

May 2010

## Voter Identification Laws: The Impact on Latinos

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Lawmakers and policy pundits complain that voter fraud has corrupted the electoral process and driven honest citizens out of the democratic process and bred distrust of our government. Congress and state legislatures have debated voter identification legislation for years, arguing that it will reduce and possibly eliminate fraud at the poll site. A dearth of evidence suggests that voter fraud occurs at the polls, and some studies find that voter identification laws may lower voter turnouts amongst eligible voters. Voter identification laws are growing around the country, and as Election Day nears, Members of Congress may push for sweeping voter reform measures with a federal voter identification law provision. Before policymakers vote yes for a comprehensive voter reform package that includes a federal voter identification law, representatives must ask themselves whether their yes vote, will strip some voters, overwhelmingly people of color, the poor, and the elderly, their day at the poll.

### Voter identification laws

Voter identification laws are intended to establish that the voter at the polling site is the person on the roll. Under current federal law, the Help America Vote Act (HAVA) requires any voter who registers to vote by mail and has not previously voted in a Federal election to show 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 name and address of the voter.<sup>1</sup> Amongst the states, voting identification requirements differ, and in 2005, two-thirds of the U.S. population lived in the majority of states that did not request documentary evidence at the polls beyond federal requirements for first-time voters.<sup>2</sup> A handful of states request that voters produce documentary identification and give them the option to produce either a photo-identification card, such as a driver's license, or a nonphotographic form of identification, such as a utility bill, bank statement, government check, or paycheck.<sup>3</sup> A few states request that a voter produce a form of photo identification,

but allow a voter who lacks photo identification to establish the voter's identity, such as signing an affidavit or reciting her birth date and address.<sup>4</sup> Just under a dozen states require documentary identification as an absolute requirement to vote.

Although very few states require only photographic identification for all voters who vote in person, pushes for voting photo identification requirements may be on the horizon. The Commission on Federal Election Reform released a report entitled *Building Confidence in U.S. Elections* recommending that the states adopt a photo-identification requirement.<sup>5</sup> Laws across the states suggest that a national voter identification law may soon be at the center of legislative debates.<sup>6</sup> In 2004, Arizona voters approved proposition 200, which among other things, strictly enforced new requirements that identification be shown at the polling place before a citizen could vote. Similar laws have popped up in other states and as of January 2008, courts in Arizona, Colorado, Georgia, Indiana, Michigan, Missouri, New Mexico, and Ohio have heard challenges to voter iden-

tification laws.<sup>7</sup> Only two states, Missouri and New Mexico, heard successful challenges to voter identification laws, signifying that voter identification laws are increasingly difficult to challenge.<sup>8</sup>

At the heart of the debate driving voter identification laws, is the concern that voter fraud is corrupting the political process.<sup>9</sup> A 2005 U.S. Senate Policy Committee Report claimed that "voter fraud continues to plague our nation's federal elections, diluting and canceling out the lawful votes of the vast majority of Americans."<sup>10</sup> The Supreme Court in *Crawford v. Marion County Election Bd.*, said that a voter identification law "protect[ed] the integrity and reliability of the electoral process itself. The implementation of a voter identification law would give states the right to "return integrity to the ballot box." Voter identification laws have public support. In 2006, the Cooperative Congressional Election Survey, conducted a 36,500 person national sample survey, and found that over 75 percent of the respondents express their support for voter identification requirements; 17 percent were opposed, and 8 percent were unsure.<sup>11</sup>

Responding to concerns of voter fraud,

the U.S. Department of Justice began the Ballot Access and Voting Integrity Initiative (BAVII) to investigate voter fraud and prosecute offenders. Government records show that only 24 people have been convicted or plead guilty to illegal voting between 2002 and 2005 nationally.<sup>12</sup> Other studies have found the same. The Brennan Center for Justice sought to learn the truth about voter fraud in a study promulgated in 2007 and looked at different forms of voter fraud. The study found that there have been a handful of ineligible voters attempting to cast votes and called voter fraud “rare,” noting that individual voters risk five years in prison and a \$10,000 fine for casting fraudulent votes in federal elections.<sup>13</sup> Similarly, Professor Minnite and Callahan found that the incidence of voter fraud at the polls is negligible.<sup>14</sup> This is serious. The push for photo-identification requirement is not supported by data showing that voter fraud occurs at the poll site, and yet policy makers continue to demand voter identification legislation. Members of Congress should call for databases that record all investigations, allegations, charges, trial, acquittals, and plea bargains regarding voter fraud before they consider voter identification legislation.

