requirement. In the November 2004 presidential election, when the new identification requirements of the Help America Vote Act of 2002 ("HAVA") were first effective nationwide,⁵ the Census Bureau reported that the turnout among African-American voters in Georgia went up again, from 49.6% to 54.4%.

Other states with large minority populations, including Florida, Alabama, Louisiana, and Virginia, have identification requirements similar to those in Georgia, yet have had no negative effect on the turnout of minority voters according to available data. Florida, for example, passed an identification requirement in 1998. Yet African-American turnout in the presidential election, as a percentage of registration, actually increased from the 1996 to the 2000 election, and, significantly, at a higher rate than white turnout. After Alabama passed an identification requirement in 2002, the turnout rate of its African-American voters as a percentage of registration rose by 8.3 percentage points from the 2000 to the 2004 presidential election, or over

³ Interestingly, the common refrain that African-Americans would have more difficulty accessing current DDS centers because they tend to reside in more rural areas is inaccurate. There are 56 DDS centers spread out over Georgia's 159 counties; the counties housing license centers contain over 74 percent of the State's African-American population, but only 66 percent of the State's white population. In other words, any disproportionate effect from this aspect of the identification requirement would be on *white*, not *African-American*, Georgia citizens.

⁴ While not critical to our pre-clearance decision on the identification provisions, it is worth noting that Georgia also relaxed its restrictions on the opportunity to vote absentee. Now, any person who lacks identification is free to cast an absentee ballot.

⁵ Beginning in 2004, HAVA began requiring that individuals who registered to vote by mail must provide identification documents: (i) upon registration; or (ii) at the polling place the first time they vote. Congress recognized the importance of identification requirements in securing the integrity of elections, and it obviously did not believe that such requirements had any discriminatory effect on minority voters.

The Honorable Christopher S. Bond

twice the rate of increase among white voters, and the turnout rate among African-American voters in Alabama actually exceeded that of white voters.

It is unfortunate that Georgia's election code amendments have generated such a large degree of inaccurate information. In one letter we received, a group suggested that the Department seek data to establish that racial minorities may be more likely than non-minorities to misplace or forget their identification when coming to the polls. Such a notion is incredibly demeaning to minorities, and this Department emphatically declines to entertain such a request.

Equally disturbing, we observed that among the letters to the editor in one newspaper which has reported and editorialized extensively on this measure, a national civil rights organization wrote in claiming that several dozen college students in the Atlanta area refrained from voting because they believed they needed a Georgia-issued photo identification card to vote, and they were unwilling to give up their home-state driver's licenses in order to obtain such cards. *See* N.Y. Times, September 18, 2005. These students were operating on wholly erroneous information. As noted above, the students' home state licenses were perfectly valid identification under the new Georgia law. That the national civil rights organization which wrote the letter was somehow unaware of this fact illustrates the dangerous misconceptions obscuring this issue. It is, in our judgment, this misunderstanding – *not* the actions of the State of Georgia – that led these students to erroneously conclude they were ineligible to vote.

We appreciate the opportunity to dispel some of the gross misconceptions that have arisen concerning this matter and to provide basic facts so that others may more dispassionately consider the important issues at play here. We hope this letter is responsive to your questions. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

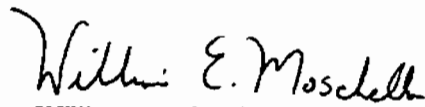

William E. Moschella
Assistant Attorney General

EXHIBIT E



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- Defensive Driving (DUI)
- Teen Drivers
- Commercial Driving
- Forms and Manuals
- Business Partners
- Rules and Regulations

GLOW Bus Schedule

The GLOW Bus will be available from 9:00 a.m. until 3:00 p.m. at the following locations:

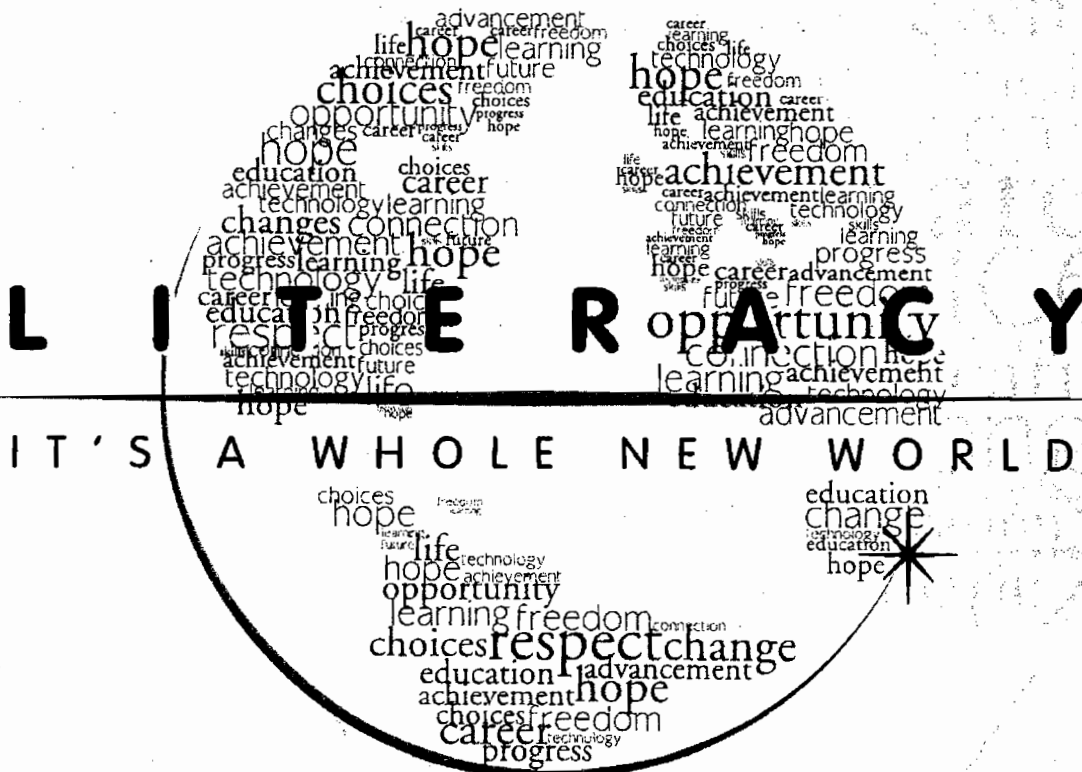
DATE	COUNTY	LOCATION
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EXHIBIT F

THE STATE OF LITERACY IN AMERICA:

ESTIMATES AT THE LOCAL, STATE, AND NATIONAL LEVELS



L I T E R A C Y

IT'S A WHOLE NEW WORLD

NATIONAL INSTITUTE FOR LITERACY
1998

**T H E S T A T E O F
L I T E R A C Y
I N A M E R I C A :**

ESTIMATES AT THE LOCAL, STATE, AND NATIONAL LEVELS

NATIONAL INSTITUTE FOR LITERACY

800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006-2712

NATIONAL INSTITUTE FOR LITERACY HOTLINE 1-800-228-8813

Phone: 202/632-1500

Fax: 202/632-1512

<http://www.nifl.gov>

Introduction

The State of Literacy in America: *Estimates at the Local, State, and National Levels*

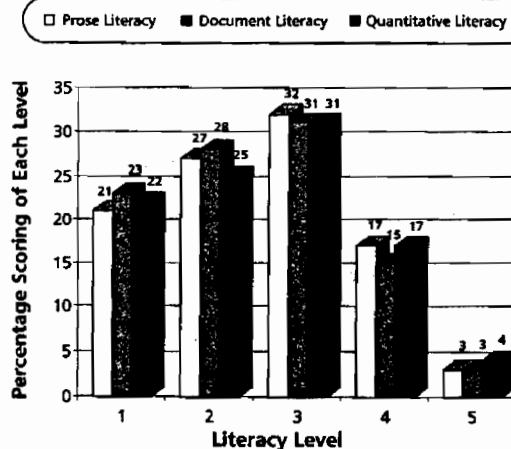
What is the NALS?

In recent years, policymakers have asked many questions — but received few real answers — about the extent of our national adult literacy problem. Some have even wondered whether low literacy is a national problem at all. Very little was known about the skills of the adult population as a whole.

Recognizing this need, Congress in 1988 directed the Department of Education to carry out an assessment of the literacy skills of American adults. The result was the National Adult Literacy Survey (NALS), a monumental study that remains the most comprehensive, statistically reliable source of data on literacy in the United States.

Through an exhaustive process that included interviews with approximately 26,000 individuals, data were collected and, in 1993, reported at the national level. Thanks to the NALS, we now have a comprehensive and up-to-date profile of the literacy skills of American adults. The following chart summarizes the NALS findings.

Literacy Levels of Adult Americans



1 represents the lowest level of proficiency; 5 the highest.

Source: U.S. Department of Education, National Center for Education Statistics, National Adult Literacy Survey, September 1993.

What's New in This Report?

Following the NALS release, policymakers and adult literacy workers were eager to find out exactly what these numbers meant to their own states, counties, and cities. They wanted to know where their adult population stood and how far it had to go. They were especially curious about the scope of the problem for adults with the lowest level of literacy skills — those in the greatest need of educational services.

We are pleased that this report provides that information. The National Institute for Literacy presents here an extrapolation of NALS data for states, counties, Congressional districts, and cities with adult populations over 5,000. It is the best estimation of how many adults have low literacy skills that we have ever had at our disposal.

The data were prepared by researcher Stephen Reder of Portland State University, and made possible by the U.S. Department of Education's Office of Vocational and Adult Education's Division of Adult Education and Literacy. Dr. Reder used sophisticated statistical modeling techniques to calculate synthetic estimates of adult literacy proficiency for these areas. (For details on the process used, please see "Frequently Asked Questions About Synthetic Estimates of Adult Literacy Proficiency.")

It is the hope of the National Institute for Literacy that this new geographic breakdown of the lowest levels of adults' literacy abilities will fuel a discussion of — and new ideas about — lifelong learning and securing higher levels of literacy for all adults as the 21st century approaches.

What is Literacy in the 1990's?

As the world changes and the demands on individuals, families, and businesses increase, the definition of literacy also continues to shift. While concerns about inadequate literacy skills are not new, the nature of the concerns is evolving. In the past, literacy was considered the ability to read and use printed materials at an extremely basic level. Today, adults need higher levels

of basic skills to function effectively in many areas of their lives, and literacy is defined more broadly to include problem-solving and higher level reasoning skills. Literacy is a range of tools that help people help themselves — and their children. It is not an end in itself, but a means to a better quality of life.

In its 1991 National Literacy Act, Congress defined literacy as:

an individual's ability to read, write, and speak in English, and compute and solve problems at levels of proficiency necessary to function on the job and in society, to achieve one's goals, and develop one's knowledge and potential.

NALS reflected this new concept of literacy. Rather than classifying individuals as either "literate" or "illiterate," NALS created three literacy scales: prose literacy, document literacy, and quantitative literacy. Each scale reflects a different type of real-life literacy task.

For example, tasks included the following:

- Finding information in texts, such as newspaper articles.
- Completing forms, such as a social security card application.
- Interpreting graphs and charts, such as a table of employee benefits.

NALS makes clear that literacy is not something individuals have or don't have. It created a literacy continuum on which people may fall at different places for different kinds of skills. NALS divided the continuum into 5 levels, with Level 5 reflecting the highest skills and Level 1, the lowest.

What Does Level 1 Mean?

The NALS found a total of 21-23 percent — or 40-44 million — of the 191 million American adults (defined as age 16 or older) at Level 1, the lowest literacy level. Although many Level 1 adults could perform many tasks involving simple texts and documents, all adults scoring at Level 1 displayed difficulty using certain reading, writing, and computational skills considered necessary for functioning in everyday life.

The following chart details activities most adults at Level 1 usually can and cannot perform successfully:

Skills of Adults at Level 1

<u>Can Usually Perform</u>	<u>Cannot Usually Perform</u>
Sign one's name	Locate eligibility from a table of employee benefits
Identify a country in a short article	Locate intersection on a street map
Locate one piece of information in a sports article	Locate two pieces of information in a sports article
Locate the expiration date information on a driver's license	Identify and enter background information on a social security card application
Total a bank deposit entry	Calculate total costs of purchase from an order form

While we are concerned about improving the literacy of all adults, we consider those scoring at the lowest level (Level 1) to be most urgently in need of nationwide attention. We want to emphasize that most of these adults are not "illiterate." They are able to perform a variety of literacy and other tasks that life requires of

them. But the background data profiled in the original NALS report clearly demonstrate that these adults tend to be at a great disadvantage in our society. They do not have the full range of economic, social, and personal options that are open to Americans with higher levels of literacy skills.

