



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 7, 2005

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

Dear Senator Bond:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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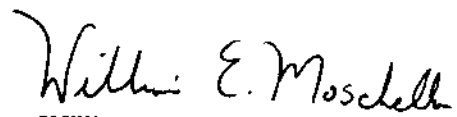
twice the rate of increase among white voters, and the turnout rate among African-American voters in Alabama actually exceeded that of white voters.

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

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

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

Sincerely,


William E. Moschella
Assistant Attorney General