In light of the little evidence of voter fraud, civil right advocates have complained that voter identification requirements unfairly increase burdens to the poll, and that more rigorous and demanding identification requirements falls hardest on people of color, the poor, the elderly, and the disabled.<sup>15</sup> Representative Sue Burmeister, a sponsor of the Georgia voter identification law, however reasoned that “if there are fewer black voters because of this bill, it will only be because there is less opportunity for fraud.” While the state has an important interest in combating voter fraud,<sup>16</sup> the problem with a federal voter identification requirement is that requiring a voter to show photo identification before casting a regular ballot only addresses in-person impersonation, and there is no proof this type of voter fraud occurs.

A driver’s license is the most common form of state-issued photo identification. In 2001, the National Commission on Election Reform collected research

showing that between six and ten percent of voting age Americans do not have a driver’s licenses or state-issued non-driver’s photo ID.<sup>17</sup> The Brennan Center for Justice conducted a survey that estimated that twenty-two million voting-age citizens lack a driver’s license. The Supreme Court in *Crawford* recognized that voter identification laws could suppress voter turnout, stating Indiana’s “‘Voter Id Law’ threatens to impose nontrivial burdens on the voting right of tens of thousands of the State’s citizens, and a significant percentage of those individuals are likely to be deterred from voting.”<sup>18</sup> In *Crawford*, the Supreme Court said that “that around 43,000 Indiana residents lack the needed identification and will bear the burdens the law [Indiana’s voter identification requirement] imposes.”<sup>19</sup> Obtaining an ID may not be easy for some voters. In Georgia, for example, there are only 56 locations in the state of Georgia that issue IDs for residents of all the state’s 159 counties.<sup>20</sup> Some legitimate voters who have been issued a driver’s license or other identification may not bring it to the polls because the card was stolen, lost, or simply forgotten.<sup>21</sup> Obtaining an ID, which must be obtained at a specified government office, may not be easy for all voters.

The actual level of voter disenfranchisement may lie in the silence of available data. In 2004, one county in Arizona, which requires proof of citizenship in order to register to vote, reported that it was forced to reject nearly 75% of new registration forms for failure to provide adequate proof of citizenship.<sup>22</sup> In a widely reported story from the 2008 presidential primary in Indiana, twelve elderly nuns were turned away from their resident convent polling place by a fellow sister because they failed to comply with the state’s new voter identification rules.<sup>23</sup>

In light of this data, should policymakers continue to consider voter identification requirements, such mandates should expand acceptable identification documentation to include non-photo identification, such as a utility bill or bank statement. This mandate is in place in ten states as of now, and for first-time voters who registered by mail in all states.

### **Sweeping voter reform measures will probably not mitigate the harm caused by a national federal identification requirement.**

The problem with the push for voter identification laws is that there is no evidence that individual voters misrepresent their identity at the polls occurs in anything but negligible numbers. In other words, legislatures seek to regulate a class – potential voters who will misrepresent their identity at the polls to cast a vote – and the law would prevent a rare crime at the expense of 20 million eligible voters. Supporters of voter identification requirements, such as the Carter-Baker Commission did, would likely address concerns that a voter identification law would suppress access to the polls by proffering legislation that offer provisional ballots, poll worker training, and other provisions aimed at improving access to the polls. But given that some studies indicate that a national voter identification law could suppress up to 20 million eligible voters, would such proffered legislation mitigate the harm?