Low literacy skills are closely connected to the social problems related to poverty. Nearly half (43 percent) of all adults in Level 1 live in poverty. This contrasts with only four to eight percent of those at the two highest literacy levels.

The Impact of Low Literacy

Poverty. Forty-three percent of adults at Level 1 were living in poverty, compared to 4 percent of those at Level 5.*

Welfare. The likelihood of being on welfare goes up as literacy levels go down. Three out of four food stamp recipients performed in the two lowest literacy levels.

Income. Adults at Level 1 earned a median income of \$240 per week, compared to \$681 for those at Level 5.*

Employment Status. Adults at Level 1 worked an average of 19 weeks per year, compared to 44 weeks per year for those at Level 5.*

Crime. Seven in 10 prisoners performed in the lowest two literacy levels.

** These numbers refer to the score on the prose literacy scale. Similar differences occurred using the quantitative and document scales.*

What's Next?

All Americans can and should be doing much more to address our nation's literacy needs. Nationally, fewer than 10 percent of adults who could benefit from literacy programs are currently being served. Public policies

created at the state, local, and federal level have a tremendous impact on the number of people served and the quality of programs. In addition to the most urgent needs — more funding, better coordination among service providers, and greater collaboration with other social services — program quality could be improved through better teacher and tutor training; greater availability of support services, such as child care and transportation; and better instructional materials that include new technologies.

While the education, labor, human services, and health care communities have begun to think about literacy across agency lines, more attention is needed because our success as a nation demands basic literacy skills for all adults. As an adult literacy student in Jackson, Mississippi explains, "Without an education in the year 2000, we the people will be in serious trouble. Because now everything is moving forward fast and without an education you will be moving nowhere."

For information on how you can help, call the National Institute for Literacy Hotline at 1-800-228-8813 or visit NIFL's Website at <http://www.nifl.gov>.

Related Resources

Literacy Behind Prison Walls, U.S. Department of Education, National Center for Education Statistics, October 1994.

Literacy of Older Adults in America, U.S. Department of Education, National Center for Education Statistics, November 1996.

Literacy and Dependency: The Literacy Skills of Welfare Recipients in the United States, Educational Testing Service, 1995.

Additional NALS information is available at: <http://nces.ed.gov/nadlts>.

Frequently Asked Questions (FAQs)

About Synthetic Estimates of Adult Literacy Proficiency

by Stephen Reder

1. What does "synthetic estimate" mean?

Synthetic estimates combine information from different data sources to produce estimates of information not available in any one source by itself. One common type of synthetic estimate extrapolates the results of a survey from one area or population to another.

2. What are synthetic estimates of adult literacy proficiency?

The estimates of adult literacy proficiency presented here combine information from the National Adult Literacy Survey (NALS) and the 1990 U.S. Census to estimate adult literacy proficiencies in geographical areas not adequately sampled by NALS. These areas include many states, congressional districts, counties, large towns, and cities.

3. Who produced these estimates?

These estimates of adult literacy proficiency were prepared by Stephen Reder of Portland State University. Robert Fountain, director of the Statistical Consulting Laboratory at Portland State University, provided technical advice on statistical procedures. Chris Wingerd and Charlie Mauck helped with the construction of databases and with running statistical programs. Computer software to display the estimate database was programmed by David Lowry and Charlie Mauck (Windows version) and by Cavanaugh and Theodore Latiolais (Macintosh version). This work was funded by the U.S. Department of Education, Office of Adult and Vocational Education. Sean Forrest of UUCOM, Inc. developed the Internet implementation of the database display.

4. How were reliable estimates obtained for areas in which the NALS collected little or no data?

The estimation process relied on a model that predicted NALS literacy proficiencies from Census-like variables about adults' demographic characteristics, level of education, ability to speak English, and so forth. The model's predictions were then compared to state- and county-level NALS information to gauge the accuracy of the estimates. The model reliably predicted the literacy proficiencies assessed by NALS in numerous sampled geographical areas. This predictive model was then applied to other geographic areas for which the U.S. Census had accurately measured those same predictive characteristics.

5. How were these estimates of adult literacy validated?

The National Adult Literacy Survey included a sample of states and counties. The predictions of the model used for this report were compared with the actual literacy proficiencies surveyed by NALS from these areas. The accompanying technical report (Appendix 1) describes the validation process and results in detail. The state-level and county-level predictions appear to be reasonably accurate. Because NALS identified the state and county but not the congressional district, city, or town in which respondents resided, it was possible to validate the model directly only at the state and county levels. It seems likely, however, that a predictive model that fits counties well will also fit most congressional districts, large towns, and cities well.

6. How accurate are synthetic estimates of adult literacy?

Estimates such as these are generally less accurate than survey estimates. The estimates of adult literacy proficiency provided here are based on a number of assumptions beyond those made in the NALS survey. Under these assumptions, it was possible to determine the degree of uncertainty associated with the estimates. A confidence interval (a range in which the true NALS

value is expected to occur 95 percent of the time) was calculated for each estimate in the database. For example, consider an estimate that 15 percent of adults in a specific county have literacy proficiency at the lowest level (Level 1). The 95 percent confidence interval might be determined in this case to be between 12 percent and 18 percent, indicating that the actual NALS percentage is very likely to fall somewhere in this 6-point interval.

The widths of the confidence intervals for estimates of adult literacy proficiency varied considerably. Among thousands of counties, for example, the 95 percent confidence intervals for adults in Level 1 had a median width of about 6 percentage points, as the above example did. This means that half of all such estimates had confidence intervals smaller than 6 percentage points (the smallest was 4 points), and half were larger than 6 percentage points (the largest was 17 points).

A confidence interval of 10 percentage points or less (+ or - 5 percent) is generally accepted by statisticians to be reliable. Estimates included in this report that have a confidence interval greater than 10 points have been noted with an asterisk to indicate that the figure may be less reliable. For the record, fewer than 500 of the more than 7,500 estimates included in this report had a confidence level that exceeded 10 percentage points.

7. Why are estimates produced for combined literacy proficiency rather than separately for prose, document, and quantitative literacy?

Separate synthetic estimates certainly could have been generated for each of the NALS literacy scales. But the three NALS scales are, in fact, very highly correlated and, for many purposes, can be well represented by a general literacy proficiency measure. Because of the large amount of information required for a database of estimates covering thousands of local areas, it was decided to estimate only an overall literacy proficiency measure, calculated as the average of the prose, document, and quantitative scores.

8. Can estimates such as these replace direct surveys?

Absolutely not. While estimation may be a reasonably cost-effective way of extrapolating survey results to other areas, it is usually not as accurate as a survey.

9. Can we generate adult literacy estimates for specific groups based on age, employment status, gender, educational attainment, or other characteristics?

Unfortunately, no. This estimation technique already depends on the covariation of adult literacy proficiency with other population characteristics. For most characteristics that are associated with adult literacy, no further reliable breakdown of the estimates is feasible.

10. Can we create accurate adult literacy estimates using more recent population data than the 1990 Census?

Although this could be tried, it seems unlikely to produce reliable estimates. Both the Census and NALS were designed as "snapshots" of a population at a fixed point in time. The estimation model depends strongly on a tight linkage between these two sets of data, and no more recent population database exists that includes the necessary indicators. Such a linkage would not be present if the predictive model based on combining Census and NALS were applied to a different source of population data.

11. Can we generate accurate estimates of changes in our area's adult literacy proficiency since the NALS survey?

An accurate updating of literacy statistics for a given area requires a great deal of information that is not present in either the 1990 Census or the NALS. Changes in the overall literacy proficiencies of an area depend on knowing:

- a) the literacy proficiencies of entering adults — those who migrated into the area since the NALS or those who were too young at the time of the NALS to have been counted as adults
- b) the literacy proficiencies of exiting adults — those who have died or migrated out of the area since the NALS
- c) changes over time in the literacy proficiencies of adults who were in the area at both times

Although for some areas more recent demographic information is available that might partially address a) and b), complete information that addresses a), b), and c) is not available. Additional surveys are almost certainly needed to accomplish this.

12. Where can I learn more about the methods used to create these estimates of NALS proficiencies?

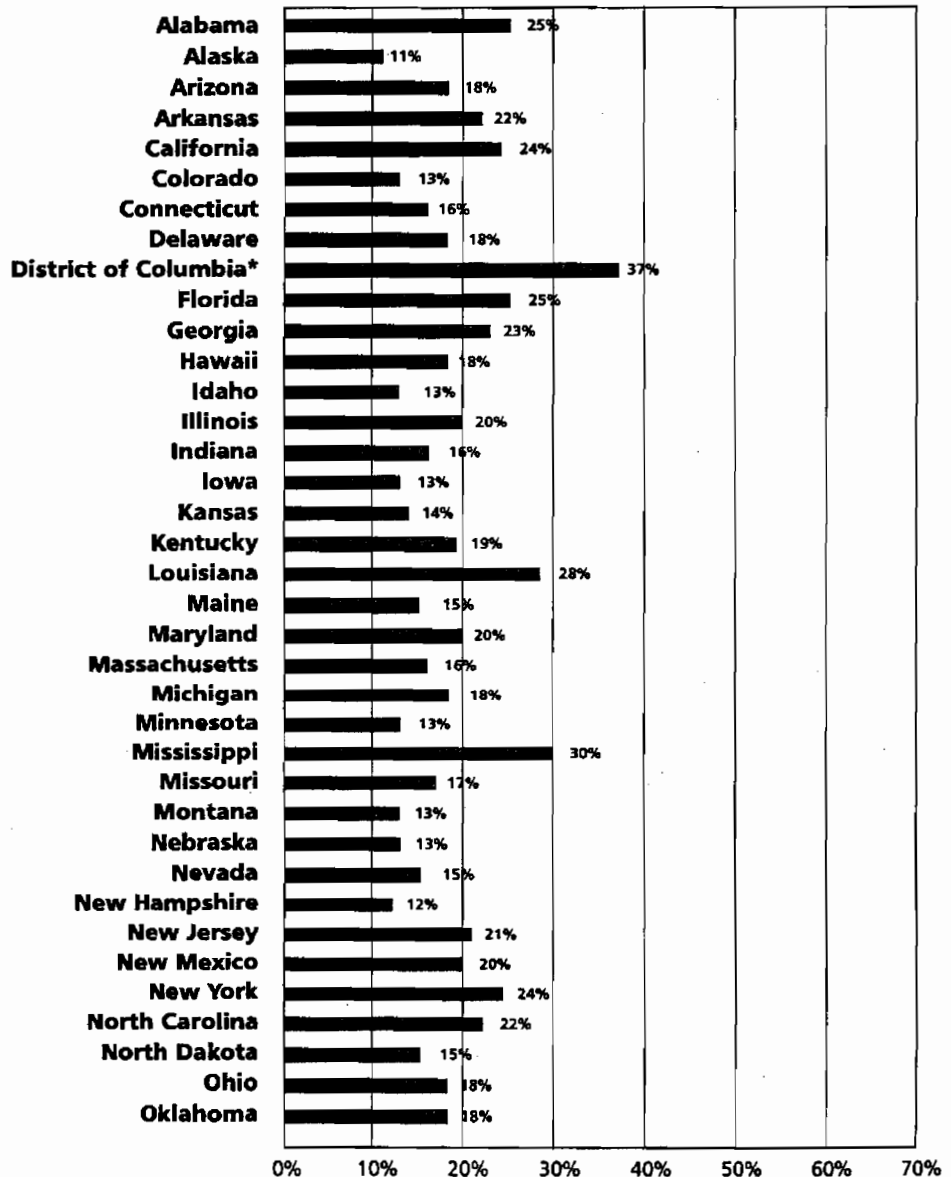
A downloadable technical report accompanies the synthetic estimates database on the National Institute for Literacy's home page (<http://www.nifl.gov>). Further questions may be directed by email to Stephen Reder at reders@pdx.edu.



