

The appropriate analysis of the restriction of the voter ID requirement first identifies whether there are individuals who are permitted to vote under the benchmark procedure who will now be precluded from casting a ballot at the polls under the current procedure, and if so, ascertains whether minorities are disproportionately represented in that group.

The submitting authority provided almost no information regarding the availability of the seventeen forms of identification that are acceptable under the benchmark, the method to obtain them, or any discrepancies in ownership of these forms of identification by race. As it is the jurisdiction's burden to demonstrate that the proposed voting change is not retrogressive, it has failed to do so. However, we have made significant efforts to obtain as much information as possible about each form of identification to conduct a thorough analysis. We were somewhat hampered by the lack of data on the availability and distribution of many forms of identification, but draw the best conclusions we can given the data limitations.

Driver's Licenses & DDS Cards: Governor Perdue estimated that approximately 300,000 voting age Georgians do not have a driver's license or ID card. Legislators did not acknowledge whether this fact was correct, nor seek any data regarding the racial composition of the group of individuals without ID during debates over HB 244. Proponents stated that more persons had a valid driver's license or ID card than there were registered voters. Ms. Meyers stated that the legislature's intention was "color-blind," but acknowledged that they did not investigate or consider any data regarding racial disparities among persons who held driver's licenses or DDS cards. She stated that in terms of statistical analysis, the legislature relied on the numbers showing that more Georgia residents overall had DDS cards than were registered to vote.

(i) Statewide Totals

We requested data from the Georgia Department of Driver Services regarding persons who hold valid driver's licenses and/or ID cards to attempt to estimate any potential shortfall and the racial makeup of such a group. In examining the data provided by DDS, we have determined that it is not reliable for purposes of estimating the number of people with and without DDS-issued identification.^{13/} This is due to an apparently unknowable number of records that are no longer valid due to death, persons moving out of the state, and other reasons. The data received from the state showed a total of 7,087,981 people of voting age with either a DDS drivers license, a photo ID issued by DDS, or both, on August 16, 2005. This total is broken down in the following table. Note that each category is mutually exclusive.

Table 1. Numbers of DDS-issued cards in Georgia, Aug. 16, 2005

^{13/} The statistical analysis contained in this section was conducted internally by Dr. Toby Moore, Geographer/Social Science Analyst.

Total	License only	ID Card only	Both license and ID card
7,087,981	6,108,560	690,538	288,883

The voting-age population of Georgia in 2005 is available only as an estimate or as a projection. In April 2005, the Census Bureau projected the VAP of Georgia to be 6,565,095 on July 1, 2005. However, the latest estimate for county-level totals, necessary for the analysis below and released in January 2005, had Georgia with a VAP of 6,496,816 in 2004. Extending that estimate to July 1, 2005 based on each county's 2003-2004 growth rate yielded a 2005 VAP estimate of 6,621,137.

The data from the state, then, suggests 466,844 more persons with a DDS card than the higher of the two estimates of current VAP, or 7 percent. The state has been unable to quantify this discrepancy. When pressed to explain the difference, DDS Data Manager Loraine Piro stated to Voting Section staff that unexpired licenses remain in the database until they expire, so they could belong to persons who have died, moved out of the state without cancelling their licenses, or had their licenses suspended or revoked (including persons who are incarcerated). As licenses issued prior to July 1, 2005 have a four-year expiration, we can assume that these records contain no more than four years' worth of individuals who died, moved, or had licenses revoked or suspended within that time frame.

There is no way to reliably estimate this number. The death rate in Georgia is approximately 66,016 per year, which could result in an extra 264,064 records in the database over four years. The Census Bureau's 2003 American Community Survey estimated that 243,100 Georgia residents had moved into the state in the past year.¹⁴ Given a net migration of around 40,000, on average, it would appear that another 200,000 or so people are leaving the state each year. In a four year period, persons who move into Georgia may obtain a DDS card, and persons who move out of Georgia may leave an unexpired DDS card behind, thus creating additional bad records. The American Community Survey also found that another 335,734 people had moved from a different county within the state; these in-state migrants also complicate the DDS database if they change county of residence without submitting a change of address with the DDS. Prison population numbers would be unhelpful without information regarding length of sentences being served by such population to determine whether their licenses might still be unexpired in the database.