### **Provisional ballots.**

HAVA establishes provisional balloting requirements for federal elections, and permits a voter who does not appear on the official list of eligible voters for the polling place, or a voter challenged as not eligible to vote, to cast a provisional ballot in a federal election and have it counted once the voter’s eligibility is verified. A continued mandate for provisional ballots would likely be a central component of any voter reform package, and provisional ballots would continue to be used to provide a back-up in the event that there are problems with voter identification. Although it is not clear exactly what provisions the provisional ballot would contain, generally the provisional ballot would allow a voter who does not possess the requisite identification at the poll to cast a provisional ballot, and then later satisfy identification requirements so that their vote would be cast.<sup>24</sup>

Provisional ballots have been found to be far from a perfect backup. According to research by the Pew Center on the States, more than two million provisional

ballots were submitted nationwide during the 2008 presidential election. Of these, more than 1.4 million, or approximately 70 percent of all provisional ballots, were counted. Nearly 600,000 were rejected. In more than 30 states and the District of Columbia, provisional ballots are not eligible to be counted if they are cast in the wrong precinct. Nationally, more than 50,000 provisional ballots were rejected for being cast in the wrong precinct. These statistics imply that voters possibly lacked the information they needed to verify their registration and precinct, and locate their polling place prior to Election Day.

After Indiana's enacted an election law (SEA 483) requiring citizens voting in person to present government-issued photo identification, the Supreme Court heard a challenge to SEA 483 in *Crawford*, and Justice Souter reasoned that the relief provided by provisional ballots "does not amount to much relief."<sup>25</sup> He concluded that the law restricted the rights of a significant number of voters as he found that approximately 43,000 Indiana residents lacked the necessary identification and would be discouraged or prevented from voting. Justice Souter found that the state's reasons for the law did not justify the burden: The state's interest in preventing voter fraud was insufficient because the law prevented only undocumented forms of voter fraud. He said:

*"All of this suggests that provisional ballots do not obviate the burdens of getting photo identification. And even if that were not so, the provisional-ballot option would be inadequate for a further reason: the indigency exception by definition offers to relief to those voters who do not consider themselves (or would not be considered) indigent but as a practical matter would find it hard, for nonfinancial reasons, to get the required ID (most obviously the disabled)."*<sup>26</sup>

While no study to date could be found that has researched whether mandated provisional ballots would mitigate the harm caused by a national voter identification law, Justice Souter's reasoning in *Crawford* makes sense. If a voter does not

have the requisite identification to vote at the poll site, such voter may not be able to surmount the barriers of obtaining the requisite identification in order to properly cast the ballot. And if such voter can obtain the requisite identification, such voter may not spend the increased time and effort to satisfy the formalities of the provisional ballot. More comprehensive evidence is needed, however, to determine how many legitimate voters will continue to go uncast or uncounted because (1) voters do not process photo-identification cards, or (2) voters do not make or have the time to return to an elections office.

### **Poll worker training**

Poll workers are supposed to ensure the conduct of fair and accurate elections. They prepare the precinct by setting up voting equipment, greeting voters, verify registrations and providing voters with appropriate ballots, and serving as translators and as roving voting equipment technicians. The requirements to become a poll worker differ amongst the states and are governed by State election statutes and administrative regulations.<sup>27</sup>

As feared by civil rights advocates, poll workers have been found to apply voter identification regulations differently along racial lines. Blacks and Hispanics showed their identification 52% of the time during the 2006 election, while whites and Asians, Native Americans, and "other[s]" showed their identification 45% of the time.<sup>28</sup> Nationwide, and not controlling for other factors, blacks and Latinos are asked to show identification 7% more frequently than whites and members of other racial groups.<sup>29</sup> These disparities may be because in practice, poll workers have considerable discretion in the application of identification rules: they may ignore the rule altogether or they may ask for identification even when the law does not require it or when they are forbidden from doing so.

Empirical data showing that poll workers apply identification regulations differently amongst racial lines undoubtedly shows that poll worker training needs to be augmented.<sup>30</sup> Voter reform measures targeting poll worker training

can require that training includes a review of the United States electoral system, an introduction of relevant electoral laws such as HAVA, a discussion of citizenship and civic duty, an analysis of the development of the right to vote, current issues of voting, a discussion of the special role of local government, and an analysis on barriers that members of minority groups may face when attempting to vote.

In addition to augmenting poll worker training, election officials should strive to create diverse poll worker teams, particularly in communities where census data and demographics show that such community has a large number of racial and/or ethnic minorities. Neighborhood recruiting may be a good strategy, and recruitment of poll workers should include efforts to retain poll workers who can demonstrate a willingness to serve in hard-to-recruit areas and those that possess fluency in a foreign language, particularly in communities that are populated by racial, ethnic and language minorities<sup>31</sup>. To do this, election officials could network with professional and civic organizations chapters such as the National Council of La Raza, the Hispanic Chamber of Commerce, or the League of United Latin America Citizens, to try to recruit poll workers who reflect the broader diversity in each respective community. Recruiting and hiring college students to serve as poll workers must be a pivotal component of any effort to recruit poll workers. College students are accustomed to learning new things and are becoming increasingly accustomed to interacting with colleagues of diverse backgrounds, and can play a pivotal role in ensuring that poll workers apply identification requirements fairly across racial lines and may help ensure fair and accurate elections.