The State of Literacy in America

Individual States

Percentage of Adult Population at Level 1 Literacy

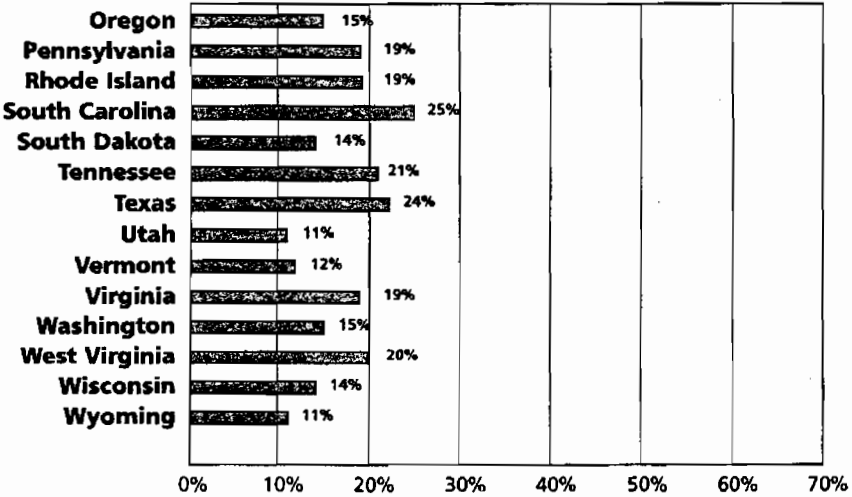


* This particular synthetic estimate has a 95% confidence interval larger than + or - 5 points, and should be used with corresponding caution.

Refer to the Frequently Asked Questions (FAQs), and to Appendix 1, the Technical Report, for additional information about these estimates. Information about the confidence interval/standard error associated with each estimate and other levels of literacy is available in a searchable database on the NIFL home page (<http://www.nifl.gov>).

Individual States (cont.)

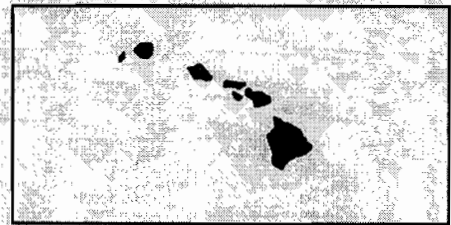
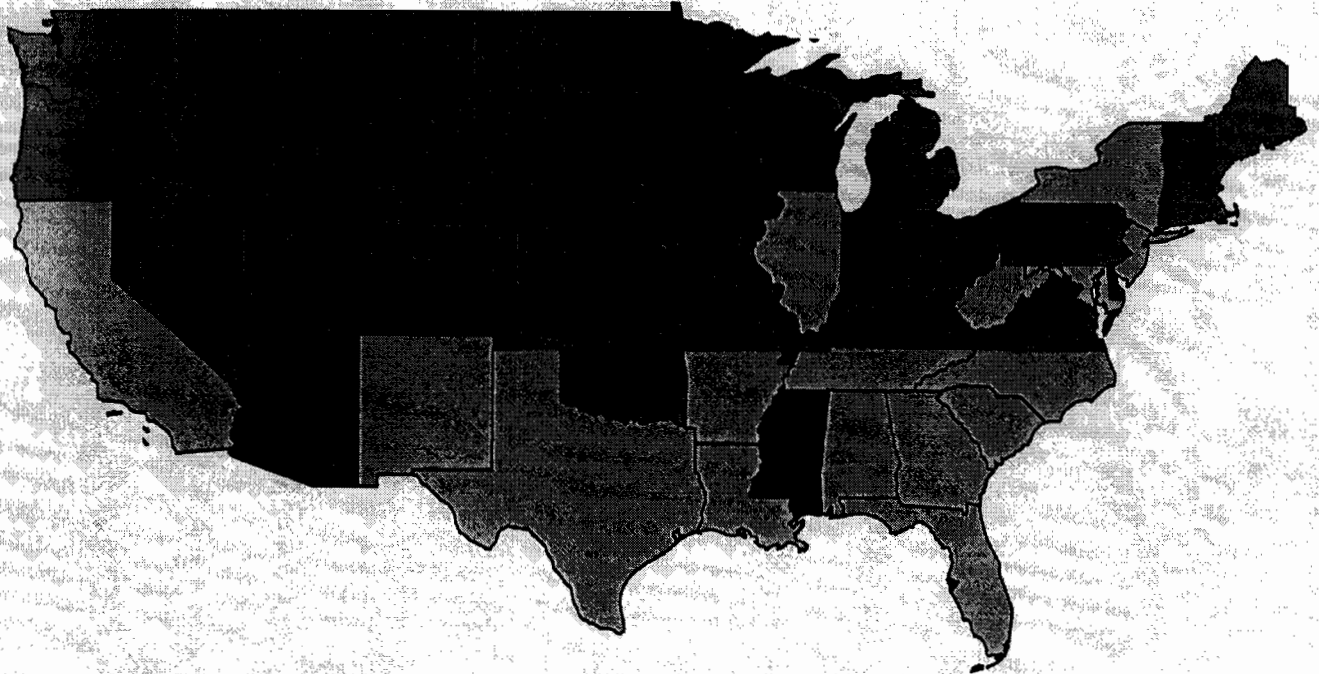
Percentage of Adult Population at Level 1 Literacy



Refer to the Frequently Asked Questions (FAQs), and to Appendix 1, the Technical Report, for additional information about these estimates. Information about the confidence interval/standard error associated with each estimate and other levels of literacy is available in a searchable database on the NIFL home page (<http://www.nifl.gov>).

The State of Literacy in America

Level 1 Literacy Rates by State



Source: U.S. Department of Education
Division of Adult Education and Literacy

Refer to the Frequently Asked Questions (FAQs), and to Appendix 1, the Technical Report, for additional information about these estimates. Information about the confidence interval/standard error associated with each estimate and other levels of literacy is available in a searchable database on the NIFL home page (<http://www.nifl.gov>).

Percentage of adult population
with Level 1 Literacy skills

■ 30% or greater	(2)
■ 20% to 30%	(16)
■ 15% to 20%	(19)
■ 10% to 15%	(14)
■ 10% or less	(0)
□ no estimate available	(0)

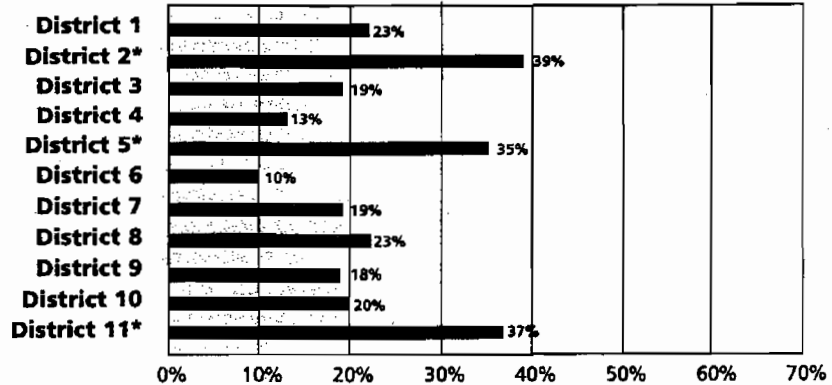


Georgia

23% of adult population
is at Level 1 Literacy

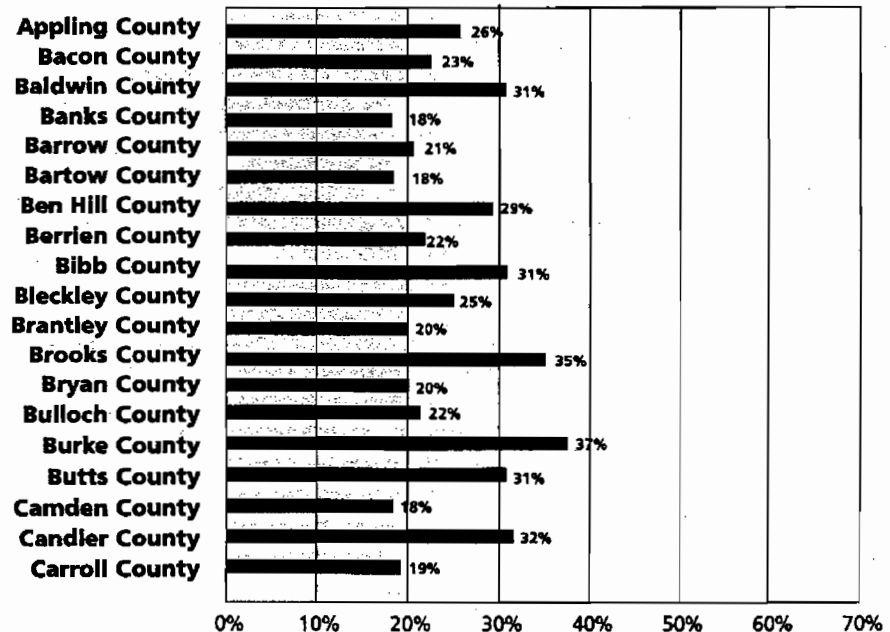
Congressional Districts

Percentage of Adult Population at Level 1 Literacy



Counties (with adult populations of at least 5,000)

Percentage of Adult Population at Level 1 Literacy



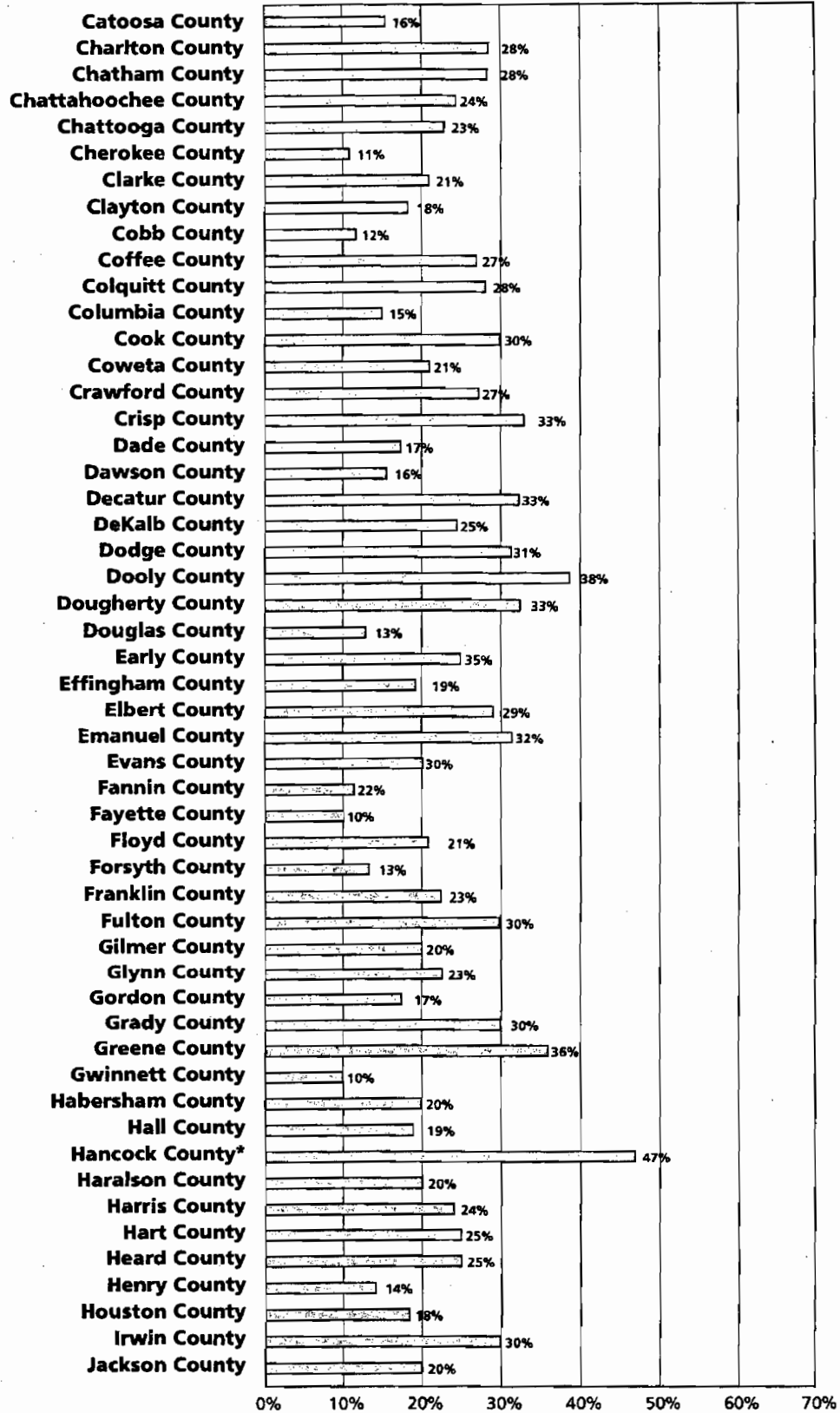
* This particular synthetic estimate has a 95% confidence interval larger than + or - 5 points, and should be used with corresponding caution.

