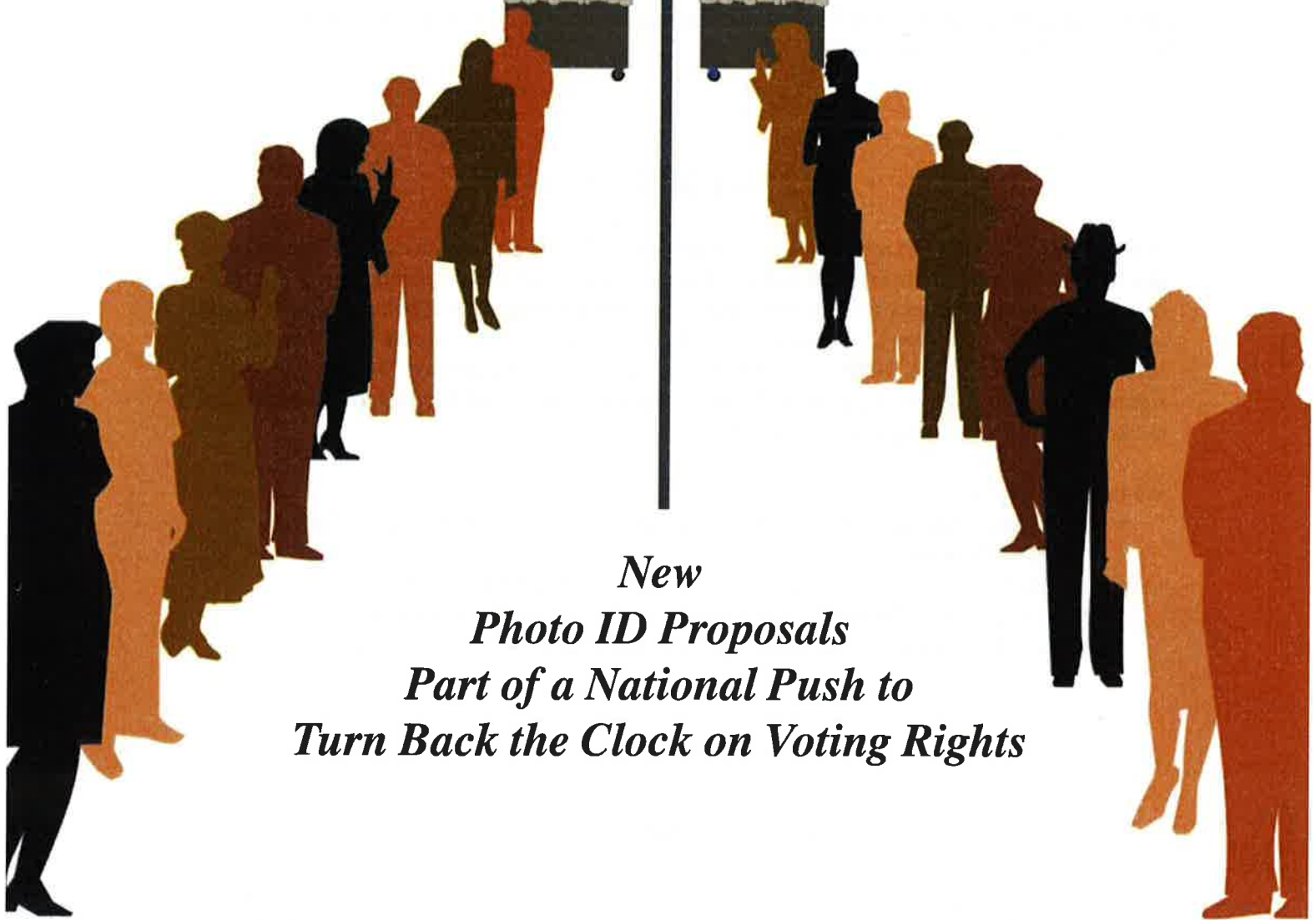


WHAT'S WRONG with this PICTURE?

**Poll Tax
1961**



**Photo ID
2011?**



*New
Photo ID Proposals
Part of a National Push to
Turn Back the Clock on Voting Rights*



WHAT'S WRONG WITH THIS PICTURE?

NEW PHOTO ID PROPOSALS PART OF A NATIONAL PUSH TO TURN BACK THE CLOCK ON VOTING RIGHTS

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ABOUT US

Advancement Project is an innovative civil rights law, policy, and communications “action tank” that advances universal opportunity and a just democracy for those left behind in America. We believe that sustainable progress can be made when multiple tools — law, policy analysis, strategic communications, technology, and research — are coordinated with grassroots movements. Advancement Project was founded in 1999 in Los Angeles and Washington D.C. by veteran civil rights lawyers who were looking for new ways to dismantle structural barriers to inclusion, secure racial equity, and expand opportunity for all.

We create change by:

- Promoting and supporting coalitions and organizations that bridge race, culture, and class divisions;
- Building new tools for the national movement for social justice; and
- Effecting reform of public institutions responsible for providing democratic participation, affordable housing, education, and public health and safety.

Disclaimer

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EXECUTIVE SUMMARY

WHAT'S WRONG WITH THIS PICTURE?

New Photo ID Proposals Part of a National Push to Turn Back the Clock on Voting Rights

In a reactionary trend that is part of the largest legislative effort to scale back voting rights in a century, nearly two-thirds of states across the nation are considering onerous voter identification bills this year that could disenfranchise millions of voters for the 2012 elections, while failing to advance the integrity of the elections process. Advancement Project, a civil rights organization that works to eliminate barriers to voting, has studied the legislation in every state and produced a comprehensive report examining the trend, analyzing the proposals in each state and bringing context to the larger political and legal debates shaping these efforts to roll back ballot access.

A Coordinated Priority. While legislatures have been debating voter ID requirements since the 2000 election debacle, photo ID proposals have strong momentum this year, propelled by conservative and Tea Party electoral victories in 2010.

Proposals to require specific forms of non-expired state or federally issued photo ID to vote have been introduced in 32 states. Touted under the guise of addressing so-called “voter fraud,” the proposals are part of a quiet but coordinated effort to reduce the voting strength of minority voters who saw greater turnout in 2008. The 2008 elections saw record turnout by Black and Brown voters, offering a glimpse of what a more equitable voter participation might look like. The photo ID proposals are part of a concerted effort to turn back the clock on voting rights.

Efforts to implement photo ID have been linked to conservative and Tea Party backers, including the Charles G. Koch Charitable Foundation, and are aligned with other voter suppression efforts, including voter challenge campaigns coordinated by Koch-funded groups, and legislation to require proof of citizenship or limit voting for those with criminal records. Photo ID bills are moving alongside collective bargaining and immigration showdowns in many states. Groups such as the Tea Party-backed King Street Patriots in Texas have pledged to place one million poll challengers at precincts around the country in 2012 to challenge voters’ identity and eligibility, using strict photo ID laws to facilitate such challenges.

These photo ID proposals stand to create second-class citizenship for classes of voters, particularly racial minorities, senior citizens, young voters, people with disabilities, immigrants, the working poor and students, who are disproportionately less likely to have current state ID or face substantial hurdles to getting one, who stand to be turned away or denied a regular ballot.

A Pernicious Myth. The rhetoric of “voter fraud” has gained traction in debates around the country and has been cited as the reason photo ID laws are needed. But evidence in support of this argument is scant. Photo ID laws address only one form of voting irregularity – voter impersonation – which study after study has confirmed to be exceedingly rare. Voter impersonation is a serious crime and illegal voting has been vigorously prosecuted in recent years by state and federal governments alike.

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Disenfranchisement. Studies show that approximately 11 percent of Americans – about 21 million people – lack a current government photo ID, disproportionately racial minorities, senior citizens, young voters, the working poor and people with disabilities – including:

- 25 percent of African American voting age citizens – more than 5.5 million people
- 15 percent of those earning less than \$35,000 a year
- 18 percent of those age 65 and above – more than 6 million voters
- 20 percent of young voters 18-29

For those without ID, the hurdles to obtaining one can be substantial. IDs cost money and after states' implementation of the provisions of the REAL ID Act, the underlying documents necessary to obtain an ID are costly and can be difficult and sometimes impossible to obtain. To get a state-issued ID, voters must present documents showing identity, citizenship and place of residence, including a certified birth certificate. In some instances voters must present a social security card, marriage or divorce records if names have changed, or naturalization papers. A copy of a certified birth certificate can cost up to \$45, and 17 states require a photo ID to obtain a copy of the birth certificate. Naturalization papers may cost \$200. Not only can the process be burdensome and time consuming, but some may be unable to get underlying documentation at all, such as those informally adopted at birth, those born in rural settings, those born outside the United States, those whose records were destroyed in natural disasters like Hurricane Katrina, which destroyed birth records of thousands of people.