This unavoidable "churn" is associated with a live data base that was not designed to be used for statistical analysis or predictive purposes. Deaths, people moving from county to county, in and out of the state, and in and out of license status all create disruptions in the data, particularly in quickly growing counties, of which Georgia has a significant number. As a result of these factors, the "overage" in the DDS database is of no use in estimating the total number of

¹⁴ This refers only to persons who moved into the state from another state, not international migration.

persons with a DDS card, or whether a shortfall exists of state residents who lack DDS cards.

A second cause for concern regarding the reliability of the data for predictive purposes is that it appears to show many more “bad records” than in two previous sets of data provided by the state. This third set of spreadsheets, which was supposed to eliminate 16 and 17 year olds who were included in the prior query, resulted in an increase in the number of DDS card holders by approximately 393,000, eliminating what had previously appeared to be a shortfall statewide and creating the impossible statistic of an “overage.” The state has provided no explanation of why the numbers diverged so significantly from the first two submissions, although Ms. Piro suggested that commercial licenses and DUI permits may have been added and could explain some of the increase, however, she was not certain that these categories of licenses were not present in the first data sets. Given the difference between this data and data submitted earlier by the state, as detailed at Tab 3, there is reason to doubt its accuracy. Combined with unavoidable error in estimating current VAP, it appears that the quality of the DDS dataset is not sufficient to estimate the size or even the existence of the voting-age population of Georgia that lacks a DDS card.

(ii) County-Level Totals

To the extent that one wanted to compare the data provided by the state at the county level with estimated VAP, projections for 2005 VAP were produced by repeating the 2003-2004 growth rate. Clearly this estimate is inexact and the source of additional unavoidable error. Nevertheless, these two variables, people of voting age with a DDS-issued card and people of voting-age, represent the key variables for further analysis. These two variables were compared in a ratio to determine the number of licenses per 100 residents of voting age. The full results are given in the table attached to this memo at Tab 3.

The county-level ratios of licenses to 100 population ranged from 41.7 in Chattahoochee County to 117.7 in Bartow County.^{15/} The Chattahoochee County ratio was a clear outlier caused by the large military base in the county. The next lowest county was Wheeler County, with 76.2 cards per 100 population. In all, 47 counties had fewer people with cards than voting-age population, while the remaining 112 counties had more people with cards than voting-age population.

Ten of the 47 counties with few cards had a DDS office, or 21.3 percent. Forty-three of the other 112 counties had DDS offices, or 38.4 percent. However, the average size of counties with more cards was about 52,000, compared to only 16,000 in those counties with few cards. It

^{15/} Note that these figures do not take group quarters populations or other elements that might skew the population figures into account. It is also important to note that the reliability at the county level is low; that is, our ability to use individual counties as illustrations or evidence is far less reliable than aggregate measures. It appears that much of the overage at the county level stems from the “churn” generated by population growth in dynamic counties.

is assumed that DDS locations are located in or near population centers.

(iii) Correlations between Race and ID Card Ownership

For a number of reasons, not the least of which is the apparently poor quality of the DDS data, it is a difficult enterprise to examine the data for correlations between race and card ownership. The data on both population and licensing is of poor quality for these purposes and thus prevent a conclusive finding of a clear correlation between race and identification ownership.

Nevertheless, some evidence supports the Census data suggesting that blacks have fewer drivers licenses than whites. For example, the 10 counties (not including Chattahoochee) with the lowest rates of card ownership had a black 20-and-over population of 29.4 percent, while the 10 counties with the highest rates had a black population of 18.3 percent. On the other hand, the number of licenses per 100 people in the 10 blackest and 10 whitest counties were nearly identical.

Correlations across the 158 counties were inconclusive. The following table shows the results of Pearson's correlation between percent non-white and the ratio of card ownership. The correlation coefficient is the measure of the strength of the relationship between two variables. Correlation scores vary between 1 and -1, with 0 meaning no correlation. Unlike regression, it does not provide a means of predicting one variable from the other, but only gives an indication of how closely the two variables are associated. In the current instance, a negative correlation would mean that as counties increase in minority population, they decrease in card ownership.