Refer to the Frequently Asked Questions (FAQs), and to Appendix 1, the Technical Report, for additional information about these estimates. Information about the confidence interval/standard error associated with each estimate and other levels of literacy is available in a searchable database on the NIFL home page (<http://www.nifl.gov>).

Georgia

Counties (cont.)

Percentage of Adult Population at Level 1 Literacy

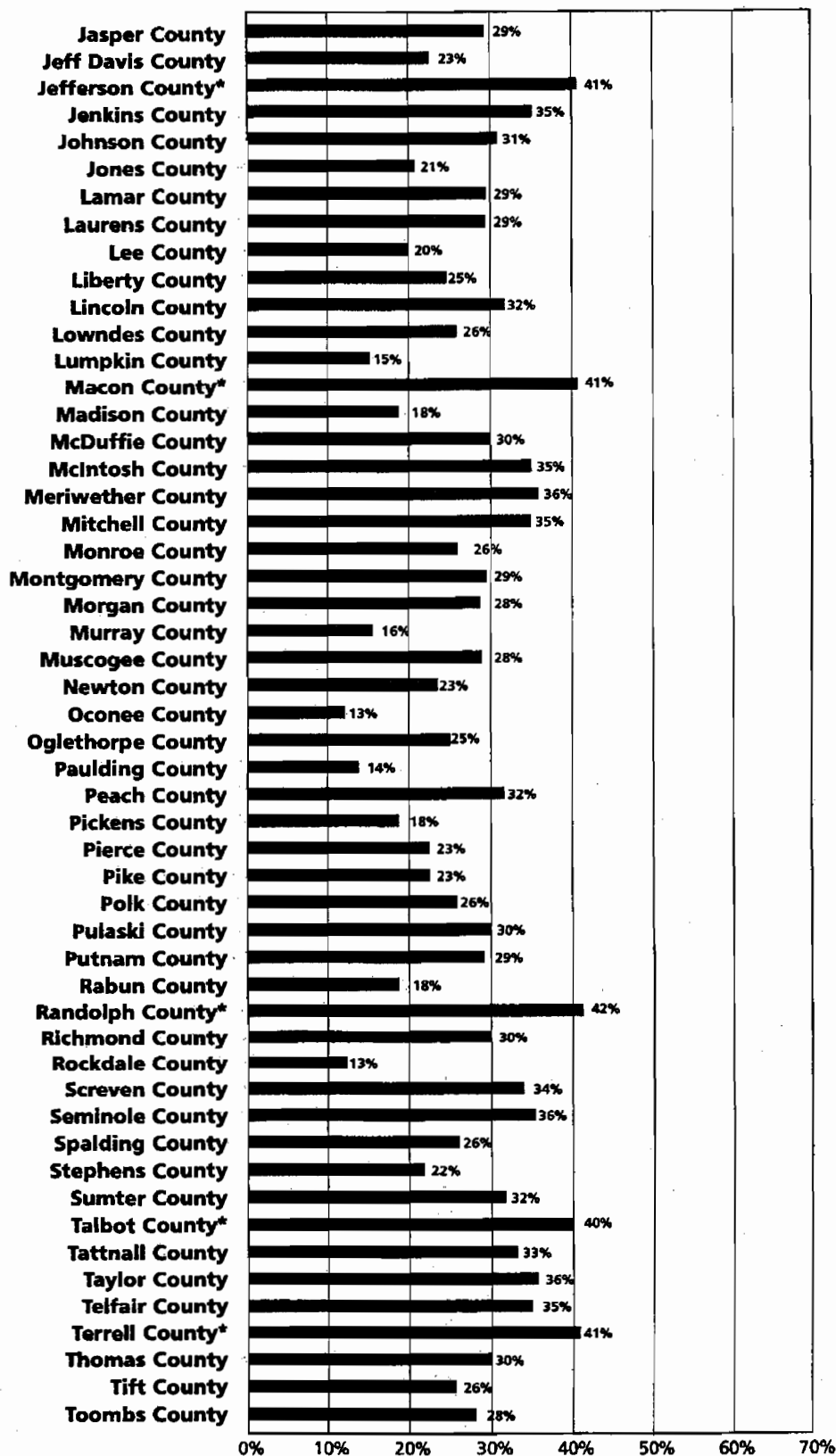


* This particular synthetic estimate has a 95% confidence interval larger than + or - 5 points, and should be used with corresponding caution.

Refer to the Frequently Asked Questions (FAQs), and to Appendix 1, the Technical Report, for additional information about these estimates. Information about the confidence interval/standard error associated with each estimate and other levels of literacy is available in a searchable database on the NIFL home page (<http://www.nifl.gov>).

Counties (cont.)

Percentage of Adult Population at Level 1 Literacy



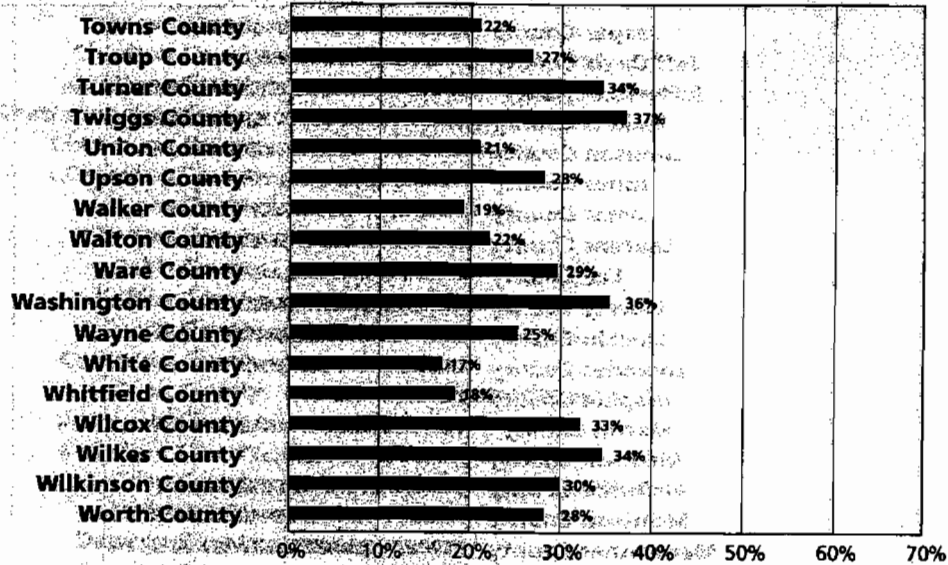
* This particular synthetic estimate has a 95% confidence interval larger than + or - 5 points, and should be used with corresponding caution.

Refer to the Frequently Asked Questions (FAQs), and to Appendix 1, the Technical Report, for additional information about these estimates. Information about the confidence interval/standard error associated with each estimate and other levels of literacy is available in a searchable database on the NIFL home page (<http://www.nifl.gov>).

Georgia

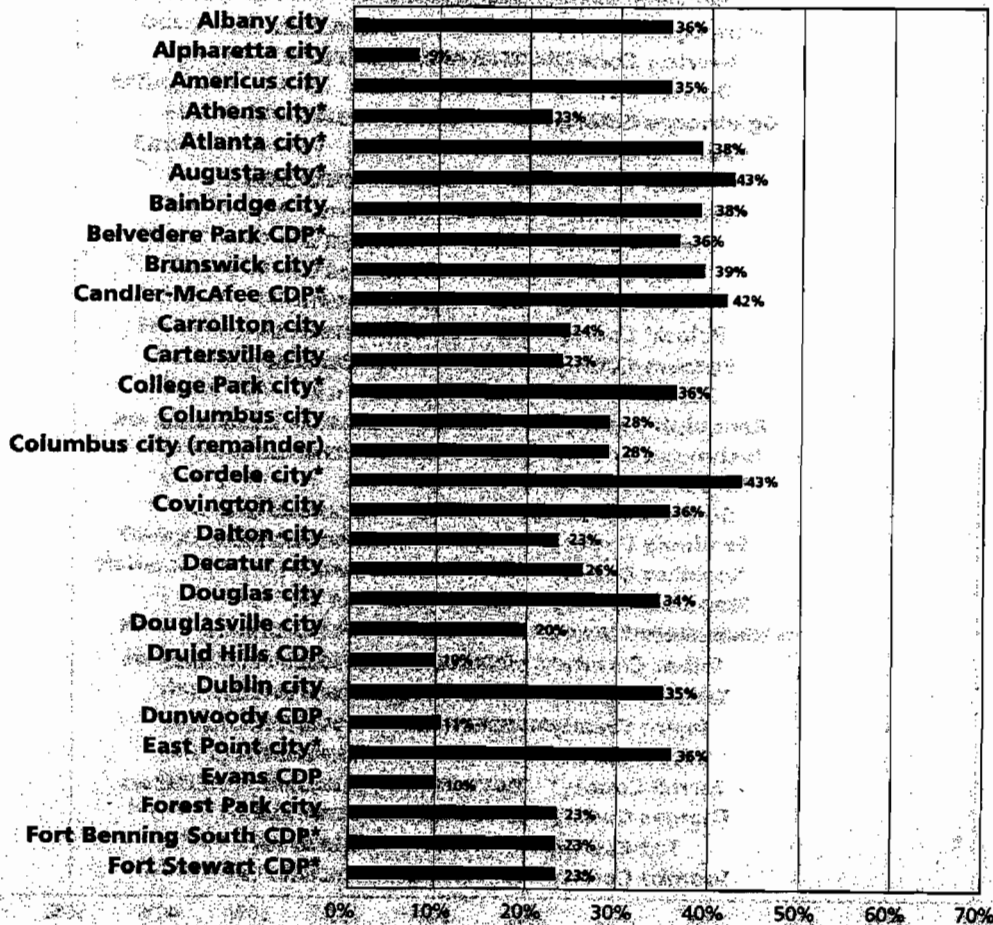
Counties (cont.)