Photo ID Proposals

Photo ID bills have been introduced in 32 states. Some of the most notable include:

- **Texas** – The state passed its photo ID bill on March 23 after 11 hours of floor debate. Despite an \$8 billion budget shortfall in the state, the governor designated the bill (which carries a multi-million dollar price tag) as a “legislative emergency” to avoid procedural delays that thwarted passage of similar legislation in previous years. Legislators eliminated provisions that would have exempted senior citizens, but added a concealed weapons license to the list of acceptable ID.
- **Missouri** – Ever since the Missouri Supreme Court struck Missouri’s 2006 Photo ID law as an unconstitutional burden on the right to vote, legislators have attempted to change the constitution to allow the requirement. Bills have already passed the Senate this year to do so, though it would exempt seniors, people with disabilities and those who cannot afford to get an ID, who would be required to cast provisional ballots. About 259,000 Missourians lack a state ID, according to the state Department of Revenue.

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- **Wisconsin** – Legislators attempted to use a promised vote on photo ID to lure back Democrats who left the state in protest of controversial collective bargaining proposals there. The photo ID proposals are part of other efforts, such as proposals to eliminate same-day registration, that stand to particularly affect student voters in the state. Rev. Jesse Jackson has embarked on a tour of campuses across Wisconsin to engage students in the fight to oppose photo ID. Passage is considered inevitable once legislators return in April.
- **Kansas** – Legislation requiring photo ID has passed the Kansas Legislature and is headed to the Governor's desk. The legislation, which would also require proof of citizenship, is a flagship proposal of Secretary of State Kris Kobach, who helped draft Arizona's anti-immigration law, though his claims that such legislation is necessary to combat voter fraud have been disputed by both his Republican and Democratic predecessors. The State Department of Revenue estimates that 620,000 Kansans lack ID.
- **New Hampshire** – A photo ID bill, which, along with proposals to eliminate same-day registration and to tighten residency requirements for voting, raised objections from students who stood to be disenfranchised after the Speaker of House told a Tea Party gathering that the bills were needed because student voters are "foolish," and "vote their feelings," has passed the Senate and awaits final approval in the House.
- **North Carolina** - Data from the state division of motor vehicles found that a million North Carolina voters lacked a state driver's license or ID card matching their names and addresses, including 555,000 who had no ID at all. Further analysis revealed that African Americans made up 27 percent of those without ID and that a third of registered voters over age 65 lacked an ID. The proposed photo ID requirement, which is touted as a top priority, has been estimated to cost the state – which is facing a \$3.7 billion shortfall – up to \$20 million to implement.
- **South Carolina** - Has passed a photo ID requirement out of both chambers of its legislature and is in the process of reconciliation. Opponents have charged that the bill is designed to depress the high turnout of African American voters who came out to vote in the state in 2008.
- **Iowa** – Opposition by the state's 99 election officials helped derail the state's photo ID proposal, despite strong backing from the Secretary of State.
- **Minnesota** – The Minnesota County Attorneys Association has brought forth a comprehensive study of voting improprieties in the state finding that 26 people had engaged in illegal voting (primarily voting with a criminal record) in the last two years, representing .00089 percent of votes cast in 2008. Even if the state's governor vetos the legislation, the photo ID measure will likely be placed as ballot initiative before voters in 2012.

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- **Ohio** – Though a latecomer to the photo ID landscape, legislation to require strict photo ID quickly made its way through the House in two days and awaits hearing in the state senate at this writing. The legislation would allow only an Ohio driver's or non-driver's license, U.S. military ID or a passport as acceptable identification, and makes scant provisions for those without ID, exempting only those with religious objections to being photographed. The legislation does not require the state to provide the ID without cost to those who lack one – up to an estimated 800,000 voters in the state.

Similar proposals have also passed the legislature in Montana and have garnered momentum in Alabama, Tennessee and Pennsylvania as well.

Legal Problems

Despite court decisions upholding photo ID requirements in Indiana and Georgia, photo ID proposals may not necessarily withstand legal challenge if they add unduly burdensome requirements to voting, require voters to expend money to exercise their right to vote, create unequal classes of voters or fail to allocate sufficient resources to identify those without ID, provide ID without cost, and sufficiently educate voters and poll workers about the requirements and facilitate voter access to the polls.

In states facing staggering budget shortfalls this year, the cost to implement a photo ID requirement could add up to \$20 million or more. Yet, many of the pending proposals fail to account for the legally required elements of implementation. Colorado and Nebraska estimated no cost to the state, Maine assumed its costs could be covered by federal grants, Ohio and Pennsylvania fail to cover cost of providing IDs to those without them or cover education costs, and other states, like Missouri, reduced fiscal notes from similar proposals in years past on the assumption that departments could absorb costs into existing budgets. Legally required costs of photo ID legislation include:

- **Providing Free ID** – Voters cannot be made to expend any money in order to exercise their right to vote, or else the proposals could be unconstitutional as a type of “poll tax.” Thus, photo ID proposals must cover costs of providing ID without cost to voters who lack one, and should take account of the underlying costs and difficulties inherent in obtaining ID. Georgia's law only withstood legal scrutiny because it was amended to provide ID to everyone who lacked one. The Missouri Supreme Court concluded that even if ID was provided for free, that the costs and difficulties obtaining the underlying documents necessary to get ID rendered the state's law tantamount to a poll tax. Yet Montana and Colorado's legislation fails to make any provision for getting ID to those without; Pennsylvania and Ohio provide it only to those who attest they are indigent. It cost Indiana, which has the strictest photo ID law in the nation, over \$10 million to provide IDs to over 700,000 Indiana voters who needed one. This cost has been estimated in the millions of dollars for many states.

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- **Reaching Voters Without ID** – States will need to make an effort to reach voters without ID and facilitate the process of obtaining one. Georgia for example, sent mailings over multiple election cycles to hundreds of thousands of voters believed to be without ID, aired public service announcements, distributed leaflets in libraries and other locations and included inserts in utility bills.
- **Educating Voters** – Photo ID requirements will require significant education campaigns. A federal court enjoined early enforcement of Georgia’s photo ID law finding the state had not done enough to educate voters about the provisions, creating an “undue burden” for voters. The costs to do so are significant. Missouri estimated \$16.9 million over three years; Texas estimated \$5 million; Maryland estimated \$500,000 and \$14 million has been estimated for North Carolina.
- **Implementation** – States will incur increased administrative costs such as changed forms, extending hours and locations of motor vehicle locations, hiring and training staff, and buying new equipment to make IDs

Conclusion

Elections cannot be free and fair unless they are open to every eligible voter. Photo ID requirements erode the integrity of elections by systematically excluding large groups of eligible voters and place them in second-class status. This is part of a larger movement to erect significant barriers for voters of color, reversing a century-long trend. If states are truly concerned about protecting the integrity of the elections process, they should start by ensuring that all eligible voters have access to the vote, not just those with a state-issued photo ID.

WHAT'S WRONG WITH THIS PICTURE?

New Photo ID Proposals Part of a National Push to Turn Back the Clock on Voting Rights

In a disturbing trend that threatens to spur massive disenfranchisement of vulnerable populations and roll back access to the ballot box, states across the country are considering reactionary voter identification laws that would require voters to produce limited forms of identification – specifically non-expired government-issued photo ID at the polls – in order to vote. The proposals, offered under the guise of preventing “voter fraud”, would dramatically limit or deny voting rights to those without government ID – disproportionately the elderly, the young, the poor, the unemployed, people of color, people with disabilities, and students – and cost cash-strapped states and local governments millions of dollars to implement. Flying under the radar¹ but in concert with higher profile labor and immigration showdowns in many states,² – the swift movement of photo ID bills across the nation is part of a broader movement that threatens the democratic process, establishing second-class citizenship for those without access and potentially disenfranchising millions of voters. With bills introduced in over 30 states, these proposals are illustrative of the most widespread legislative effort to scale back voting rights since the post-reconstruction era, reversing the century-long legislative movement to broaden the franchise. This report examines this trend and analyzes the specific proposals around the country, bringing context to the political debates shaping efforts to roll back ballot access and analyzes the questionable legality of such measures.