The U.S. Election Assistance Commission has recently undertaken research on how to recruit and train poll workers, but there does not appear to be any research on how successful these measures may be. However, current research showing that poll workers apply identification requirements differently along racial lines suggests that voter reform measures should

include a focus on ensuring that poll worker recruiting and training attracts poll workers who belong to racial and/or ethnic minority groups, and that poll workers, when hired, appreciate the voting rights of every voter.

### **Free photo identification**

If Congress were to enact a federal voter-identification requirement, it would need to satisfy the Federal Constitution because any state constitutional challenge would be superseded under the Supremacy Clause. Many states charge a fee to issue a photo identification card, and these states that have required photo identification in order to cast a vote, have been challenged as violating the 24<sup>th</sup> Amendment prohibition on poll taxes.<sup>32</sup>

In 2006, Georgia allowed for individuals who completed a form declaring indigency to obtain a free-identification card, and to mitigate access concerns, the Carter-Baker Commission proposed that states “undertake their best efforts to make registration and ID accessible and available to all eligible citizens” through mobile offices and offering “Read ID” cards to nondrivers free of charge.<sup>33</sup> This is expensive. The Commission estimates the cost of its identification card proposal at \$115 million, at \$5 per card, and states that this \$5 estimate includes appropriate administrative, infrastructure, and issuance costs. This estimate has been dubbed as a lowball. In 1997, testimony before the U.S. House of Representatives, Stephen Moore of the Cato Institute predicted that mass production of smart ID cards could cost \$5.00 per person, but included none of the administrative or infrastructure costs, such as “mobile offices,” staff, and training.<sup>34</sup>

### **Election Day Registration**

States that enact a photo-identification requirement could also adopt Election Day registration, which allows unregistered, eligible citizens to show up at the polls on Election Day, register and immediately cast a ballot. Assuming this is funded and adequately enforced, this requirement would likely help voters receive more access to the polls.

### **Voting Machines**

Voting machines should also be a central portion of voter reform legislation, although voting machines in a substantial number of minority jurisdictions have become troublesome, for a variety of reasons: inadequate numbers of voting machines or breakdowns in those machines; insufficient numbers of voting privacy booths or space for those booths; insufficient numbers of ballots or lengthy ballots that take an unusually long amount of time to complete; insufficient check-in procedures, equipment, and personnel; inadequate communication links with central offices; voter registration problems in the precinct; confusion about proper precinct locations; challenges and other disputes about voter eligibility; and a reluctance to expand alternatives to Election Day voting.

### **Conclusion**

Congress and state legislatures undoubtedly have an interest in curtailing voter fraud,<sup>35</sup> but before jumping on the photo-identification bandwagon, policymakers should closely examine empirical data about the magnitude of voter fraud and the extent to which a photo-identification requirement would cripple participation by legitimate voters. Before considering photo-identification legislation, Members of Congress should call for data on both fraud and access to the polls to determine whether a photo-identification requirement would lead to fewer erroneous election outcomes or result in more erroneous election outcomes by deterring a large number of legitimate voters. These calls for data on the magnitude of voter fraud are likely to yet again find that in-person voter impersonation does not occur in anything but negligible numbers. This is not due to the difficulty of prosecuting in-person voter identification. There have been attempts on behalf of the DOJ to crack-down on voter fraud and despite these ambitious “crack-downs,” their efforts were futile. The reason why there is no data that voter fraud occurs is simple. There are not sufficient benefits for voters to impersonate their identities at the poll,