Percentage of Adult Population at Level 1 Literacy



Municipalities (with adult populations of at least 5,000)

Percentage of Adult Population at Level 1 Literacy

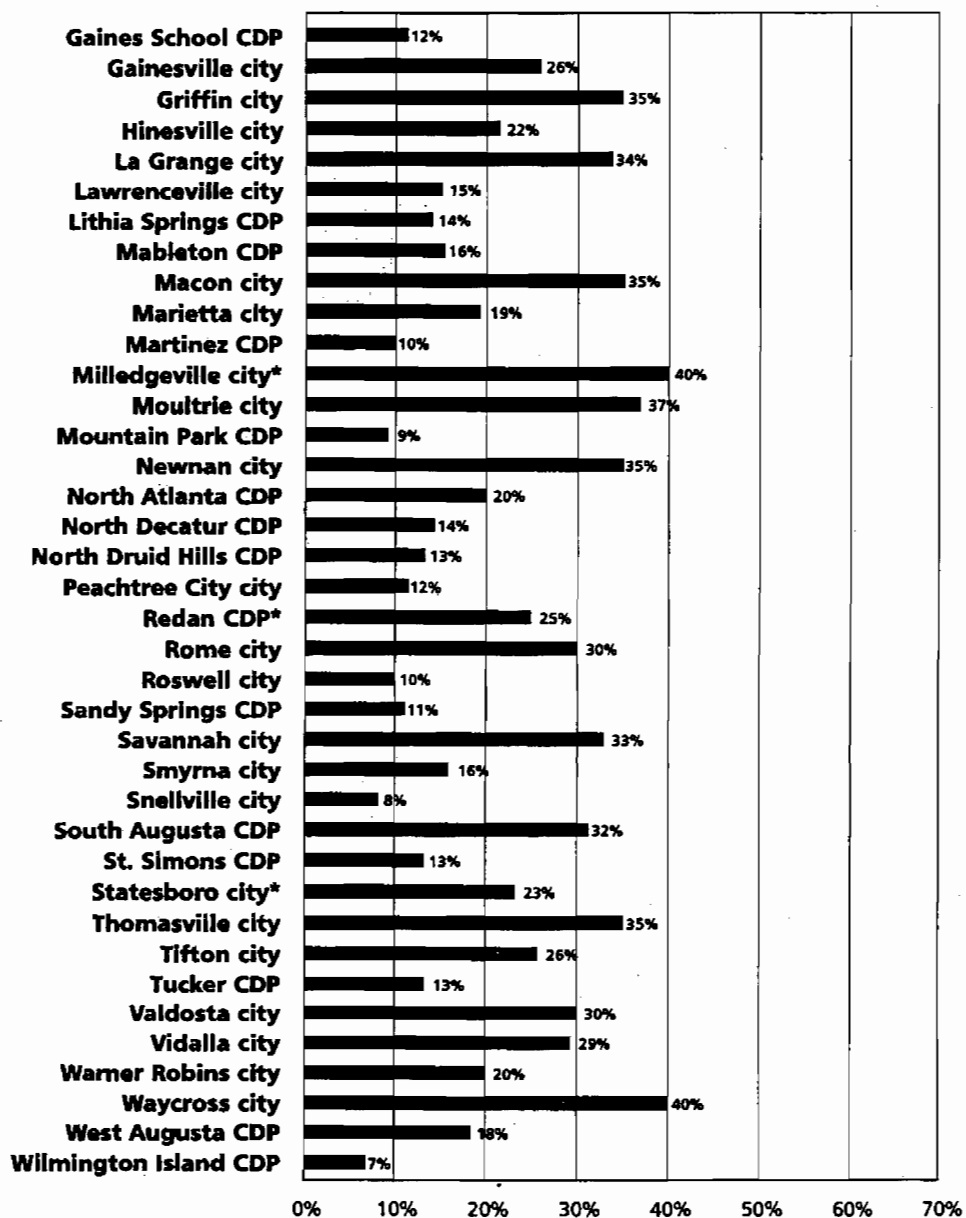


* This particular synthetic estimate has a 95% confidence interval larger than + or - 5 points, and should be used with corresponding caution.

Refer to the Frequently Asked Questions (FAQs) and to Appendix L, the Technical Report, for additional information about these estimates. Information about the confidence interval/standard error associated with each estimate and other levels of literacy is available in a searchable database on the NIFL home page (<http://www.nifl.gov>).

Municipalities (cont.)

Percentage of Adult Population at Level 1 Literacy



* This particular synthetic estimate has a 95% confidence interval larger than + or - 5 points, and should be used with corresponding caution.

Refer to the Frequently Asked Questions (FAQs), and to Appendix 1, the Technical Report, for additional information about these estimates. Information about the confidence interval/standard error associated with each estimate and other levels of literacy is available in a searchable database on the NIFL home page (<http://www.nifl.gov>).

The State of Literacy in America: Georgia

Level 1 Adult Literacy Rates, by Congressional District



Source: U.S. Department of Education
Division of Adult Education and Literacy

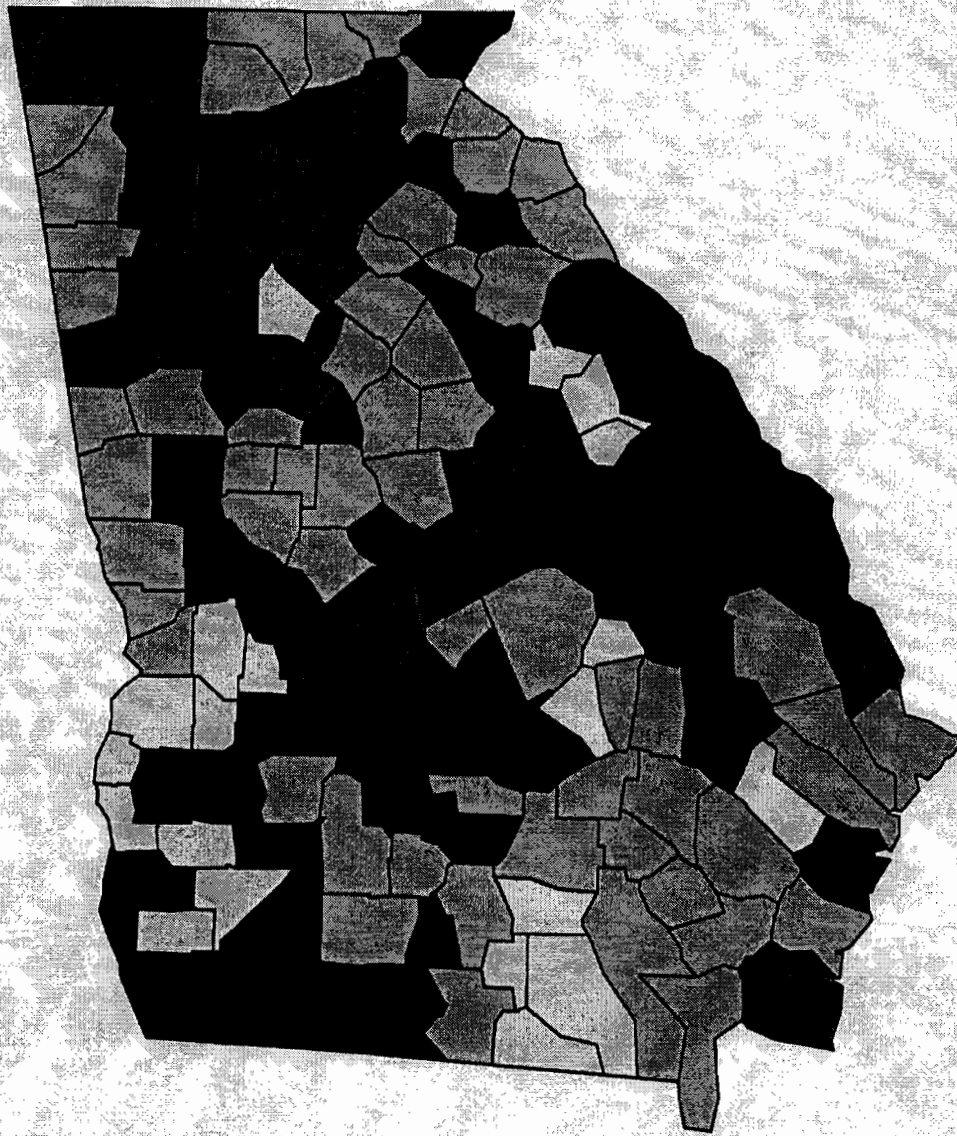
Refer to the Frequently Asked Questions (FAQs), and to Appendix 1, the Technical Report, for additional information about these estimates. Information about the confidence interval/standard error associated with each estimate and other levels of literacy is available in a searchable database on the NIFL home page (<http://www.nifl.gov>).

Percentage of adult population
with Level 1 Literacy skills

■ 30% or greater	(3)
■ 20% to 30%	(3)
■ 15% to 20%	(3)
■ 10% to 15%	(1)
■ 10% or less	(1)
■ no estimate available	(0)

The State of Literacy in America: Georgia

Level 1 Adult Literacy Rates, by County



Source: U.S. Department of Education
Division of Adult Education and Literacy

Refer to the Frequently Asked Questions (FAQs), and to Appendix 1, the Technical Report, for additional information about these estimates. Information about the confidence interval/standard error associated with each estimate and other levels of literacy is available in a searchable database on the NIFL home page (<http://www.nifl.gov>).

Percentage of adult population
with Level 1 Literacy skills

■ 30% or greater	(48)
■ 20% to 30%	(60)
■ 15% to 20%	(21)
■ 10% to 15%	(9)
■ 10% or less	(1)
□ no estimate available	(20)

EXHIBIT G

ABSENTEE BALLOT APPLICATION

County or Municipality: _____ Date: _____

Name as registered: _____

Address as registered: _____
(CITY) (STATE) (ZIP)

Date of birth: _____ Date of Primary, Election, or Runoff: _____

(For a primary ballot, select political party by checking appropriate box) DEMOCRATIC REPUBLICAN

PLEASE CHECK THE APPROPRIATE BOX:

- ABSENTEE VOTING (In Person Only):** See reverse side for appropriate reason code and circle here: **OP D CG EO RH PS E**
- ADVANCE VOTING (In Person Only):** Monday - Friday of the week immediately preceding the election; not required to provide a reason.
- NO REASON ABSENTEE (By Mail Only):** Requesting an absentee ballot by mail; not required to provide a reason.

MANNER IN WHICH ABSENTEE BALLOT SHALL BE PROVIDED:

- I request that I be allowed to vote my ballot in the registrar's office at this time;
- I request that ballot be mailed to: _____
- I request that ballot be delivered to voter in hospital. Name of hospital: _____

SIGNATURE (OR MARK) OF VOTER: _____

Signature of person assisting disabled or illiterate voter: _____

NOTE: Each voter must make their own application by mail, by fax, or in person unless he or she is residing temporarily out of the county or municipality, or is a voter with a disability residing within the county or municipality. A disabled or illiterate voter may receive assistance.

IF YOU ARE VOTING BY ABSENTEE BALLOT BECAUSE YOU ARE: (check appropriate box below)

A member of the Armed Forces or Merchant Marines of the United States or a spouse or dependant living outside the county or municipality in which the election is held,

- MST** – military stateside **MOS** - military overseas **OSC** - overseas civilian (permanent)
- A voter age 75 or older, or
- A voter with a physical disability, you may choose to submit one application and receive a ballot for the Primary, Primary Runoff Election, and Election Runoff by completing the information below:

I CHOOSE TO RECEIVE:

- All absentee ballots as allowed by law

FOR VOTERS RESIDING TEMPORARILY OUT OF COUNTY/MUNICIPALITY OR VOTERS WITH A PHYSICAL DISABILITY RESIDING WITHIN COUNTY/MUNICIPALITY:

In the case of a voter residing temporarily out of the county/municipality or a physically disabled voter residing within the county/municipality, application may be made by mother, father, grandparent, brother, sister, aunt, uncle, spouse, son, daughter, niece, nephew, grandchild, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, or sister-in-law of the age of 18 or over upon completing the following oath:

I, the undersigned, do swear (or affirm) that the above named voter is:

- residing temporarily out of the county/municipality
- a voter with a physical disability residing within the county/municipality and that the facts included within this application are true.

Signature and relationship of relative requesting ballot

Office Use Only

- The voter named is eligible to receive an absentee ballot
- The voter named is ineligible to receive an absentee ballot

Date Application Received: _____ Date Ballot Mailed: _____

Date Ballot Returned: _____ Voter Registration #: _____

Precinct ID: _____ Combo#: _____

Reason for rejection:

***Reason Codes**

- OP** I am required to be absent from my precinct all day on primary or election day (7:00 a.m. to 7:00 p.m.)
- D** I am unable to vote in person because of physical disability.
- CG** I am unable to vote in person because I am required to give constant care to someone who is physically disabled.
- EO** I am an election official who will perform official acts or duties in connection with the primary or election.
- RH** I will be unable to be present at the polls because the date of the primary or election falls on a religious holiday which I observe.
- PS** I will be unable to be present at the polls because I am required to be on duty in my place of employment for the protection of the health, life, or safety of the public during the entire time the polls are open and my place of employment is within my precinct.
- E** I am 75 years of age or older.

- *** I am a citizen of the United States permanently residing outside the United States, was last domiciled in Georgia, and am not Domiciled or voting in any other state. I understand that I am allowed to vote for federal offices (or: President, Vice President, United States Senator or Representative in Congress).

I am a member of the Armed Forces or Merchant Marines of the United States, or a spouse or dependent of the member, residing outside the County.