A TOP PRIORITY

Voter identification proposals are at the forefront of legislative agendas across the nation this year, as legislatures in over 30 of the states consider proposals that include strict photo ID requirements that could significantly restrict access to the ballot box in 2012. Photo ID proposals are not new, with calls for strict voter identification laws emerging out of the 2000 presidential election when conservative watchdog groups contended that laws intending to facilitate voting, such as the National Voter Registration Act of 1993 (known as Motor Voter), had opened the door to illegal voting. The Justice Department, under Attorney General John Ashcroft, pledged that cracking down on so-called “voter fraud” would be a top priority of the Bush administration Justice Department, though ultimately the Department’s own extensive analysis found little evidence of voting improprieties.³ Congress passed the Help America Vote Act in 2002, establishing uniform minimum voter identification requirements, prompting calls that states should go further. Since 2001, more than 700 voter identification bills have been introduced in 46 states, according to the National Conference of State Legislatures. A dozen states have passed new voter ID laws since 2003, but only eight states require photo ID of voters and only two have laws as strict as those being proposed this year. However, photo ID proposals have a forceful momentum this year not seen in years past, part of broader legislative movements to limit access to the political process for disenfranchised groups at a level not seen since post-reconstruction era laws implementing poll taxes and literacy tests.⁴ In just over the first two months of 2011, photo ID proposals have been introduced in 32 states and passed out of one legislative chamber in twelve states.⁵ Lawmakers across the nation have pinpointed photo ID as a top legislative priority. The governor of Texas designated photo ID as a legislative emergency in order to allow it to be procedurally fast-tracked through the legislature,⁶ photo ID proposals were pre-filed before legislative sessions began in half a dozen states,⁷ and secretaries of state in a number of states have listed photo ID as a top priority.⁸ Photo ID proposals have garnered significant momentum in more than a dozen states and opponents are having difficulty waging effective counter attacks to curb movement on the bills, as majority leaderships, emboldened by their increased numbers following the 2010 mid-term elections, are more committed to passing this legislation than in years past.

These proposals have many similarities – most limit the forms of acceptable identification voters may show at the polls to non-expired state or federally-issued photo identification, eliminating many commonly acceptable forms of ID used in the majority of states that already require voters to produce ID at the polls, such as an expired driver’s license, student ID, a driver’s license or ID from another state, a voter identification card, bank statement or utility bill. Studies show that large numbers of American citizens – about eleven percent - do not possess a valid, government-issued photo ID, or the required documents to obtain a photo ID, and that voters of color, low-income voters, the elderly, young voters and voters with disabilities may be up to twice as likely to lack a current government ID.⁹ States’ adoption of the provisions of the REAL ID Act means that getting a state ID is difficult, requiring up to four separate pieces of identification, such as a certified birth certificate. But the effort remains a solution in search of a problem: proponents of photo ID requirements cannot demonstrate that such rules would prevent even one fraudulent voter for every 1,000 legitimate voters excluded from the voting process by the requirement.¹⁰

A COORDINATED EFFORT

If enacted, these photo ID proposals seem likely to affect the partisan balance of power and weaken the voting strength of already vulnerable voters, particularly in states likely to be electoral battlegrounds in 2012 (for example, in North Carolina, an estimated 270,000 African American voters lack a photo ID; President Obama carried the state by less than 14,000 votes). Republicans are the major proponents of voter ID proposals, leading many progressives to suspect that the true motive is not to protect electoral integrity, but rather to limit the voting power of populations that tend to vote Democratic.¹¹ One progressive analysis explained: “The push is a part of a trend in states, particularly where Republicans made major gains in the 2010 election. Many of those states are advancing voter ID laws, nominally meant to crack down on the unsubstantial problem of voter fraud, but which in practice are meant to disenfranchise young and poor liberal voters.”¹² The Institute for Southern Studies refers to the “GOP’s urgent and coordinated push” to implement photo ID laws, calling them Republican-launched campaigns.¹³ And, documents were released linking the American Legislative Exchange Council (ALEC)—a conservative organization tied to tea party, corporate, and right-wing donors (including the Charles G. Koch Charitable Foundation)—to the rash of voter ID bills moving through the states. The organization drafted and distributed model legislation, which has been cited as inspiration for bills in many states.¹⁴ The push for photo ID laws is part of a broader coordinated movement that threatens to limit access to the ballot box for minority populations who saw increased turnout in 2008. The 2008 elections saw record turnout by Black and Brown voters. According to the Pew Research Center, African American turnout increased from 60 percent to 65 percent in 2008, nearly matching white turnout of 66 percent. Latino turnout increased as well. Backed by the same Koch-funded groups that supported partisan “voter integrity” campaigns during the November 2010 general elections that lead to voter caging efforts and voter challenges of minority and student voters.¹⁵ Just days after Texas passed its restrictive photo ID law, the King Street Patriots, a Houston-based Tea-Party group, unveiled its “True The Vote” campaign pledging to place one million poll challengers at precincts across the country in 2012 to challenge voters’ identities and eligibility.¹⁶ The initiative, announced at a national summit attended by representatives from 25 states, will use photo ID laws, among others, as a basis on which to challenge voters’ eligibility at the polls in 2012. The *National Journal* reported, “The movement to challenge voters in person is only one prong of a multi-part national campaign to fight supposed fraud by erecting new barriers to voting. These include proposed photo IDs and proof-of-citizenship bills; plans to eliminate same-day voter registration, and efforts to restrict voting access for students and felons. The movement is fueled in part by new GOP legislative majorities.”¹⁷

A PERNICIOUS MYTH

Proponents have argued that photo ID laws are necessary to combat so-called “voter fraud.” But evidence in support of this argument is scant, and states already have strict laws against voter impersonation, the only type of voting irregularity that ID laws would address.¹⁸ Most states already require voters to show ID at the polls. The Help America Vote Act of 2002 establishes federal voter identification requirements and requires ID at the polls from all first-time voters who register by mail who fail to provide an ID at the time of registration.¹⁹ But 27 states have laws more strict than HAVA’s mandates, requiring all voters to show ID at the polls. Only eight states require ID with a photograph. Impersonating a voter is a serious crime and states already have tough laws against it. In Missouri, for example, voter impersonation carries a penalty of not less than 5 years in prison and a \$250,000 fine. Penalties for improper voting are harsh – *The New York Times* has reported on the fates of those sitting in prison for mistakenly voting while on probation, and non-citizen immigrants who were deported after mistakenly filling out a voter registration card while renewing a driver’s license.²⁰ After 2000, voting irregularities have been vigorously prosecuted by state and federal governments alike, though few cases have been found meritorious. Moreover, study after study shows that voting irregularities that could be addressed with photo ID are incredibly rare and not supported by any empirical evidence.

A recently released extensive analysis of data from all fifty states and the U.S. Justice Department by Barnard Professor Lorraine Minnite found that incidents of voter impersonation are exceedingly rare, and most instances of improper voting involve registration and eligibility issues, not voter impersonation.²¹ Research found that only 24 people were convicted or pleaded guilty at the federal level to illegal voting between 2002-2005. At the state level, they identified 19 instances of those ineligible to vote, five who illegally voted because of felony convictions, fourteen who were not citizens, and five who voted twice in the same election. None would have been prevented by a photo ID requirement.

The government’s own statistics bear this out. Despite that detection and prosecution of “voter fraud” was a top priority of President George W. Bush’s administration,²² (notably propelling the firings of U.S. attorneys who refused to prosecute what they believed to be weak cases), a comprehensive five-year investigation by the Bush Justice Department itself found just 86 instances of improper voting.²³ In addition, a detailed analysis of each of the allegations of voting improprieties—cited as support for Indiana’s photo ID law in legal briefs submitted by the State of Indiana, the U.S. Department of Justice, the Attorney Generals of nine states, members of Congress, various election officials, and several nonprofit organizations in the Supreme Court’s review of Indiana’s photo ID law in 2008—found that none could have been prevented by a photo ID requirement.²⁴ Indiana’s Secretary of State Todd Rokita admitted at the time of the Supreme Court’s decision that Indiana had never had a case of voter impersonation fraud that the law was intended to prevent. And, Indiana’s photo ID law--the strictest in the nation – did nothing to

prevent the recent high-profile indictment of Secretary of State Charlie White.²⁵ White, the state's top elections official, was indicted in March on seven felony charges, including three counts of "voter fraud," as well as perjury and theft, after he voted using his ex-wife's address. Since White's apparent intentional voting in the wrong district was a registration infraction, Indiana's strict photo ID law did nothing to prevent or catch the misdeed. And, photo ID requirements may be ineffective even at combatting voter impersonation, since, as described below, people often do not resemble the photo on their IDs.