and this type of voter fraud hardly occurs. Policymakers should not regulate a class of “lawbreakers,” – individuals who will commit in-person voter impersonation – when there is no evidence that this form of voter fraud occurs, and potentially 20 million eligible voters may not be able to surmount the hurdles that increased voter identification requirements will present. When a federal photo identification requirement is packaged in a comprehensive voter reform bill, Representatives must consider whether provisions for provisional ballots, poll worker training, and free government issued ids, will allow voters to overcome the hurdles imposed by an identification requirement. When lawmakers consider voter reform measures designed to increase access to the polls, they should demand specific data on how each added provision – whether it be provisional ballots, increased poll worker training, or same day registration – will increase access to the polls, when such measures are packaged along with a federal voter identification requirements. Without hard data on how an increased voter identification requirement, coupled with provisions with sweeping voter reform measures, will facilitate access to the polls, millions of eligible voters may not have their day at the poll on Election Day. Moreover, as history has taught us, these mandates, while undoubtedly attractive measures of a voter reform package, have been far from perfect and been significantly underfunded, and policymakers should approach voter reform legislation with great caution and demand empirical research as to the effectiveness of such legislation.

## Endnotes

- 1 42 U.S.C. (b)(2)(A) (2000 ed., Supp. V).
- 2 As of July 1, 2005, the combined population of the District of Columbia and the twenty-eight states that did not request documentary identification at the polls was 196,194,611 out of a total U.S. population of 296,410,404. U.S. Census Bureau, Annual Estimates of the Population for the United States and States, and for Puerto Rico: April 1, 2000 to July 1, 2005 (2005), <http://www.census.gov/popest/states?NST=ann-est.html>. The full list of such states includes California, the District of Columbia, Idaho, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas, Utah, Vermont, West Virginia, Wisconsin, and Wyoming.
- 3 In 2005, these states included Arkansas, Connecticut, Delaware, Kentucky, North Dakota, and Tennessee.
- 4 A voter without photo identification could establish his identity by signing an affidavit in Louisiana and South Dakota, and by reciting his birth date and address in Hawaii. Florida requests that voters produce photo identification, but those without photo-identification, but those without photo identification can case a provisional ballot that will be counted in the voter's signature on the Provisional Ballot Voter's Certificate and Affirmation matches the signature on the voter's registration.
- 5 Comm'n of Fed. Election Reform, Building Confidence in U.S. Elections 18-21 (2005), [http://www.american.edu/ia/cfer/report/full\\_report.pdf](http://www.american.edu/ia/cfer/report/full_report.pdf). This national commission was chaired by former President Jimmy Carter and former Secretary of States James Baker.
- 6 Federal Election Integrity Act of 2006, Hr. R. 4844, 109<sup>th</sup> Cong. (as passed by House, Sept. 20, 2006) (Act proposed replacing HAVA's limited identification requirement with a requirement that all voters would be required to present "a government-issued, current, and valid photo identification," and after 2010, the identification card would need to be one, such as the Real ID card, "for which the individual was required to provide proof of United States citizenship." See also 152 Cong. Rec. H6765-85 (daily d. Sept. 20, 2006) (providing a record of consideration of the bill on the House floor).
- 7 See *Bay County Democratic Party v. Land*, 347 F. Supp. 2d 404, 434-35 (E.D. Mich. 2004) (rejecting a challenge to Michigan's voter identification procedure); *League of Women Voters v. Blackwell*, 340 F.Supp. 2d 823, 828-29 (N.D. Ohio 2004)(rejecting a challenge to Ohio's voter-identification procedures); *Colorado Common Cause v. Davidson n*, No. 04CV7709, 2004 WL 2360485, at \* 13-14 (Colo. Dist. Ct. Oct. 18, 2004) (rejecting a challenge to Colorado's voter-identification procedures); *Purcell v. Gonzalez*, 127 S.Ct. 5, 7 (2006)
- 8 The Gonzalez district court rejected poll-tax challenges to Arizona's requirement that individuals present identification both when registering to vote and when voting. With respect to registration identification requirements, which could be satisfied by presenting a driver's license, birth certificate, passport or other documents proving U.S. citizenship, the court noted that though each of the documents cost between ten and one hundred dollars, the cost of some of the documents, for example the passport, was not within the state's control and was only indirectly connected to the right to vote.