*** No reason required if ballot is requested by mail.**

EXHIBIT H

9/01/05
S5VRL37684

GEORGIA SECRETARY OF STATE
VOTER REGISTRATION SYSTEM
ABSENTEE VOTERS BY RACE/SEX/AGE
GENERAL ELECTION VOTING HISTORY
ELECTION DATE: NOVEMBER 02, 2004

PAGE
SECRET OF STATE

	BLACK FEMALE	BLACK MALE	WHITE FEMALE	WHITE MALE	ASIAN-P1 FEMALE	ASIAN-P1 MALE	HISP-L2 FEMALE	HISP-L2 MALE	OTHER FEMALE	OTHER MALE	UNKNOWN	TOTAL VOTERS											
REG	46,734	467,835	26,144	1,548,916	189,143	1,376,368	150,732	18,258	1,199	15,437	911	35,809	833	14,547	781	26,242	1,788	23,117	1,358	83,394	2,877	4,285,333	
VOTED	7 8	6 8	12 8	11 8	7 8	6 8	5 8	5 8	7 8	6 8	5 8	5 8	5 8	5 8	5 8	5 8	5 8	5 8	5 8	5 8	5 8	5 8	10 8



9/07/05
SPV01176N3

GEORGIA SECRETARY OF STATE
VOTER REGISTRATION SYSTEM
ABSENTEE VOTERS BY RACE/GENDER
GENERAL ELECTION VOTING HISTORY
ELECTION DATE: NOVEMBER 02, 2004

STATE OF GEORGIA

CITY NAME	BLACK FEMALE		BLACK MALE		WHITE FEMALE		WHITE MALE		ASIAN-PI FEMALE		ASIAN-PI MALE		HISP-LAT FEMALE		HISP-LAT MALE		OTHER FEMALE		OTHER MALE		OVERALL		TOTAL VOTERS			
	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED				
ATLANTA 002	455	0	132	0	1,493	1	1,318	0	2	0	3	0	48	0	52	0	0	0	0	0	0	3,703	1			
ATLANTA 001	1,089	120	726	81	4,118	584	3,974	479	6	0	9	2	28	0	19	2	21	4	0	1	10	1	9,588	3,274		
BALCON 003	465	14	265	9	2,632	174	2,402	139	5	0	1	0	4	0	5	0	13	1	10	0	18	1	5,820	338		
BANKS 004	599	0	466	0	635	0	560	0	1	0	3	0	0	0	0	0	6	0	7	0	6	0	2,283	0		
BALCON 005	4,122	656	2,522	324	6,050	1,401	5,229	1,140	42	12	43	10	22	7	10	2	42	3	37	5	406	44	18,525	3,604		
BANKS 006	72	0	68	0	3,512	0	3,333	0	3	0	0	0	15	0	21	0	12	0	13	0	32	0	7,093	0		
BANKS 007	1,303	243	832	145	10,327	2,539	9,445	1,929	86	10	78	4	102	11	99	10	68	10	68	4	68	4	35,231	4,941		
BANKS 008	1,978	245	1,430	11	156	19,583	2,920	17,837	2,407	61	11	7	63	13	135	13	139	4	58	3	44	2	62	15	41,580	5,780
BANKS 009	1,459	0	807	0	2,920	0	2,488	0	10	0	6	0	7	0	9	0	10	0	8	0	43	0	7,767	0		
BANKS 010	514	0	339	0	3,534	0	3,113	0	1	0	1	0	16	0	10	0	22	0	18	0	62	0	7,630	0		
BANKS 011	19,911	2,059	11,630	940	22,734	4,176	18,874	2,909	157	17	176	16	107	6	74	7	212	28	149	18	551	49	74,575	10,223		
BANKS 012	618	0	379	0	2,504	0	2,278	0	2	0	7	0	8	0	3	0	5	0	8	0	8	0	5,824	0		
BANKS 013	158	0	111	0	4,008	0	3,553	0	4	0	0	0	4	0	2	0	7	0	10	0	13	0	7,950	0		
BANKS 014	1,498	0	959	0	2,487	0	2,186	0	5	0	2	0	9	0	4	0	11	0	8	0	84	0	7,213	0		
BANKS 015	956	0	698	0	5,877	0	5,237	0	28	0	21	0	47	0	34	0	55	0	39	0	104	0	13,096	0		

GEORGIA SECRETARIAT OF STATE
VOTER REGISTRATION SYSTEM
ASSEMBLY VOTERS BY RACE/GENDER
GENERAL ELECTION VOTING HISTORY
ELECTION DATE: NOVEMBER 02, 2004

SECRET OF STATE

CITY	CITY	BLACK FEMALE		BLACK MALE		WHITE FEMALE		WHITE MALE		ASIAN-PI FEMALE		ASIAN-PI MALE		HISP-IT FEMALE		HISP-IT MALE		OTHER FEMALE		OTHER MALE		UNKNOW	TOTAL VOTERS			
		REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED					
BRIDGEC 016	3,481	0	0	2,442	0	10,181	1	9,125	0	51	0	37	0	36	0	27	0	73	0	63	0	126	0	25,842	0	1
BURKE 017	3,280	465	2,065	232	3,142	666	2,931	589	19	6	1	5	0	10	0	10	1	37	3	20	3	25	1	11,531	1,943	17
BUTTS 018	1,405	0	996	0	3,912	0	3,521	0	5	0	4	0	15	0	15	0	11	0	16	0	243	0	10,143	0	0	
CLARKE 019	956	0	675	0	641	0	535	0	1	0	2	0	0	0	1	0	2	0	0	0	6	0	2,839	0	0	
CANNON 020	2,254	457	1,570	236	8,337	1,227	7,127	1,052	66	14	9	32	3	119	10	78	9	131	18	96	3	181	18	34,200	3,076	15
CANDEL 021	0	0	425	0	1,762	0	1,577	0	7	0	2	0	23	0	28	0	6	0	6	0	6	0	4,436	0	0	
CANNON 022	3,110	382	2,733	257	18,986	2,938	17,636	2,457	73	5	54	0	109	9	75	10	164	16	131	14	326	35	45,456	6,133	13	
CANNON 023	1,131	59	160	42	15,610	4,241	13,236	3,386	35	6	29	7	35	6	39	6	66	15	55	3	200	24	29,754	7,785	26	
CHARLT 024	582	0	433	0	1,902	0	1,671	0	3	0	6	0	1	0	1	0	7	0	9	0	5	0	4,640	0	0	
CHARTR 025	2,182	17,420	1,057	38,542	4,650	33,542	3,313	235	17	190	3	6	292	14	249	4	840	60	724	45	893	41,119	1,68	11,405	5	
CHARTTA 026	565	1	487	0	913	0	861	0	13	0	9	0	51	0	60	0	34	0	28	0	13	0	3,034	0	2	
CHATTO 027	505	35	414	4	5,444	417	4,762	7	312	8	0	6	0	6	0	20	0	11	0	9	0	23	0	11,208	781	7
CHEROK 028	1,722	201	1,276	118	43,795	6,384	39,701	5,384	246	23	170	16	283	33	364	36	441	57	423	41	948	87	89,459	12,408	14	
CLABBE 029	7,163	1,243	4,459	613	17,899	4,982	16,106	3,877	275	33	234	35	202	21	167	20	335	57	269	43	371	56	47,480	11,000	23	
CLAY 030	671	0	429	0	436	0	379	0	0	0	0	0	0	0	0	0	2	0	0	0	3	0	1,919	0	0	

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GEORGIA SECRETARY OF STATE
VOTER REGISTRATION SYSTEM
SUBSET: VOTERS BY RACE/GENERA
GENERAL ELECTION VOTING 11/02/04
ELECTION DATE: NOVEMBER 02, 2004

SECRET OF STATE

CITY	CITY	BLACK FEMALE		BLACK MALE		WHITE FEMALE		WHITE MALE		African-PI FEMALE		African-PI MALE		HISP-IT FEMALE		HISP-IT MALE		OTHER FEMALE		OTHER MALE		UNDEMON		TOTAL VOTERS	
		REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED
CLAYTON 031	42,286	3,033	27,259	1,738	16,544	2,150	14,193	1,521	620	31	771	19	537	19	444	18	1,254	80	1,066	51	2,396	921	7,390	8,755	
CLINTON 032	422	1	380	1	1,341	12	1,159	14	5	0	2	0	0	0	1	0	7	0	2	0	11	0	3,530	30	
COBB 033	39,651	4,615	26,977	2,601	139,918	23,410	120,421	19,215	1,904	195	1,738	132	1,961	140	1,698	115	4,100	516	3,778	392	2,421	21,338	7,671	50,544	
COTTELE 034	2,455	506	1,764	238	6,809	1,821	5,739	1,395	30	27	8	34	21	7	62	5	3	69	3	25	4	27	11	3	17,245
COLQUHOUN 035	1,855	242	1,197	12	6,857	2,225	5,841	15,881	9	22	2	5	20	1	43	5	2	37	5	61	10	40	8	155	16,100
COLUMB 036	3,672	586	2,654	389	25,283	4,591	22,787	3,892	568	127	459	100	225	12	29	190	35	481	80	417	47	425	55	57,171	
COOK 037	1,083	0	729	0	2,645	0	2,302	0	1	2	0	3	0	7	0	11	0	9	0	14	0	42	0	6,847	0
COVINGTON 038	4,282	116	3,011	66	22,999	1,434	21,154	1,285	80	3	51	5	129	2	135	1	150	2	146	4	640	22	82,779	2,899	
CRANFORD 039	813	0	587	0	2,342	0	2,121	0	2	0	1	0	2	0	3	0	9	0	9	0	26	0	5,915	0	
CHIEF 040	1,935	342	1,125	167	3,167	1,032	2,618	799	11	18	2	11	27	3	20	1	16	2	15	2	82	14	8,991	2,365	
DAVE 041	13	0	15	0	4,458	0	3,975	0	10	0	6	0	8	0	1	0	6	0	9	0	73	0	8,576	0	
DANNON 042	11	9	1	3	5,316	1,832	4,744	1,853	11	9	1	4	75	3	19	5	11	9	22	27	6	26	35	28	2,10,195
DECATUR 043	2,680	0	1,584	0	4,308	0	3,673	0	13	0	7	0	20	0	0	0	22	0	22	0	49	0	0	0	12,380
DEKALB 044	112,658	27,75	417	18	74,908	0	64,570	0	31	2,185	0	1	2,258	0	1,440	0	1	1,177	0	1	2,398	0	1	1,893	0
DOUGLASS 045	1,456	0	909	0	4,191	0	3,715	0	2	0	3	0	3	0	3	0	10	0	10	0	9	0	0	0	10,313

9/01/05
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GEORGIA SECRETARY OF STATE
VOTER REGISTRATION SYSTEM
ABSENTEE VOTERS BY RACE/GENDER
GENERAL ELECTION VOTING DISTRICT
ELECTION DATE: NOVEMBER 02, 2004

SRCR OF STATE

	BLACK FEMALE		BLACK MALE		WHITE FEMALE		WHITE MALE		ASIA-P1 FEMALE		ASIA-P1 MALE		HISP-L2 FEMALE		HISP-L2 MALE		OTHER FEMALE		OTHER MALE		UNKNOWN		TOTAL VOTERS	
	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED
DOOLEY 046	1,508	0	956	0	1,471	0	1,247	0	2	0	0	0	11	0	27	0	24	0	28	0	37	0	5,119	0
DODDRE 047	15,901	2,065	10,082	932	10,356	2,078	8,615	1,424	57	7	56	7	64	3	58	5	106	5	101	16	298	21	45,675	6,593
DOODIA 048	8,598	1,022	5,562	565	19,589	3,011	17,106	2,380	110	15	109	7	156	15	137	11	300	32	242	22	705	57	52,614	7,147
EARLY 049	1,633	0	1,056	0	1,935	0	1,724	0	4	0	2	0	4	0	0	0	6	0	6	0	23	0	6,383	0
ERBOLD 050	75	0	39	0	759	0	690	0	0	0	0	0	12	0	12	0	10	0	7	0	7	0	1,611	0
ERTING 051	1,349	24	1,009	2	9,650	293	8,911	222	33	0	15	0	47	6	41	2	29	0	35	1	131	2	21,250	364
ELBERT 052	1,633	0	1,122	0	3,929	0	3,487	0	12	0	9	0	7	0	6	0	16	0	11	0	13	0	10,205	0
EMANUEL 053	2,131	0	1,468	0	4,217	0	3,842	0	6	0	4	0	8	0	7	0	21	0	12	0	33	0	11,749	0
EVANS 054	961	0	641	0	1,951	0	1,754	0	3	0	4	0	8	0	13	0	21	0	13	0	9	0	5,388	0
FABRIN 055	5	0	6	0	6,804	0	6,161	0	1	0	3	0	2	0	5	0	10	0	6	0	51	0	13,054	0
FAYET 056	4,795	1,080	3,711	786	26,018	6,263	23,411	5,306	248	37	189	25	228	28	203	28	433	79	366	57	1,583	315	61,185	14,004
FLOYD 057	2,911	256	1,751	145	19,799	2,296	17,087	1,772	123	10	121	9	152	10	144	5	90	4	52	2	243	16	42,473	4,297
FONST 058	306	46	276	19	33,965	7,535	31,300	6,415	253	49	206	23	221	22	250	25	161	20	140	14	128	28	67,206	14,226
FONNIE 059	388	0	219	0	4,844	0	4,348	0	14	0	12	0	10	0	10	0	8	0	3	0	37	0	9,891	0
FURFON 060	110,184	15	78,235	9	117,780	0	110,543	0	14	0	1,457	0	945	0	958	0	5,014	0	4,874	1	16,300	0	1447,838	61