DISENFRANCHISEMENT

Millions of voters who lack or can't get the requisite ID stand to be disenfranchised by photo ID proposals; a disproportionate number are African-American and Latino voters, senior citizens, people with disabilities, low-income citizens, and young voters.²⁶ Justice Robert Benham, writing in dissent in a March 7 court ruling upholding Georgia's photo ID law, brought home this point, writing: "Citizens at the margin of our society ... are still being effectively disenfranchised in the name of ... preventing voter frauds that have not been proven to occur at any rate of significance."²⁷ Indeed, as many as 11 percent of United States citizens – estimates of 21 to 30 million people – do not have current government-issued photo identification.²⁸ African Americans are more than twice as likely to lack ID – 25 percent of African-American voting-age citizens, more than 5.5 million people – have no current government-issued photo ID.²⁹ A study presented before American Political Science Association quantified that "immigrant and minority voters are significantly less likely" to have various forms of ID, including source documents, such as a birth certificate, necessary to get a state ID. The study concluded, "Because our data reflects the identification trends of actual voters, not just adult citizens, the findings go far to suggest that voter identification laws could immediately disenfranchise many Latino, Asian and African American citizens."³⁰ People with low income are also disproportionately affected: at least 15 percent of voting-age American citizens earning less than \$35,000 per year do not have a valid government-issued photo ID. And eighteen percent of American citizens age 65 and above – or more than 6 million seniors – do not have current government-issued photo ID.³¹ (One study found that nearly a third of registered voters over age 65 in North Carolina lack an ID.³²) Moreover, about 20 percent of young voters age 18-29 lack a driver's license, the most common form of photo ID.³³ An earlier study by the 2001 Commission on Federal Election Reform estimated that 6 to 10 percent of voting-age Americans do not have a driver's license or state-issued photo ID--as many as 20 million eligible voters. The report found that those who lack photo ID are disproportionately poor and live in urban areas.³⁴

The proposals also impact Native Americans, who disproportionately live in poverty and lack government-issued ID. George Washington University law professor Spencer Overton, who served on the Commission on Federal Election Reform (known as the "Carter-Baker" commission), and who has written extensively about photo ID proposals, points to a study showing that in 2004, South Dakota voters in predominantly Native American counties were two to eight times more likely not to have ID with them at the polls than other voters.³⁵ Some proposals, such as Wisconsin's, have been amended this year to include tribal documents as acceptable ID at the polls, while others, like Ohio's will not allow tribal documents as acceptable ID. Groups such as the Native American Voters Alliance have opposed photo ID proposals in places such as New Mexico.³⁶

The hurdles for those without ID can be substantial. IDs may cost \$10 to \$30 to obtain and many state license bureaus have limited hours and locations for obtaining an ID.³⁷ Even if states provide ID without cost to those who don't have one, the underlying documents necessary to procure a state ID are not cost-free, and can be difficult, time-consuming and sometimes

impossible to obtain. To get an ID, voters must present several other forms of identification, such as a certified birth certificate or passport to prove identity, citizenship, and place of residence. In some instances, voters must present a social security card, proof of residence, court documents or marriage and divorce records if names have changed. A copy of a Missouri birth certificate costs \$15, and in Indiana it costs between \$12 and \$20. In Texas, it costs \$22. In some states, it may cost up to \$45 for a birth certificate. A current U.S. passport can cost between \$85 and \$145, while naturalization papers can run \$200. In a classic Catch-22, seventeen states plus Puerto Rico and Guam require a photo ID before they will issue a copy of one's birth certificate – which is necessary to get a photo ID.³⁸ There may be other hidden costs such as transportation to various agencies and fees related to acquiring supporting documents. These significant hurdles led the Missouri Supreme Court to conclude that the state's photo ID law amounted to a poll tax and unconstitutionally disenfranchised voters – even if the state provided ID without cost to those who lacked one.³⁹

Indiana's photo ID law disenfranchised a group of elderly nuns who lacked driver's licenses and current passports, despite the fact that the poll worker who turned them away was a member of their own order who personally knew the sisters.⁴⁰ The *Los Angeles Times* reported on the case of a 19-year-old Indiana college student, a registered voter in Indiana who was turned away from her polling site in South Bend, where she was attending college. Officials at the local motor vehicles office would not accept her Illinois license as proof of identification to get an Indiana ID.⁴¹ The state's non-partisan Election Protection hotline that year fielded a number of calls from registered Indiana voters who were turned away at the polls because they lacked state or federal photo identification. One newly married woman said she was told she couldn't vote because the name on her driver's license didn't match the one on her voter registration record. Another was turned away because she had only a college-issued ID card and an out-of-state driver's license.⁴²

Even when they have the required ID, voters still risk being disenfranchised by poorly trained poll workers implementing new ID requirements. The proposals place near total discretion at the hands of poll workers to determine the sufficiency of the ID and whether the photo actually portrays the intended voter. Most of the proposals, such as South Carolina's, allow poll workers to determine if they believe the ID is not the voter, in which case the voter would be made to cast a provisional ballot.⁴³ Most states do not allow voters to contest the election authority's decision to not count a provisional ballot, and most of the photo ID proposals fail to require or provide funding for poll worker training. This opens the door to arbitrary and discriminatory enforcement. People often do not look just like their ID photos. During floor debates on Texas' ID proposal this year, Sen. Judith Zaffirini brought this point home, presenting an enlarged image of the ID of her chief of staff, who was known to everyone in the room and sitting right next to her during the demonstration. Legislators could not identify the identification as belonging to the aide, as his hair had thinned considerably since the photograph was taken.⁴⁴ Texas Democrats followed up with a website comparing current photos of key Republican supporters of ID bills with photos on file for those individuals with the Department of Revenue, to demonstrate that many don't look like their driver's license picture. The proposals leave it to the discretion of poll

workers to decide whether the ID reflects the person presenting to vote, and deny a ballot if they don't think so. Such discretion opens the door to covert bias as well. As one Harvard University study showed, African Americans are already more likely to have their IDs more harshly scrutinized at the polls: A survey of voters after the 2006 elections found that 47% of whites were asked for photo identification whether it was required or not, compared to 54% of Hispanics and 55% of African Americans.⁴⁵

IN THE STATES

Photo ID proposals have been introduced in 32 states in 2011 and are quickly progressing in a dozen states. The most notable are chronicled here. A comprehensive chart of photo ID legislation in all the states is included in the appendix to this report.

TEXAS

Leading the states in passing a photo ID bill into law, a bill making Texas' voter identification law among the most restrictive in the nation passed both chambers of the Texas legislature after lengthy floor debates. The Texas House approved the measure 101-48 late in the night after more than eleven hours of debate that included some 40 proposed amendments.⁴⁶ Appallingly, the bill was fast-tracked as a "legislative emergency" despite other urgent threats to state services due to a \$10 billion budget shortfall.⁴⁷ The legislation, SB14, introduced by Sen. Troy Fraser, would require Texas voters to show a non-expired Texas driver's license, state ID card, military ID, US passport or citizenship ID to vote.⁴⁸ Amendments in the Senate added a Texas concealed handgun license to the list. Banned forms of identification would include driver's licenses from other states, college IDs, birth certificates and other identification documents. During floor debate, legislators removed provisions that would have exempted voters over 70 from the requirement, though the bill does exempt certain people with disabilities, as long as they have a doctor's certification. Those without the requisite ID would have to cast provisional ballots that would be counted only if the voter returned with valid ID within six days after the election.

While similar proposals were defeated in past years, Texas Gov. Rick Perry designated the legislation as an emergency to allow it to be procedurally fast-tracked through the legislature to avoid the debates that derailed such efforts in previous years.⁴⁹ Upon passage, Rep. Rafael Anchilla, who has been leading the legislative opposition to the bill, called the measure a "voter suppression effort," saying, "This is intentional disenfranchisement of African-American and Latino voters. Republicans simply want fewer people to vote."⁵⁰ Opponents additionally challenged the hefty price tag, the disenfranchising impact on poor and minority voters, and expressed concerns that the law may violate the Voting Rights Act of 1965 because it fails to include alternative provisions allowing those without a state-mandated ID to vote using multiple alternative forms of ID. As a preclearance state under the Voting Rights Act, Texas must submit any electoral changes for approval by the U.S. Department of Justice for review under the Voting Rights Act.