- 9 See Publius, *Securing the Integrity of American Elections: The Need for Change*, 9 Tex. Rev. L. & Pol. 277, 278 (2005); see also Joseph P. Harris, *Registration of Voters in the United States 5-16* (1929) (discussing the "widespread election frauds" in the nineteenth and early twentieth century's); Larry J. Sabato & Glenn R. Simpson, *Dirty Little Secrets: The Persistence of Corruption in American Politics* 276-78 (1996) (briefly reviewing America's "long and depressing history as a happy haven for the vote thief").
- 10 Barreto, Matt, Nuno, Stephen, Sanchez, Gabriel. *Voter ID Requirements and the Disenfranchisements of Latino, Black and Asian Voters*. September 1, 2007 (citing U.S. Senate Republican Committee, "Putting an end to Voter Fraud," (February 15, 2005)).
- 11 Ansolabehere, Stephen. *Access versus Integrity in Voter Identification Requirements*. February, 2007. Report available at [http://web.mit.edu/polisci/portl/cces/material/NYU\\_Identification1.pdf](http://web.mit.edu/polisci/portl/cces/material/NYU_Identification1.pdf). The survey was a collaborative survey project among 37 universities and conducted a 36, 500 person national sample survey. The survey was conducted over the internet by Polimetirx, which used a random sample to construct a national random sample of adults.
- 12 Minnite, Lorraine. 2007. "The Politics of Voter Fraud." A Project Vote Report, March 5, 2007. Report available at; <http://project-vote.org/publications/reports-guides.html>
- 13 Levitt, Justin. *The Truth About Voter Fraud*, Brennan Center for Justice. 2007. See *Crawford*, 553 U.S. 181, 128 S.Ct at 1637 n. 28 ("The lack of evidence of in-person voter impersonation fraud is not for failure to search.).
- 14 Lorraine Minnite & David Callahan, *Securing the vote: An Analysis of Election Fraud* (2003), available at [http://www.demos.org/pubs/EDR\\_-\\_Securing\\_the\\_Vote.pdf](http://www.demos.org/pubs/EDR_-_Securing_the_Vote.pdf).
- 15 Many argue voter identification requirements constitutes an impermissible poll tax. See 152 Cong. Rec. H6769 (daily ed. Sept. 20, 2006) (Statement of Rep. Pelosi); see also 153 Cong. Rec. S7059 (daily ed. June 5, 2007) (statement of Sen. Obama) (calling Georgia's photo identification requirement "a poll tax for the 21<sup>st</sup> century"). See also National Commission on Federal Election Reform, *To Assure Pride and Confidence in the Electoral Process*, Brookings, 2001 (Concluding that voter identification requirements might have disproportionate effects on poorer people and inner city residents because many of them do not have the most commonly used forms of identification, such as drivers' licenses and state-issued identification cards).
- 16 See *Eu v. San Francisco County Democratic Central Comm.*, 489 U.S. 214, 231, 109 S.Ct 1013, 103 L.Ed.2d 271 (1989) ("A State indisputable has a compelling interest in preserving the integrity of its election process").
- 17 National Commission on Election Reform, *To Assure Pride and Confidence in the Electoral Process*, at 32 (Aug.2001). Some legitimate voters who have been issued a driver's license or other identification may not bring it to the polls because the card was stolen, lost, or simply forgotten. Further, the number of individuals without valid photo identification may rise due to the heightened burdens of the REAL ID Act. After 2007, the REAL ID Act prohibits states from issuing a driver's license or nondriver's identification card unless a person presents documentary proof of (a) her full legal name and date of birth, (b) her Social Security number (or the fact that she is not eligible for one), (c) the address of her principal residence, and (d) her citizenship. Real ID Act of 2005, 49 U.S.C.A. § 30301 (Supp. 2006). Studies in some states suggest that the burdens of an ID requirement may also fall disproportionately upon racial minorities. See Overton, *Voter Identification*, 105 Mich. L.Rev. 631, 659 (2007) ("In 1994, the U.S. Department of Justice found that African-Americans in Louisiana were four to five times less likely than white residents to have government-sanctioned photo identification).
- 18 553 U.S. 181m 128 S.Ct. at 1627.
- 19 128 S.Ct. at 1633.
- 20 Report at 10.
- 21 See *Crawford*, 128 S.Ct. at 1620 (stating "a voter may lose his photo identification, may have his wallet stolen on the way to the polls, or may not resemble the photo in the identification because he recently grew a beard.).
- 22 (citing Press Advisory, Maricopa County Recorder and Elections Department, *Voter Registration is Different Following DOJ Approval* (Feb. 4, 2005), <http://recorder.maricopa.gov/pressrelease.aspx>).
- 23 McClatchy newspapers, *Retired Nuns Barred from Voting in Indiana*, May 7, 2008. Available at <http://www.guardian.co.uk/world/2008/may/07/uselections2008.usa>.
- 24 Under current law, in a provision entitled "Fail-safe voting," HAVA authorizes the casting of provisional ballots by challenged voters. 42 U.S.C. 15483(b)(2)(B). After Indiana passed its voter identification law, it had a provisional-ballot exception to the ID requirement for individuals the state con-