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GEORGIA SECRETARY OF STATE
VOTER REGISTRATION SYSTEM
ASSEMBLY VOTING BY RACE/GENDER
GENERAL ELECTION VOTING HISTORY
ELECTION DATE: NOVEMBER 02, 2004

SEN OF STATE

PAGE

5

CITY	CITY	BLACK FEMALE		BLACK MALE		WHITE FEMALE		WHITE MALE		ASIA-PI FEMALE		ASIA-PI MALE		HISP-LAT FEMALE		HISP-LAT MALE		OTHER FEMALE		OTHER MALE		UNKNOWN		TOTAL		VOTED	
		REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED		
CLAYTON 061	9	1	10	0	6,889	1,647	6,534	1,411	5	20	1	4	0	22	5	24	4	1	22	14	3	20	10	80	8	13,719	3,079
CLAYTON 062	53	0	42	0	780	0	653	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	0	1,549	0
CLAYTON 063	4,407	0	1,278	0	3,154	0	13,267	0	17	46	0	35	0	0	0	0	0	60	0	132	0	98	0	192	1	2,361,957	0
COBURN 064	369	59	295	43	10,491	2,143	9,555	1,726	24	2	2	29	4	96	9	97	2	61	5	8	5	66	12	53	2	21,136	4,003
GRADY 065	1,804	0	5	1,086	1	6	4,296	0	9	3,684	0	4	0	5	0	34	0	21	0	34	0	17	0	59	0	11,044	0
GRADY 066	1,920	0	1,197	0	2,964	0	2,688	0	3	0	0	1	0	4	0	3	0	0	0	0	0	14	0	40	0	8,822	0
GRADY 067	29,911	2,280	20,873	1,373	115,386	13,234	103,301	10,787	3,982	208	4,359	229	5	2,771	120	2,560	118	3,494	227	3,267	199	9,804	612,299	680	20,484	10,484	
BARBER 068	163	35	132	17	9,473	1,464	7,751	1,161	38	5	13	46	0	39	3	52	4	46	3	7	3	29	3	90	5	16,859	2,714
BALL 069	2,438	332	1,518	156	29,239	4,650	25,898	3,689	130	19	138	12	585	27	604	35	249	16	265	21	404	33	41,458	8,990	15	8,990	15
BANNOCK 070	2,433	334	1,895	225	632	109	640	104	1	0	0	0	0	1	0	0	0	6	0	3	33	1	28	0	5,599	14	
BANNOCK 071	347	54	241	38	6,824	1,374	6,008	1,161	7	29	2	12	25	3	1	0	0	11	2	16	3	95	6	6,131,566	2,643		
BANNOCK 072	1,324	43	1,054	20	6,413	346	6,201	5	32	3	1	6	0	28	4	25	0	51	4	2	36	11	98	1	13,468	741	
BANK 073	979	0	635	0	5,202	0	4,738	0	21	0	0	16	0	9	0	8	0	12	0	13	0	40	0	31,673	0		
BANK 074	387	0	332	0	2,678	0	2,414	0	6	0	0	1	0	5	0	7	0	11	0	6	0	32	0	5,889	0		
BANK 075	10,677	1,670	7,580	1,130	31,387	7,163	28,005	5,615	351	53	289	30	347	47	287	42	460	38	377	56	1,685	378	81,455	16,042	20	8,208	20

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GEORGIA SECRETARY OF STATE
VOTER REGISTRATION SYSTEM
ABSENTEE VOTERS BY RACE/SEX/EDUCATION
GENERAL ELECTION VOTING HISTORY
ELECTION DATE: NOVEMBER 02, 2004

SECR OF STATE

CMTY	CTY	BLACK FEMALE		BLACK MALE		WHITE FEMALE		WHITE MALE		ASIA-PI FEMALE		ASIA-PI MALE		HISP-LT FEMALE		HISP-LT MALE		OTHER FEMALE		OTHER MALE		OVERSNG		TOTAL VOTERS			
		REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED		
ROBERTO	016	1,453	916	5,051	563	22,681	4,087	20,047	3,371	328	41	188	24	243	23	214	22	341	45	225	10	363	38	57,152	9,153		
IMPIN	017	584	0	371	0	1,760	0	1,601	0	2	0	1	0	3	0	3	0	2	0	2	0	10	0	4,339	0		
JACKSO	018	665	140	499	74	10,336	1,774	9,206	1,515	41	10	4	32	2	44	5	47	11	28	6	37	7	112	10	21,047	3,548	
JASPER	019	784	174	527	113	2,505	612	2,276	507	1	0	3	0	6	0	8	2	4	1	3	1	24	4	6,141	1,411		
JEFF D	020	590	88	407	48	3,187	523	2,762	459	1	0	2	0	16	1	16	3	17	0	14	1	9	1	7,024	1,134		
JEFFER	021	2,880	283	1,887	146	2,290	477	2,007	328	2	50	1	1	5	0	3	0	13	1	4	0	15	3	9,107	1,250		
JENNIF	022	1,101	209	684	18	1,468	35	1,304	32	3	0	6	4	5	0	3	0	7	3	3	0	10	2	4,584	1,277		
JOHNS	023	822	0	550	0	1,817	0	1,668	0	2	0	4	0	2	0	4	0	2	0	4	0	15	0	4,968	0		
JONES	024	1,744	0	1,233	0	5,343	0	4,784	0	24	0	12	0	15	0	7	0	23	0	15	0	112	0	13,332	0		
LANON	025	1,303	2	922	0	3,349	5	2,983	8	5	0	5	0	7	0	5	0	23	0	21	0	112	0	8,735	15		
LANIER	026	468	0	338	0	1,451	0	1,250	0	4	0	2	0	5	0	5	0	17	0	6	0	33	0	3,579	0		
LANHAM	027	4,239	0	2,790	0	8,677	0	7,728	0	39	0	43	0	21	0	15	0	24	0	28	0	69	0	23,673	0		
LEE	028	958	195	789	105	5,608	1,209	5,267	993	18	17	3	15	0	15	13	2	14	2	36	3	41	10	221	32	13,182	2,514
LIMBERT	029	3,189	1	62	3,181	1	46	4,600	3	124	152	3	74	1	330	0	1	203	1	3	112	2	110	3	17,979	2	375
LINCOL	030	829	0	563	0	1,771	0	1,646	0	3	0	1	0	4	0	2	0	0	0	0	0	2	0	4,821	0		

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GEORGIA SECRETARIAT OF STATE
VOTER REGISTRATION SYSTEM
ABSENTEE VOTERS BY RACE/GENDER
GENERAL ELECTION VOTING HISTORY
ELECTION DATE: NOVEMBER 02, 2004

PAGE OF STATE

PAGE

7

CITY	CITY	BLACK FEMALE		BLACK MALE		WHITE FEMALE		WHITE MALE		ASIAN-P1 FEMALE		ASIAN-P1 MALE		HISP-L1 FEMALE		HISP-L1 MALE		OTHER FEMALE		OTHER MALE		UNKNOWN		TOTAL VOTERS	
		REG	NOTED	REG	NOTED	REG	NOTED	REG	NOTED	REG	NOTED	REG	NOTED	REG	NOTED	REG	NOTED	REG	NOTED	REG	NOTED	REG	NOTED	REG	NOTED
LONG	081	653	0	423	0	1,939	0	1,745	0	13	0	7	0	53	0	46	0	26	0	19	0	10	0	4,934	0
LONG	082	6,397	1,450	4,556	826	14,431	3,929	12,648	3,128	110	20	70	12	91	23	81	16	139	32	149	28	578	68	39,822	9,530
LONG	083	60	17	53	6	6,066	1,187	5,281	1,043	18	3	9	3	59	3	32	5	32	4	27	4	45	5	11,690	2,280
LONG	084	2,287	574	1,494	296	1,384	568	1,297	494	13	4	17	7	7	14	13	2	11	2	6	0	26	4	6,535	1,952
LONG	085	516	0	1,352	0	6,123	47	5,421	45	18	0	8	0	25	0	14	0	7	0	15	0	33	0	12,532	94
LONG	086	797	0	566	0	1,367	0	1,331	0	4	0	7	0	12	0	15	0	15	0	17	0	18	0	4,149	0
LONG	087	2,087	5	108	1,212	3,782	6,218	3,199	7,208	11	0	8	0	22	0	15	0	10	0	10	0	38	0	10,374	584
LONG	088	1,392	0	881	0	2,130	0	2,026	0	8	0	4	0	6	0	4	0	2	0	9	0	12	0	6,574	0
LONG	089	2,580	0	1,711	0	3,787	0	3,203	0	2	0	7	0	2	0	0	0	23	0	9	0	115	0	11,439	0
LONG	100	517	0	366	0	1,515	0	1,315	0	2	0	2	0	1	0	2	0	5	0	4	0	10	0	3,738	0
LONG	101	2,557	483	1,619	250	3,032	843	2,604	628	9	2	8	2	7	0	9	0	3	0	3	0	91	12	9,942	2,222
LONG	102	1,673	400	1,117	208	5,056	1,084	4,637	947	7	1	11	1	5	0	8	13	33	7	37	7	71	6	12,655	2,632
LONG	103	540	0	383	0	1,685	0	1,508	0	0	0	1	0	2	0	1	0	2	0	5	0	3	0	4,130	0
LONG	104	1,078	170	687	13	3,430	603	3,128	670	8	13	5	20	16	6	13	2	13	2	6	17	84	16	8,488	1,758
LONG	105	32	0	33	0	7,709	0	7,127	0	8	0	3	0	81	0	129	0	43	0	40	0	138	0	15,363	0

9/01/05
 STATEMENTS

GEORGIA SECRETARY OF STATE
 VOTER REGISTRATION SYSTEM
 ASSEMBLY VOTERS BY RACE/GENDER
 GENERAL ELECTION VOTING DISTRICT
 ELECTION DATE: NOVEMBER 02, 2004