MISSOURI

Missouri has been the proverbial poster-child in the photo ID debate since 2006, when the legislature passed a photo ID law only to have it struck down as unconstitutional. The state Supreme Court ruled that requiring a photo ID posed "a heavy and substantial burden on Missourians' free exercise of the right of suffrage."⁵¹ Since then, legislators have tried every year to amend the state's constitution to allow the provisions, only to see the proposals pass the House but stall in the Senate. This year, in a party-line vote, Missouri senators have approved

SJR2⁵² and SB3⁵³, a constitutional amendment authorizing photo ID and accompanying legislation to require it at the polls. The measures have cleared a House committee and stand poised for a floor vote that would make Missouri's law among the strictest in the nation.

The legislation, which would allow only non-expired state or federally issued photo ID or military ID, is estimated to disenfranchise some 240,000 current registered voters in the state who lack ID, according to studies by the Secretary of State and the Center for Budget and Policy Priorities.⁵⁴ The Missouri Department of Revenue identified an even larger number: 253,496 registered voters who don't have a photo ID on file with the Department, and another 125,795 whose IDs are expired who would have to get new ones in order to vote.⁵⁵ Other currently acceptable forms of ID under Missouri's already strict voter ID law, such as college IDs and out-of-state drivers' licenses, would not be accepted. Eligible voters without valid ID would be made to cast provisional ballots, which would only be counted if voters returned to election authorities within two days with acceptable ID. While the bill exempts seniors, people with disabilities, those with religious objections and those who cannot afford ID, these voters may still be disenfranchised because their provisional ballots would be counted only if their signatures match their registration.⁵⁶

Missouri's governor, Jay Nixon (who defended the 2006 ID law in court while serving as attorney general), has stated that he opposes photo ID measures but has not indicated whether he would veto the bill. Even if he did, a veto would only affect the enabling legislation implementing photo ID requirements. The proposed constitutional amendment allowing photo ID would still be submitted to the state's voters as a referendum in November 2012.

WISCONSIN

In the midst of a showdown over Gov. Scott Walker's attempts to eliminate state public employee's collective bargaining rights, Republican senators in Wisconsin pushed forward a photo ID bill in an attempt to lure back senate Democrats who remained out of the state in protest of Gov. Walker's proposed anti-union bill. In an atypical move, the chair of the Elections Committee refused to allow missing Senator Jon Erpenbach to vote or even comment on the legislation from the speakerphone that was set up for a hearing on the bill, even though this had been allowed in the past. The legislation, SB 6, would turn Wisconsin from one of the states where it is easiest to vote, to one where it's the hardest, even with amendments to the legislation adding passports and tribal documents to a state driver's license as forms of acceptable ID (student IDs and disabled veteran cards will not be accepted). Wisconsin, which does not require specific ID to vote, has one of the highest voter turnout rates in the nation. The proposed requirement, which is expected to depress voter turnout,⁵⁷ was originally fast-tracked to be implemented in time for the state's April elections, but legislators have now postponed enforcement until January 2012. Wisconsin legislators have debated photo ID for years, with Republican lawmakers passing voter ID requirements three times during the administration of previous Gov. Jim Doyle, who vetoed the legislation each time. The measure has cleared the committee and stands poised for a floor vote. Though senators are debating possible expansions to the list of acceptable IDs, the legislation is expected to move fast.

KANSAS

Kansas Secretary of State Kris Kobach, known for helping draft Arizona's anti-immigration law, campaigned for office in 2010 on a platform of implementing photo ID if elected. And now his proposed legislation, HB 2067⁵⁸, known as the Secure and Fair Elections Act, passed the legislature and is now headed to the Governor's desk. The legislation requires proof of citizenship upon registering to vote as well as photo identification at the polls, including state ID, passport, student or employee ID. The legislation was amended to address its scant provisions for those without ID, removing a provision that would have provided ID without cost only for those receiving public assistance or whose income is 150 percent below the federal poverty level, who would have to submit an affidavit attesting to their indigence and their intent to use the ID to vote. Kobach's claims that photo ID is necessary to combat voter fraud have been disputed by his predecessors, including former secretaries of state Democrat Chris Biggs⁵⁹ and Republican Ron Thornburgh.⁶⁰ According to the Secretary's elections division, there have been only 20 allegations of voter fraud in the last decade,⁶¹ and it is unclear that any of these could have been addressed by voter ID. Opponents have called the measure extreme and part of a national "concerted effort to suppress Democratic votes."⁶² The legislation was amended to strip the governor of the ability to criminally prosecute identification fraud. At least 620,000 residents who lack ID could be eligible to receiving free identification according to records at the state Department of Revenue.

NEW HAMPSHIRE

New Hampshire has gained national attention this year for several voter suppression bills that would significantly disenfranchise students. New Hampshire House Speaker William O'Brien told a meeting of Tea Party members that such legislation is necessary because there "are kids voting liberal, voting their feelings, with no life experience,"⁶³ and that young voters are "foolish."⁶⁴ The proposals included SB 129, imposing photo ID requirements among several others that would limit student voting in the state. However, following the publication of Speaker O'Brien's comments, the House Elections Committee voted 13-5 not to move forward on proposals limiting student residency for purposes of voting and voted 18-0 to reject a proposal eliminating Election Day registration. Nonetheless, the photo ID proposal is still swiftly moving forward, having already passed the Senate.

NORTH CAROLINA

Legislators pledged to make photo ID a top priority in North Carolina and on March 15 introduced HB 351 and SB352 to require state or federally-issued photo ID at the polls. The legislation garnered significant objections even before it was introduced. The Institute for Southern Studies estimated in a report that the legislation could cost North Carolina taxpayers more than \$20 million in a state facing a \$3.7 billion budget shortfall.⁶⁵ An analysis by the North Carolina State Board of Elections found that large numbers of voters could be disenfranchised. The state Board of Elections matched its database of 6.1 million registered voters with records at the Division of Motor Vehicles and found in February that one million voters did not have a driver's license or ID card matching their names and addresses. About half of those had some

missing information, such as a different last name or old address; about 555,000 had no identification at all. Democracy North Carolina did further analysis on those numbers and found that:

- African Americans make up 22 percent of active voters in the state, 12 percent of whom don't have ID. African Americans make up 27 percent of all those who lack ID.
- Whites make up 73 percent of the state's voters, 6.7 percent of whom lack an ID.
- Almost a third of registered voters over the age of 65 don't have an ID.⁶⁶

The proposed legislation could therefore carry a significant price tag, since the legislation requires the state to provide ID without cost to those who lack one. State elections officials confirmed that voting irregularities are virtually nonexistent in North Carolina. Out of the 4.3 million votes cast in the 2008 general election, approximately 40 were identified as problematic.⁶⁷ Gov. Bev Purdue has not indicated whether she would veto the legislation.

SOUTH CAROLINA

Legislation to require photo ID at the polls has passed both chambers of South Carolina legislature.⁶⁸ Similar legislation died in the Senate last year, but is being pushed this year on party lines. It is estimated that 178,000 of the state's 2.6 million voters lack a photo ID. The head of the local NAACP has called the legislation "Jim Crow, Jr.," charging that the bill is designed to depress the high turnout of African-American voters that occurred during the 2008 elections, because "[Republicans] don't want the African-American vote to come out that strongly again."⁶⁹ Despite proponents' claims that the legislation is necessary to combat voter fraud, Chris Whitmire, public information officer for the State Election Commission, said there have been no substantiated cases of "voter fraud" in recent state history.⁷⁰ Once the differences between the House and Senate versions of the legislation can be reconciled, Gov. Nikki Haley is expected to sign the bill into law.

IOWA

Election officials have proven to be effective opponents against proposed photo ID requirements in Iowa that have now stalled in the senate after passing the house. The state association of county election officials has said that the legislation would depress voter turnout and is unnecessary.⁷¹ Not one of the state's 99 elections officials, about 60 percent of whom are Republicans, support the measure, saying it is politicizing the elections process and will disenfranchise voters.⁷² The legislation could have disenfranchised more than 67,000 eligible voters in the state who lack an ID. The bill, House File 95, would require all voters who cast a ballot in person to show a photo ID issued by the federal or state government.⁷³ Voters without ID could cast a provisional ballot which would only be counted if they return by the following Monday with appropriate ID, or sign an affidavit attesting that they are indigent or have a religious objection to being photographed. The strong opposition by the election officials has stalled the legislation in a senate committee, but Secretary of State Matt Schultz has pledged to travel county to county to drum up support for photo ID.⁷⁴

TENNESSEE

The Tennessee Senate, on party lines, passed legislation requiring voters to present a state driver's license, non-driver ID, U.S. Passport or military ID card in order to vote. One senator called the bill, SB 16⁷⁵, a "modern day poll tax."⁷⁶ The legislation, which stands to disenfranchise more than 500,000 adults who lack a driver's license, is expected to easily pass the House (Similar legislation has passed the Senate in recent years but failed in the House).