- sidered “indigent” as well as those with religious objections to being photographed. The law allows these voters who lack the necessary ID to sign the poll book and cast a provisional ballot. Ind.Code Ann. § 3-11-8-25.a (West Supp.2007).
- 25 553 U.S. 181, 128 S.Ct at 1631.
- 26 *Crawford v. Marion County Election Board*, 553 U.S. 181, 203 (2008).
- 27 For a full list of the poll worker requirements amongst the states, see the U.S. Election Assistance Commission, Compendium of State Poll Workers Requirements, August 2007. Available at <http://www.eac.gov/files/BPPollWorker/Compendium.pdf>.
- 28 Ansolabehere, Stephen. The Uncertainty of Election Law: Symposium at New York University Law School. February 2007. 63 NYU-ANSAL 613.
- 29 See also Asian American Legal Defense and Education Fund, The Asian American Vote 2004 (April 2005) (documenting discriminatory application of ID rules to Asian-Americans), [http://www.aaldef.org/images/04-20-05\\_exit\\_poll\\_report.pdf](http://www.aaldef.org/images/04-20-05_exit_poll_report.pdf); Editorial, Lessons of the Ballot Box, N.Y. Times, Nov. 4, 2004, at A24 (stating that “voter identification requirements were arbitrarily, and often incorrectly, enforced” in 2004 election); cf. Chandler Davidson et al., Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both? 93-95 (Spet.2004) (describing reports of Native Americans not being informed of option to sign an affidavit instead of furnishing photo ID in South Dakota).
- 30 Although local election officials typically recruit and train the nation’s 1.4 million poll workers, many States supplement and support the recruitment of high-quality poll workers. State-led poll worker training programs differ, but they typically include at least one of the following: a uniform poll worker curriculum or uniform training materials, collaboration with local officials or universities to develop poll worker recruiting materials, work with corporations to benefit corporate poll worker programs, training and certifying local election officials in State laws and procedures, and observation from state offices visiting polling places and providing feedback to local officials. See U.S. Election Assistance Commission, Successful Practices for Poll Worker Recruitment, Training and Retention, July 2007. Available at <http://www.eac.gov/election/poll%20workers/successful-practices/>.
- 31 Other questions should include contact information, current source of employment, access to transportation, willingness to serve in communities with large numbers of minorities, fluency in a foreign language, work-assignment preference source of information about poll workers service, and reason for wanting to become a poll worker. See U.S. Election Assistance Commission, A Guidebook for Recruiting College Poll Workers, July 2007. Available at [http://www.eac.gov/files/BPPollWorker/College\\_Guidebook.pdf](http://www.eac.gov/files/BPPollWorker/College_Guidebook.pdf).
- 32 U.S. Const. amend. XXIV, § 1 (“The right of citizens of the United States to vote . . . shall not be denied or a bridges by the United States or any State by reason of failure to pay any poll tax or other tax.”).
- 33 Id. at 21, 33-34.
- 34 Legislation Concerning Immigrant Issues: Hearing on H.R. 231, H.R. 429, H.R. 471 and H.R. 1493 *Before the Subcomm. on Immigration and Claims of the House Comm. On the Judiciary*, 105<sup>th</sup> cong. 107 (1997) (statement of Stephen Moore, Economist, Cato Institute), [http://commdocs.house.gov/committees/judiciary/hju43829.000/hju43829\\_of.htm](http://commdocs.house.gov/committees/judiciary/hju43829.000/hju43829_of.htm)
- 35 See *Crawford*, 128 S.Ct. at 1619 (“There is no question about the legitimacy or importance of the State’s interest in counting only the votes of eligible voters.”).