SECRET OF STATE

DISTRICT NAME	BLACK FEMALE		BLACK MALE		WHITE FEMALE		WHITE MALE		ASIAN-PI FEMALE		ASIAN-PI MALE		HISP-LAT FEMALE		HISP-LAT MALE		OTHER FEMALE		OTHER MALE		UNKNOWN	TOTAL VOTERS
	REG	%	REG	%	REG	%	REG	%	REG	%	REG	%	REG	%	REG	%	REG	%	REG	%		
CHRYSTAL	4	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0
MUSCOC 106	22,395	10.8%	2,267	10.1%	15,135	14.8%	26,075	14.8%	21,242	12.8%	366	7.8%	25	6.8%	219	6.8%	516	7.8%	37	4.8%	426	9,806
NEWTON 107	4,349	14.8%	871	12.8%	3,478	15.8%	14,064	15.8%	12,339	14.8%	1,698	3.8%	37	3.8%	1	3.8%	32	6.8%	2	6.8%	125	5,205
OCCUR 108	375	26.8%	98	25.8%	266	34.8%	8,209	34.8%	7,364	31.8%	2,272	31.8%	63	27.8%	17	29.8%	20	28.8%	38	28.8%	11	5,331
OGLAWE 109	644	14.8%	98	11.8%	422	11.8%	3,039	23.8%	2,815	22.8%	613	22.8%	6	0.8%	2	0.8%	0	17.8%	1	5.8%	0	1,473
PAULDI 110	3,231	15.8%	480	14.8%	2,751	15.8%	23,353	15.8%	20,711	14.8%	2,908	14.8%	46	17.8%	8	10.8%	4	13.8%	9	12.8%	10	7,367
FRANCE 111	2,555	21.8%	534	18.8%	1,707	18.8%	3,409	25.8%	3,140	23.8%	723	17.8%	18	17.8%	3	12.8%	2	17.8%	2	17.8%	44	2,435
PIGGMAN 112	54	17.8%	9	11.8%	56	28.8%	7,120	28.8%	6,457	26.8%	1,688	31.8%	13	4.8%	8	25.8%	2	19.8%	5	26.8%	19	3,772
PIERCE 113	483	9.8%	40	11.8%	322	12.8%	3,776	12.8%	3,180	14.8%	457	3.8%	3	0.8%	0	1.8%	0	11.8%	0	0.8%	5	1,009
PIKE 114	557	0.8%	0	0.8%	434	0.8%	3,716	0.8%	3,427	0.8%	0	7.8%	0	0.8%	5	0.8%	0	10.8%	0	0.8%	6	0
POLE 115	1,189	0.8%	0	0.8%	800	0.8%	7,895	0.8%	7,073	0.8%	0	12.8%	0	0.8%	6	0.8%	0	39.8%	0	0.8%	81	0
PUTNAM 116	748	0.8%	0	0.8%	508	0.8%	1,860	0.8%	1,735	0.8%	0	3.8%	0	0.8%	3	0.8%	0	5.8%	0	0.8%	0	0
PUTNAM 117	1,523	21.8%	325	16.8%	1,063	16.8%	4,122	32.8%	3,685	30.8%	1,111	10.8%	10	0.8%	4	0.8%	0	3.8%	0	0.8%	8	2,946
QUINCY 118	414	0.8%	0	0.8%	266	0.8%	442	0.8%	377	0.8%	0	0.8%	0	0.8%	0	0.8%	0	0.8%	0	0.8%	5	0
RADNOR 119	12	0.8%	0	0.8%	11	0.8%	4,333	2.8%	3,795	2.8%	7	0.8%	0	0.8%	8	0.8%	0	10.8%	0	0.8%	16	169
RANDOLPH 120	1,389	0.8%	4	0.8%	835	0.4%	968	0.8%	871	0.8%	2	1.8%	0	0.8%	2	0.8%	0	1.8%	0	0.8%	3	0

9/07/05
REV0437653

GEORGIA SECRETARY OF STATE
VOTER REGISTRATION SYSTEM
ASSEMBLY VOTERS BY RACE/GENDER
GENERAL ELECTION VOTING HISTORY
ELECTION DATE: NOVEMBER 02, 2004

RECORD OF STATE

PAGE

9

CITY	CITY	BLACK FEMALE		BLACK MALE		WHITE FEMALE		WHITE MALE		ASIAN-FI FEMALE		ASIAN-FI MALE		HISP-LC FEMALE		HISP-LC MALE		OTHER FEMALE		OTHER MALE		UNKNOWN		TOTAL VOTERS									
		REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED								
MOONDA 122	6,726	1,003	4,533	560	14,312	2,646	12,780	2,070	197	23	214	20	191	22	202	17	72	5	63	4	488	13	39,778	5,283									
MOONDA 122	15	12	18	18	16	16	16	16	12	12	9	9	12	12	8	8	7	7	7	7	17	6	1,211	28									
MOONDA 122	311	127	220	58	826	343	736	280	0	0	0	0	2	0	1	0	1	0	7	14	1	17	6	810									
MOONDA 122	41	26	26	42	42	38	38	280	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	28									
MOONDA 122	1,730	0	1,213	0	2,471	0	2,174	0	5	0	3	0	4	0	6	0	11	0	5	0	18	0	7,640	0									
MOONDA 122	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0									
MOONDA 122	848	0	543	0	1,869	0	1,633	0	2	0	0	0	7	0	4	0	4	0	9	0	7	0	4,946	1									
MOONDA 122	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0									
MOONDA 122	4,742	759	2,883	297	10,551	2,077	9,280	1,498	35	14	5	26	44	2	31	1	77	6	5	78	7	377	16	28,082	4,659								
MOONDA 122	16	10	10	20	20	16	16	1,498	17	17	3	12	2	9	11	1	31	19	6	22	5	53	8	4,099	32								
MOONDA 122	605	28	489	440	21	96	6,129	2,067	5,413	1,726	17	29	3	18	22	4	13	17	2	9	11	1	31	19	6	22	5	53	8	4,099	32		
MOONDA 122	1,033	0	800	0	0	0	604	0	2	0	0	0	2	0	2	0	4	0	3	0	3	0	3	0	3,100	0	0						
MOONDA 122	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
MOONDA 122	4,240	0	2,794	0	1	4,533	0	1	3,908	0	1	5	0	5	0	15	0	87	0	68	0	205	0	15,872	0	3							
MOONDA 122	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
MOONDA 122	1,323	173	979	103	836	109	825	100	1	0	2	1	1	0	1	0	3	0	3	0	11	9	1	3,985	487								
MOONDA 122	13	11	11	13	13	12	12	100	0	0	50	1	0	0	0	0	0	0	0	0	0	0	0	0	12	0	0	0	0	0	0	0	0
MOONDA 122	423	135	365	97	300	94	258	71	2	0	1	0	0	0	0	0	6	3	4	25	1	2	0	1,361	421								
MOONDA 122	37	27	27	31	31	28	28	71	0	0	0	0	0	0	0	0	50	3	4	25	1	2	0	1,361	421								
MOONDA 122	1,184	114	850	76	3,876	640	3,453	505	11	3	8	0	56	2	53	3	18	1	18	1	22	1	9,549	1,346									
MOONDA 122	10	9	9	17	17	15	15	505	11	27	3	8	0	4	6	6	1	1	1	1	22	1	9,549	1,346									
MOONDA 122	1,028	150	703	89	1,419	344	1,323	265	1	0	0	0	2	0	4	0	5	0	4	0	10	0	4,501	868									
MOONDA 122	15	13	13	24	24	22	22	265	1	0	0	0	2	0	4	0	5	0	4	0	10	0	4,501	868									
MOONDA 122	1,006	0	711	0	1	2,021	0	1,783	0	0	4	0	3	0	10	0	2	0	2	0	7	0	5,564	0	1								
MOONDA 122	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
MOONDA 122	1,719	241	1,070	108	1,282	212	1,152	151	3	0	6	1	3	0	2	0	4	0	4	0	4	0	4	0	5,259	14	113						
MOONDA 122	14	10	10	16	16	13	13	151	3	0	17	1	3	0	2	0	4	0	4	0	4	0	4	0	5,259	14	113						

9/07/05
REV0037683

GEORGIA SECRETARIAT OF STATE
VOTER REGISTRATION SYSTEM
ASSEMBLY VOTERS BY RACE/GENDER
GENERAL ELECTION VOTING HISTORY
ELECTION DATE: NOVEMBER 02, 2004

SECT OF STATE

PAGE 13

CITY	CITY	BLACK FEMALE		BLACK MALE		WHITE FEMALE		WHITE MALE		ASIA-PI FEMALE		ASIA-PI MALE		HISP-LA FEMALE		HISP-LA MALE		OTHER FEMALE		OTHER MALE		OVERSAMP		TOTAL VOTERS			
		REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED
THOMAS 136	3,627	128	2,341	73	7,424	706	6,523	496	22	5	1	18	3	22	5	1	27	0	49	1	22	1	227	13	20,502	1,423	
WLF 137	2,278	20	1,259	17	6,416	54	5,535	47	35	0	25	0	40	3	1	49	2	2	3	1	30	0	100	1	15,802	142	
TOONDA 138	1,579	1	964	1	4,802	19	4,167	10	11	0	18	0	48	0	0	44	0	54	0	53	0	74	0	0	11,614	31	
THOMAS 139	1	0	0	0	3,560	0	3,216	0	3	0	0	0	3	0	0	4	0	0	0	0	0	0	2	0	6,789	0	
TRUSTY 140	688	0	461	0	1,427	0	1,278	0	1	0	0	0	2	0	0	5	0	0	0	0	0	0	1	0	3,863	0	
THOOD 141	4,907	203	3,130	113	11,290	823	9,701	833	32	3	35	0	28	0	0	29	3	86	5	56	3	455	8	29,749	1,992		
TUNNER 142	864	285	514	153	1,471	234	1,254	164	4	0	4	0	1	0	0	3	0	4	0	4	0	16	0	4,139	208		
THOOD 143	1,436	331	1,107	238	1,746	355	1,653	332	3	33	1	0	6	0	0	2	50	1	5	40	2	8	1	34	5	6,001	1,266
UNION 144	8	2	0	13	6,007	1,521	5,380	1,172	9	33	3	2	50	1	7	14	1	4	25	1	0	0	87	12	11,526	2,716	
PERSON 145	2,090	0	1,356	0	5,422	0	4,856	0	5	0	0	4	0	6	0	2	0	34	0	27	0	83	0	0	13,685	0	
WALKER 146	597	47	420	37	16,071	1,262	13,850	1,008	5	0	7	1	15	0	0	16	0	49	4	4	4	49	3	624	37	31,703	2,399
WALTON 147	2,233	242	1,428	124	15,738	2,135	13,743	2,351	41	27	11	31	8	66	6	64	8	96	11	80	13	1,134	164	34,655	6,298		
WALKER 148	2,228	1	24	1,221	0	6,285	1	5,031	2	78	17	0	18	6	1	15	0	33	0	39	0	32	0	0	14,933	1	
WALKER 149	1,173	10	713	1	789	3	744	2	15	4	0	1	0	1	0	0	0	1	0	0	0	5	0	0	3,437	1	
WALKER 150	2,948	0	1,928	0	3,093	0	2,689	0	2	0	0	3	0	5	0	0	15	0	8	0	0	0	21	0	10,720	0	

8/07/05
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OHIO SECRETARY OF STATE
 VOTER REGISTRATION SYSTEM
 ASSEMBLY VOTES BY RACE/GENDER
 GENERAL ELECTION VOTING HISTORY
 ELECTION DATE: NOVEMBER 02, 2004

STATE OF OHIO

CITY CTR NAME CDR	BLACK FEMALE		BLACK MALE		WHITE FEMALE		WHITE MALE		ASIA-PI FEMALE		ASIA-PI MALE		HIS-IT FEMALE		HIS-IT MALE		OTHER FEMALE		OTHER MALE		UNKNOWN		TOTAL VOTES							
	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED	REG	VOTED						
WATNE 151	1,080	0	0	0	0	0	5,877	14	4,901	0	8	15	0	9	0	26	0	21	0	12	0	24	0	70	1	12,521	0	23		
WENGER 152	368	0	234	0	378	0	0	0	357	0	0	0	0	0	0	1	0	3	0	0	0	3	0	4	0	12	0	1,377	0	0
WHEEL 153	430	0	336	0	1,104	0	0	0	1,019	0	0	0	0	0	0	1	0	3	0	5	0	0	2	0	0	0	2,920	0	0	
WHITE 154	88	0	61	0	6,080	0	0	0	5,312	0	0	10	0	11	0	15	0	10	0	12	0	13	0	60	0	11,672	0	0		
WITTE 155	792	91	693	40	17,043	2,069	15,028	1,618	78	10	92	10	579	7	737	20	94	7	102	9	305	14	35,573	11	305	14	35,573	11	0	
WILCOX 156	637	2	376	0	1,361	18	1,241	10	1,241	10	0	0	0	1	0	3	0	6	0	7	0	7	0	5	0	11	0	3,648	1	30
WILKER 157	1,401	13	177	949	10	1,921	26	1,748	22	4	50	2	1	0	2	0	3	0	7	14	1	3	0	0	0	6,039	1,165	19		
WILSON 158	1,398	0	931	0	1,824	0	1,560	0	2	0	1	0	1	0	1	0	2	0	2	0	0	3	0	0	59	0	5,782	0	1	
WONTE 159	1,498	0	963	0	3,826	0	3,416	0	9	0	3	0	12	0	4	0	23	1	24	1	63	0	9,901	0	63	0	9,901	0	14	