The state operates driver's license offices in only about one third of Tennessee counties. Opponents have pointed to the challenges faced by the poor or those without cars in obtaining an ID. Currently, Tennessee voters can present a voter registration card or a Social Security card. In debates, Sen. Andy Berke, D-Chattanooga, unsuccessfully sought to require the state to provide a free government photo ID for seniors over 65. The bill sponsors say that it adequately protects poor voters by allowing them to vote upon signing an affidavit swearing they are indigent and cannot afford a photo ID such as a driver's license.

COLORADO

Although Colorado Secretary of State Scott Gessler has called photo-ID requirements his top legislative priority,⁷⁷ a measure to require photo ID at the polls has passed the House but is now stalled in the Senate.⁷⁸ The legislation, HB1003, would require Colorado voters to present "a valid, government-issued form of identification with a photograph" at the polls before voting.⁷⁹ Currently, voters in Colorado may present a number of forms of ID to vote, such as a copy of a current utility bill, bank statement, or birth certificate. These would no longer be valid. The legislation may be legally flawed for failing to provide the ID for free to voters who lack one, and does not make provisions for those who appear at the polls without ID, those who are unable to obtain an ID or who have religious objections to being photographed.⁸⁰

MINNESOTA

Legislation is pending in Minnesota to require photo ID at the polls and create a database to scan voter IDs. The Minnesota County Attorneys Association has found that proponents' allegations that the legislation is necessary to combat voter fraud are "frivolous." The Association citing a comprehensive investigation of voting improprieties finding that only 26 people had been convicted of illegal voting (improperly voting with a felony conviction) in the last two years – representing 0.00089 percent of votes cast in 2008.⁸¹ Because they did not involve voter impersonation, the improprieties would not have been prevented by a photo ID requirement.⁸² Opponents also contend that the legislation would disenfranchise vulnerable populations.⁸³ The state's governor, Mark Dayton, while stopping short of saying he would veto the bill, has indicated that he would not sign the legislation, which could cost the state \$20 million to implement.⁸⁴

OHIO

Ohio is among the most recent of states to introduce a photo ID bill, but it is moving quickly towards passage.⁸⁵ The measure, HB 159,⁸⁶ was introduced on March 14, heard and passed out of committee on March 22, and passed the House of Representatives on March 23. If enacted,

the proposal would represent the strictest ID requirements in the nation, allowing only an Ohio driver's license or state ID, US military ID or US passport as acceptable identification to vote. It would not allow student ID, tribal documents or voter identification cards. It exempts only those who attest to a religious objection to being photographed, and may be unconstitutional for failing to appropriate sufficient funds to provide free IDs to those without (up to 800,000 voters), voter education and other costs of implementation.⁸⁷

OTHER STATES

Bills are also pending in Alabama,⁸⁸ Alaska,⁸⁹ Arkansas,⁹⁰ California,⁹¹ Connecticut,⁹² Hawaii,⁹³ Illinois,⁹⁴ Maine,⁹⁵ Maryland,⁹⁶ Massachusetts,⁹⁷ Montana,⁹⁸ Nebraska,⁹⁹ New Jersey,¹⁰⁰ New Mexico,¹⁰¹ Pennsylvania¹⁰² and Rhode Island,¹⁰³ and Virginia,¹⁰⁴ among others. A comprehensive chart of all proposals is included as an appendix.

LEGAL PROBLEMS WITH PHOTO ID PROPOSALS

The proposed voter identification laws have been found not only to depress voter turnout and disenfranchise voters, but also to contain some serious potential legal flaws. While states have broad authority to establish processes for elections and voting, they may not do so in a way that creates different tiers of voters, adds unduly burdensome requirements to voting, or that requires voters to expend money in order to exercise their right to vote. Despite court rulings upholding photo ID laws in Indiana¹⁰⁵ and recently in Georgia,¹⁰⁶ as described below, states could face uphill battles in court over the legality of their proposals due to cost impositions on voters, failure to identify those who lack ID and facilitate providing ID to such voters without charge, failure to provide adequate education and training on ID requirements, and failure to make adequate provisions for those who do not or cannot obtain a government-issued ID.¹⁰⁷

Cost

As states across the country face staggering budget shortfalls this year, the high cost of photo ID is a sound policy argument against their enactment.¹⁰⁸ But many states may not realize that they have legal obligations to fund the numerous elements required to implement photo ID. Failure to do so could render the laws flawed for their lack of coverage, and could constitute, as argued by the Pennsylvania County Commissioners Association in a March 21 hearing on its photo ID bill, “an unfunded mandate” because the legislation would improperly impose costs on voters or local election officials.¹⁰⁹ In many of the states considering photo ID proposals, the bills fail to adequately budget for legally required elements of implementation, including providing photo ID at no cost to all voters who lack a state ID; notifying voters who lack ID and facilitating the process to obtain one (which could include the overhead for adding hours and locations to motor vehicle offices if access is insufficiently available); informing and educating voters of new voter ID rules; training staff and poll workers and re-doing training materials; administrative costs of administering the programs; and costs of processing increased numbers of affidavits and provisional ballots of those who appear to vote without requisite ID. States may also have litigation expenses if the legislation is challenged in court.

An effective voter ID program could end up costing \$20 million or more – the three-year cost officials estimated for the 2010 photo ID proposal in Missouri.¹¹⁰ Review of legislative fiscal notes shows that legislators often fail to account for these costs or underestimate them. Colorado, for example, estimated zero cost for its photo ID legislation, based on the assumption that “costs to revise, print, and distribute election materials will be absorbed within appropriations provided by the annual budget process.”¹¹¹ Other states, like Maine, have estimated that certain costs could be covered by federal funds they receive under the Help America Vote Act, though a study by the Fair Elections Legal Network found that many states could not use HAVA funds for this purpose -- or if they could, the funds would be insufficient to cover the costs (only Texas, with \$45 million in its HAVA funds account, even comes close).¹¹² Some states like Ohio attempt to account only for the cost of providing ID but have not included any other potential costs, like voter education, in its analysis.¹¹³ Other states like Missouri, which had a \$20 million three-year price tag in 2010, reduced the fiscal note to \$5 million for nearly identical proposals in 2011,

based on assumptions that agencies would absorb the necessary costs into their existing budgets. In 2009, Texas officials argued that photo ID would have “no significant fiscal implication to the State” though this year have estimated \$2 million.¹¹⁴ Nebraska is also claiming no fiscal impact.¹¹⁵ Such statements are irresponsible and expose states to legal challenges. Real costs to states will include:

- **Providing ID to those who lack one.** Proposals must contain provisions requiring the state to provide ID at no cost to those who lack ID, otherwise such proposals will likely be considered tantamount to a “poll tax” and unconstitutional under *Harper v. Virginia State Board of Elections*, 383 U.S. 663, (1966), which ruled that that any tax or fee imposed on the right to vote presents an undue burden on the exercise of that right. The Georgia Supreme Court’s recent decision upholding Georgia’s photo ID law found that the state had cured earlier deficiencies in the law by ensuring that the state would provide ID at no cost to all those without ID – without regard to their inability to afford the ID.¹¹⁶ In contrast, Montana’s proposal, for example, fails to provide a means for those without ID to get one free of charge. Colorado’s legislation fails to account at all for the cost of providing IDs. Kansas ultimately amended its legislation to remove a provision providing ID only to those with incomes at 150 percent below the federal poverty line or on public assistance. But such limitations remain in proposals pending in many other states, such as Ohio and Pennsylvania, where voters would be required to sign an affidavit attesting to their inability to afford an ID before the state will provide one.¹¹⁷ This is insufficient. It is unconstitutional to require anyone – not just the indigent – to expend money to exercise the right to vote.¹¹⁸ The bills must provide ID at no cost for all who lack one – hundreds of thousands of voters in most states. Indiana’s actual costs have exceeded \$10 million to issue free photo IDs to 771,000 Indiana voters over the last four years.¹¹⁹ In 2009, Wisconsin projected \$2.4 million to cover this cost.¹²⁰ Missouri estimated \$3.4 million.¹²¹ Maine has estimated it will cost \$256,000 to provide ID cards to 97,000 voters.¹²² South Carolina has estimated \$100,000 for photo ID supplies and \$375,000 for 50 camera stations at \$7,500 each.¹²³ It will likely cost North Carolina \$2.5-\$4.7 million to provide needed IDs to voters.¹²⁴
- **Reaching voters without ID.** States will need to identify and notify those without state ID and facilitate getting an ID for them. South Carolina’s proposed legislation, for example, requires that the “State Election Commission is directed to create a list containing all registered voters of South Carolina who are otherwise qualified to vote but do not have a South Carolina driver’s license or other form of identification containing a photograph issued by the Department of Motor Vehicles.”¹²⁵ In order to make sure they met their obligation to reach voters who needed ID in Georgia, the Secretary of State’s office sent mailings over multiple election cycles to the hundreds of thousands of voters believed to lack driver’s licenses, aired public service announcements, distributed leaflets in libraries and included inserts about photo ID in utility bills.¹²⁶
- **Accounting for the underlying costs of obtaining an ID.** Most of the bills that provide state-issued ID for those who cannot afford them do not take notice of the costs of obtaining the underlying documents to procure the ID, such as a certified birth certificate, marriage or divorce records, etc., which can be difficult, costly and sometimes impossible

