



VOTER IDENTIFICATION REQUIREMENTS

Summary

- Restrictive voter identification policies – especially those that require state-issued photo ID cards – threaten to exclude millions of eligible voters.
- As many as 10% of eligible voters do not have, and will not get, the documents required by strict voter ID laws. For some groups, the percentage is much higher.
- ID requirements fall hardest on people who have traditionally faced barriers at the polls.
- ID requirements are not justified by any serious or widespread problem.
- There is no reason for states to implement burdensome ID requirements.
- States that do require proof of identity at the polls should permit an expansive range of proof.

Restrictive voter ID policies – especially those that require state-issued photo ID cards – threaten to exclude millions of eligible voters. There is a movement afoot to demand that eligible voters provide documentation of their identity at the polls and to restrict the documents that a voter may offer as proof. Indiana just implemented one such law; Missouri has just passed another. A recent Georgia law demands that voters show one of a limited number of forms of government-issued photo ID. The 2005 Commission on Federal Electoral Reform, known as the Carter-Baker Commission, went even further, recommending that states require a voter to present an enhanced driver's license known as "Real ID" or a specific state-issued equivalent. If followed, this recommendation would prevent eligible citizens from voting if they appeared even with a valid U.S. passport or U.S. military photo ID.

As many as 10% of eligible voters do not have, and will not get, the documents required by strict voter ID laws. Approximately ten percent of voting-age Americans today do not have driver's licenses or state-issued non-driver's photo ID. Based on Americans' moving patterns, many more do not have photo ID showing their current address. And getting ID costs substantial time and money. A would-be voter must pay substantial fees both for ID cards and the backup documents needed to get them—up to \$100 for a driver's license, up to \$45 for a birth certificate, \$97 for a passport, and over \$200 for naturalization papers. The voter may also have to take several hours off of work and travel significant distances to visit government offices open only during select daytime hours. Finally, many identifying documents cannot be issued immediately, so potential voters must allow for processing and shipping, which may take from several weeks to an entire year.

ID requirements fall hardest on people who have traditionally faced barriers at the polls. The impact of ID requirements is even greater for the elderly, students, people with disabilities, low-income individuals, and people of color. Thirty-six percent of Georgians over 75 do not have a driver's license. Fewer than 3 percent of Wisconsin students have driver's licenses listing their current address. The same study found that African Americans have driver's licenses at half the rate of whites, and the disparity increases among younger voters; only 22% of black men aged 18-24 had a valid driver's license. Not only are minority voters less likely to possess photo ID, but they are also more likely than white voters to be selectively asked for ID at the polls. For example, in New York City, which has no ID requirement, a study showed that poll workers illegally asked one in six Asian Americans for ID at the polls, while white voters were permitted to vote without showing ID.

ID requirements are not justified by any serious or widespread problem. Proponents often cite fraud or the potential for fraud to justify new ID requirements. There is no question that election misconduct exists, including improper purges of eligible voters, distributing false information about when and where to vote, stuffing of ballot boxes, and tampering with registration forms. But there is no evidence that the type of fraud addressed by stricter voter ID – individual voters who misrepresent their identities at the

polls – is anything but an anomaly. In Ohio, a statewide survey found four instances of ineligible persons voting or attempting to vote in 2002 and 2004, out of 9,078,728 votes cast – a rate of 0.00004%. Despite the invocation of fraud as support for the new Georgia law, Georgia Secretary of State Cathy Cox has stated that she could not recall one documented case of voter fraud relating to the impersonation of a registered voter at the polls during her ten-year tenure as an election official. Nationwide, since October 2002, 86 individuals have been convicted of federal crimes relating to election fraud (including several offenses not remedied by ID requirements), while 196,139,871 ballots have been cast in federal general elections. Statistically, Americans are more likely to be killed by a bolt of lightning.

States should not implement burdensome ID requirements. Although ID requirements may seem reasonable to many middle-class Americans, hard evidence shows that many citizens face extreme difficulty in obtaining certain forms of identification and that ID requirements are often discriminatorily implemented. Restrictive ID requirements are not only unnecessary, but will disenfranchise eligible voters, artificially depress turnout, and lead to administrative difficulties at the polls. Moreover, there are existing laws that address the same rare problems targeted by voter ID requirements – including procedures for cleaning the voter rolls and voter ID provisions in the Help America Vote Act (HAVA) – that have not yet been fully implemented or assessed. States without widespread evidence of actual fraud caused by individual misrepresentation at the polls should not turn to ID requirements now.

States that do require proof of identity at the polls should continue to permit an expansive range of proof. In HAVA, Congress found it sensible to ask for documentary proof of identity at the polls *only* from a very limited range of voters: citizens registering for the first time in a jurisdiction, by mail, whose application information had not already been verified against other state or federal databases. For all other voters, a person’s sworn statement as to her identity should ordinarily suffice; such is the policy, for example, in Arkansas. If a state nevertheless demands further documentary proof, it should give ample notice to the voter of the documents accepted and should not restrict the list of acceptable documents beyond the broad range provided in HAVA – including current utility bills, bank statements, paychecks, and other government documents. Moreover, any voter unable to provide sufficient ID at the polls should be allowed to cast a provisional ballot, which will then be counted unless election officials determine that the voter was not in fact eligible under state law to vote. Election officials can also confirm the eligibility of a provisional voter by matching the signature on the provisional ballot envelope against the signature on the registration form.

THE WORK OF THE BRENNAN CENTER

- ▶ **National.** In response to the report of the 2005 Carter-Baker Commission, the Brennan Center and Commissioner Spencer Overton prepared the most detailed critique to date of proposals to implement restrictive ID rules nationwide. The Center has also been working to oppose new federal ID bills.
- ▶ **Indiana.** In 2006, the Brennan Center filed an *amicus* brief with the Seventh Circuit Court of Appeals in two cases challenging the constitutionality of Indiana’s requirement that all voters show photo identification. The brief presented the most compelling evidence that impersonation fraud is an extremely unlikely and unsubstantiated occurrence. The brief also catalogued the practices in other states that effectively curbed election fraud without resorting to restricting identification requirements.
- ▶ **Georgia.** In October 2005, a Georgia federal court recognized that a law requiring photo ID as a prerequisite for voting constituted an unconstitutional poll tax and an undue burden on the right to vote. On appeal, the Brennan Center filed an *amicus* brief, arguing that the threat of impersonation fraud, which the law purported to combat, is extremely rare and could not justify the ID requirement. The appellate court remanded the case in light of a subsequent amendment to the law, which was also blocked before Georgia’s 2006 primary election.
- ▶ **Missouri.** In 2006, the Brennan Center analyzed the likely effect of a new photo ID proposal, and found hundreds of thousands of voters at risk, and no reason to believe that an ID requirement would solve any real problem. The analysis was presented to officials around the state. Although a bill containing the proposal was passed, it is now subject to attack by at least three lawsuits.