to obtain. Birth certificates can cost up to \$45. The Missouri Supreme Court concluded that the required cost of obtaining the underlying documents necessary to get the ID, even where ID itself was provided without cost, still rendered the state's photo ID bill constitutionally flawed, tantamount to a poll tax.¹²⁷ Missouri's bill this year attempts to account for that by exempting those who attest they cannot afford an ID or the underlying documents. And this may even be insufficient to keep the legislation from being considered a poll tax, as states cannot require any voter – not just indigent voters – from being made to expend money in order to exercise their right to vote.

- **Educating Voters.** Photo ID requirements will require significant education campaigns to educate voters about the requirements. A federal court enjoined enforcement of Georgia's photo ID law during the 2006 primary elections, finding that the state's efforts to educate voters was constitutionally insufficient and thus posed an undue burden on voters.¹²⁸ The court noted that the state's photo ID might survive constitutional challenge in the future if the state undertook voter education efforts over sufficient amount of time to ensure that voters were fully aware of the requirements and how to exercise their rights.¹²⁹ In 2010, Missouri estimated it would cost \$16.9 million over three years for TV, radio and newspaper announcements and other outreach to the state's 4 million voters.¹³⁰ Texas estimated \$5 million in education costs. South Carolina has estimated \$160,000 for education and training.¹³¹ Maryland has estimated \$500,000 for education costs. Costs of educating North Carolina's 6 million voters about photo ID proposals were estimated at \$14 million over three years.¹³²
- **Implementation costs.** Many of the bills fail to account for the new administrative costs of implementing ID, such as changed forms, staff to account lines at motor vehicle offices or having to keep motor vehicle offices open more frequently, hiring and training staff to process provisional ballots, etc. Maryland estimated \$285,000 for new poll staff for just one county; South Carolina estimated \$480,000 for printing of additional provisional ballots; and Wisconsin estimated \$138,000 for systems training, as additional costs incurred by photo ID proposals.¹³³

Exemptions

Some photo ID bills are less restrictive than others by taking account of voters who will be unlikely or unable, for various reasons, to procure an ID, such as those unable to obtain an original birth certificate or other underlying document needed to procure an ID, those for whom the bureaucratic process of obtaining an ID would be unduly burdensome, or those who have religious objections to being photographed. Failure to adequately provide mechanisms to vote for those who lack or can't get an ID may open states up to legal liability for disenfranchising eligible voters. Some bills, such as Missouri's, exempt seniors, people with disabilities and those with religious objections to being photographed from the ID requirement, but nevertheless require them to cast provisional ballots, which won't be counted unless the voter's signature matches that on the voter's registration. While it's a step in the right direction, the provisional ballot and signature requirement may be problematic.¹³⁴ Signatures may change over time, particularly for those with ambulatory disabilities and seniors. For example, Kathleen Weinschenk, the plaintiff

in the 2006 legal challenge to Missouri's Photo ID law, testified before the House Elections committee this year that her cerebral palsy leaves her unable to make a consistent signature or mark and thus her signature would never match the signature on her voter registration record required by Missouri's proposed law.¹³⁵

Provisional Ballots and Affidavits

The Georgia Supreme Court recently found that the state's photo ID law survived constitutional challenge because it did not "deprive any Georgia voter from casting a ballot in any election" by allowing voters without ID to cast provisional ballots or vote absentee without being subjected to the ID requirement.¹³⁶ Many of the current proposals offer provisional ballots to voters who appear without ID. But the circumstances under which such votes get counted should be scrutinized. Under most of the pending proposals, such provisional ballots will not be counted unless the voter returns to the election authority in a set amount of time (between two and ten days, depending on the state) with adequate ID. Such provisions may not be the savings clauses promoted by bill sponsors, since many provisional ballots are not counted for reasons unrelated to the voter's actual eligibility (such as a missing signature on the ballot envelope, or if cast in the wrong precinct). Such provisions also fail to account for the very real logistical hurdles of requiring voters to return to the election board with specific ID. States should consider amendments to their bills similar to provisions in place in Michigan and Idaho that allow voters without requisite ID to sign an affidavit under oath attesting to their identity and cast a regular – not provisional – ballot.

Constitutionality

Many proponents of Voter ID bills point to the Supreme Court's decision in *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), as affirming the constitutionality of voter ID laws overall. This is a fallacy. While the Supreme Court ruled that Indiana's photo ID law did not violate the U.S. Constitution, *Crawford* does not stand for the position that voter ID laws are necessarily constitutional. The Supreme Court upheld rejected an outright facial challenge to photo ID laws, upholding Indiana's law based on a balancing test, finding that the challengers had not presented sufficient evidence of voter disenfranchisement. Such evidence does now exist in some jurisdictions. Moreover, many state constitutions protect the right to vote more strongly than the federal constitution does and demand greater scrutiny of voter restrictions than the federal constitution requires.¹³⁷ In addition, though never tested, proposals might be susceptible to challenge under *ex post facto* laws, if the state's constitution has been interpreted – as it has in Missouri, for example – to confer a vested fundamental right to vote and the legislation burdens that right. The pending proposals may be open to challenge under those laws.

The Road Ahead

Voter ID proposals will likely pass in many states this year if they come to floor votes. Because of the partisan nature of the proposals, legislators overwhelmingly tend to vote on party-lines on this issue. However, concerns about big government oversight and costly fiscal notes may appeal to conservatives, and the hype and motivation over voter ID may decrease as legislatures begin to get embroiled in serious debates on more pressing issues, such as budget deficits, worker rights, and cuts in services as states face staggering budget shortfalls this year.¹³⁸ bills appear

stalled in Arkansas, Iowa and Rhode Island too. In Colorado, where Secretary of State Scott Gessler called photo ID his top priority,¹³⁹ early enthusiasm passed the legislation swiftly through the house,¹⁴⁰ but it appears stalled indefinitely in the senate.

But the stalling of bills in some states is not an indicator of waning interest in this legislation. Emboldened by movement of photo ID proposals in other states, and the news of fraud indictments against Indiana's Secretary of State and the recent ruling in Georgia upholding Georgia's photo ID laws, three new photo ID bills were introduced in just the first week of March,¹⁴¹ and in that same time frame, photo ID bills saw movement in seven states.¹⁴²

CONCLUSION

Elections cannot be fair and free unless they are open to every eligible voter. Photo ID requirements degrade the integrity of our elections by systematically excluding large numbers of eligible voters. They are nothing more than a solution in search of a problem. More insidiously, these initiatives reflect a coordinated effort to scale back access to the ballot for poor and minority voters whose turnout spiked in 2008 to decrease their voting strength and relegate these citizens to a lower tier of citizenship.

The forceful momentum on these and other voter suppression bills this year represents the largest legislative effort to scale back ballot access since the post-Reconstruction era, reversing a century-long trend of opening the ballot booth to groups that have been legally disenfranchised throughout our nation's history. Voting is the only government institution that is at its essence truly classless, allowing everyone's vote the same weight, placing the poor on equal footing with the rich, non-whites on equal footing with whites. Our nation has historically struggled with this basic concept of electoral equality, using insidious schemes such as poll taxes, literacy tests, and even violence to maintain power by majority groups. But over the last 100 years, we have gradually opened up legal barriers to the ballot box. Photo ID proposals erode this core and essential characteristic of our democracy by relegating those without ID to second-class citizenship. If states are truly concerned about protecting the integrity of the elections process, they should start by ensuring that all voters have access to the vote, by allowing them to present a range of IDs rather than enacting strict, state-issued photo ID requirements contained in this year's proposals.

PHOTO BILLS, AS OF MARCH 22, 2011

| State | Bill | Description | Status |
|-------|------------------|--|--|
| AL | HB63/SB86 | Requires voters to present state or federally-issued photo ID to vote; requires SOS to offer free voter ID cards to those who lack ID, which can only be used for voting purposes. | Passed House on 3/22/11; Sent to Senate Constitutional, Campaign Finance, Ethics & Elections Committee. |
| AK | HB162 | Requires voters to present photo ID when voting. The state will provide ID for free to those who lack one, are already registered to vote, and indigent. Includes student IDs and tribal documents as acceptable ID, as well as state or federally issued ID. Makes no provisions for those who appear without mandated ID. | Pending in Judiciary committee. |
| AR | HB1797 | Requires voters to present a photo ID issued by the US or State of Arkansas when voting and requires the state to provide free ID to anyone who doesn't have a valid ID and will be 18 by the next election. The bill exempts those in nursing homes or other residential care facilities from having to show photo ID. Those without ID can cast a provisional ballot that will only be counted if voter returns with ID by the Monday following the election, or signs an affidavit attesting to indigence or religious objection to being photographed. | Passed House on 3/21/11; Sent to Senate, where it has died. |
| CA | AB663 | Requires voters to show photo ID, exempting those in state care facilities, those with religious objections to being photographed and those voting by absentee ballot. Allows those without ID to cast provisional ballots, which will only be counted if voter returns with ID within ten days, and requires state to provide ID at no cost to those who lack one. | Introduced 3/7/11. |
| CO | HB1003 | Requires only non-expired state or federally issued ID to vote; fails to provide mechanism for those without ID to obtain one or provide measures for those who appear at the polls without ID. The legislation's fiscal note estimates no costs to the state. | Passed House on 2/22/11, but is indefinitely stalled in the Senate State, Veterans and Military Affairs Committee. |
| CT | HB 5231 & SB 604 | Requires photo ID when voting (House version also requires proof of citizenship). | Pending in Joint Cmte on Gov't Administration and Elections. No hearing scheduled. |
| HI | HB 1359 | Requires photo identification bearing a photograph when voting, but doesn't otherwise specify what ID will be acceptable, nor include provisions for those who lack photo ID or providing the ID without cost. | Stalled in House Judiciary Committee. |

WHAT'S WRONG WITH THIS PICTURE?

| | | | |
|----|--|--|--|
| IA | HF 95 & SF142 | Requires non-expired state or federal photo ID when voting, and allows those without one to cast provisional ballots. Requires the State to offer free (for purposes of voting) birth certificates and non-operator's identification cards. Fiscal note estimates costs to the state of \$173,000 in fiscal year 2012 and \$345,000 each year after. | 1/27/11: HF 95 Passed House. Measure died in Senate Committee on State Government. |
| IL | HB3058 / SB2035 | Requires photo ID to vote and requires the Secretary of State to issue IDs without cost to those without one. Acceptable ID under the legislation includes an Illinois Driver's License or state ID, Illinois Disabled Person ID Card, senior citizen ID card, FOID card, US Passport or other government document. | HB 3058 is in the House Rules Committee and SB 2035 is in the Senate committee on assignments. |
| KS | HB2067 / SB129 | Requires non-expired photo ID when voting and proof of citizenship when registering. It requires the state to waive the \$14 fee for an ID (as well as the charge for obtaining a birth certificate) for voters without ID. On March 22, the legislation was amended to remove a requirement that voters receive public assistance or are 150 percent below the federal poverty level before they could receive a free ID. The bill allows those without ID to cast provisional ballots, and it allows those over age 65 to present expired ID. Acceptable ID includes state- or federally issued photo ID, gun license, student ID, military ID or public assistance ID card. The bill exempts those with a permanent disability that prevents them from going to the motor vehicle office, those on active military duty, and those with a religious objection to being photographed. The state estimates that it will cost the state \$68,500 over two years. | SB129 passed Senate on 2/24/11; passed House Committee on 3/23/11. |
| MA | HB 1113 (and HB1115, HB2731, SB316) | Requires a non-expired Massachusetts or federally-issued photo ID to vote. Those who appear without ID can cast provisional ballots that will only be counted if they return to the election authority with proper ID within 8 days. | Pending in joint committee on election laws. |
| ME | HP 176 | Requires voters to present photo ID when voting. The bill fails to provide details on specifics of implementation, providing that the Secretary of State shall establish rules for implementation, though the fiscal note estimates that it will cost \$256,000 to manufacture ID cards for those without ID. | Pending in Veterans and Legal Affairs Committee. |
| MD | HB 288 (and HB 701) | Requires government-issued photo ID when voting, but doesn't spell out specifics. It requires the state to provide a state ID without cost for the purpose of voting, and allows those without ID to cast provisional ballots, but does not address the circumstances in which those ballots would be counted, nor does it provide exemptions for seniors, people with disabilities or those with religious objections to being photographed. Costs to the state to provide ID and educate voters would total about \$1.6 million. | Pending House Ways & Means Committee. |
| MN | HF 210/ SF 479, HF302, HF89, SF169, SF354, SF509 | Requires government-issued photo ID to vote, eliminating currently acceptable forms of ID. Allows those without ID to cast provisional ballots and requires the state to provide ID without cost to those who lack one. Fiscal notes say that the photo ID proposal could cost \$5 million to implement. | Passed out of House Committee. SF479 and SF509 passed out of Senate Committee on 3/21/11. |

WHAT'S WRONG WITH THIS PICTURE?

| | | | |
|----|------------------------|---|---|
| MS | HB228, HB233 and HB462 | Requires government-issued photo ID vote, though it does provide some exceptions for those unlikely to have ID. It allows those without ID to cast an affidavit ballot. The state must provide ID cards for those who lack one. | All three bills died in committee. |
| MO | HJR14 | Constitutional amendment to allow photo ID and early voting to be implemented. Would go before voters in 2012. | Passed House Elections Committee on 2/15/11; on calendar for full floor vote in the House. |
| MO | HB329 | Requires only non-expired, Missouri or federal-issued photo ID when voting and establishes 4-day advance voting period. Provides exceptions for seniors, people with disabilities, those who cannot afford ID and people with religious objections, who would have to cast a provisional ballot that would not be counted unless their signatures match. The State must offer at least one form of personal identification at no cost, for purposes of voting. Contingent on the constitutional amendment passing. | Passed House Elections Committee on 2/15/11; on calendar for full floor vote in the House. |
| MO | SJR2 | Constitutional amendment to allow photo ID to be implemented, to override MO Supreme Court's 2006 ruling striking Missouri's Photo ID law as unconstitutional. Has been amended to also include advance voting. The measure would go before voters in November 2012. The enabling legislation, SB3, could not be implemented until SJR 2 is approved. | Passed Senate; Passed House Elections Committee after being amended to include advance voting; slated for floor vote in the House. |
| MO | SB3 | Requires only non-expired, Missouri or federally-issued photo ID when voting. Provides exceptions for seniors, people with disabilities, those who cannot afford ID and people with religious objections, who would have to cast a provisional ballot that would not be counted unless their signatures match. The State must offer at least one form of personal identification at no cost, for purposes of voting. Contingent on the constitutional amendment passing. The state estimates \$10 million to implement. | Passed Senate; Passed House Elections Committee after being amended to include advance voting; slated for floor vote in the House. |
| MT | HB 152 & HB 99 | Requires voters to present state or federal photo ID when voting and would not allow student IDs. Would allow those without IDs to cast provisional ballots. The bill would not allow voters without ID to get one free of charge. | Passed House, passed Senate Committee on State Administration. Passed Senate on 3/31/11 |
| NC | HB351/ SB352 | Requires voters to present only state or federally-issued photo ID at the polls to vote. The legislation requires the state to provide ID for free to all registered voters who do not have a driver's license or state ID. | Legislation introduced on 3/15 and 3/16/11 and sent to House and Senate Elections Committees. Amended to allow voter registration card as valid ID |
| NE | LB239 | Requires photo ID when voting but has been amended to also allow those without a state driver's license to vote with a voter identification card issued by the county. The bill had a "zero fiscal note" estimating no cost to the state to implement. | Legislation was amended on 3/10/11 to include the voter identification card provision. Was voted out of the Government, Military and Veterans Affairs Committee on 3/15/11. |