Table 2. Correlations between race and card ownership

correlation between race and:	correlation across 158 counties
ID:VAP	-0.15
ID:VAP minus correctional population	0.03
ID:VAP minus all group quarters population	0.13

The correlations in each case were weak, but notice that the trend reversed when the group quarters population is subtracted. The group quarters population is a difficult issue for two reasons, and appears to be key to gleaning what evidence is in the data:

1. It includes people who may or may not have cards, and whose cards may or may not be issued from the county in which they reside. College students, prisoners and military personnel all pollute the database at the county level. One solution would be to subtract all or part of the group quarters population, but doing so

would remove people whom we know have cards from the population figures without removing them from the license figures.

2. A greater problem is that concentrations of group quarters populations are themselves correlated with race. That is, counties with higher black populations tend to have a higher percentage of their population in group quarters, particularly prisons. Subtracting group quarters populations, while intuitively defensible, skews the resulting data by taking population out of non-white counties and eliminating evidence of any shortfall of licenses.

In fact, a curious correlation between race and the degree of license ownership emerges when counties with large group quarters populations begin to be removed from the data set. The following table summarizes a set of correlations performed on successive subsets of Georgia counties, as counties with large (and skewing) populations of students, prisoners and military personnel are removed from the correlation.

Table 3. Correlations between race and card ownership as group quarters is controlled

	number of counties	population	correlation
counties with less than 10% GQ VAP	138	6,266,518	-0.02
all counties with less than 5% GQ VAP	108	4,658,445	-0.08
all counties with less than 2% GQ VAP	62	2,873,075	-0.19
all counties with less than 1% GQ VAP	23	592,531	-0.35

Dr. Moore stated that while there might be other explanations for the emergence of this correlation, his professional opinion at this point is that group quarters populations, along with “noise” in the data, obscures the modest correlation between race and card ownership that surfaces when counties with significant group quarters populations are removed from the study. Removing those counties from the sample appears to uncover a relationship that is otherwise hidden. On the other hand, the final correlation, while statistically significant, is based on less than 10 percent of the state’s VAP and 14 percent of its counties. It is possible that further work in refining the query of the DDS data would result in a more convincing set of correlations.

The bottom line is that the DDS data provided by the state is not sufficient to answer the question of whether race correlates with lack of DDS card ownership in Georgia. The poor quality of the DDS data; the unavoidable error in the estimation of VAP for 2005 (particularly at the county level); the inter-correlations between race and poverty, educational attainment, county growth, group quarters population, and so on; and the other hypothesized correlations with card ownership (e.g., age), make it extremely difficult to derive meaningful patterns from the DDS

data.

(iv) Racial Identifications in the DDS Database

The DDS data base contains racial identifications for approximately 4.2 million Georgians who have a DDS card, or approximately 59 percent of the people for in the data set. The database contains records for approximately 2.88 million people without racial IDs, or 41 percent of the records. Roughly half of the records with racial ID these come from voter registrations submitted at DDS offices since April 1, 2001. The other half are left over from previous Georgia policies of collecting racial information during the license (or ID card) application process. That practice ended at some point in the past, but exactly when is unclear, as is how that information was originally collected. Individuals who renewed their licenses or cards had their racial identifications preserved in their records. "Motor voter" registrants constitute approximately 29 percent of the records in the database, and "old records" constitute approximately 28 percent of the records in the database. Racial identity information regarding persons who register to vote at motor vehicles agencies compared to other locations is not available in the EAC Report to Congress, the Georgia 2005 Voter Registration Report to the EAC,^{16/} nor other available sources. Therefore, we cannot draw conclusions about the representativeness of the records that have race identification other than to say they are a non-random sample of the total number of records.

Accordingly, Dr. Moore stated his strong belief that these racial identifications are not useful for determining the race of people in Georgia who do not have DDS cards. This based on two reasons:

1) No reputable statistician would infer characteristics of a population by analyzing the characteristics of a non-random sample. The people for whom we have racial identifications are undeniably a non-random sample of the entire data set. The state has provided no evidence of the old practice of obtaining racial identifications, so we have no way of knowing how representative that is, or of knowing whether blacks or whites fail to renew these old licenses at the same rate. Similarly with the "motor voter" registrations: it reflects not people who come into DDS locations for cards, but those people who a) come in for cards; b) have not registered to vote; c) choose to register to vote; and d) give their racial identity. Each step in that process makes the end group less and less representative of the total pool of ID card holders.

2) Even if the motor voter registrations were reliable indicators of who has obtained a DDS card since 2001, that rate in comparison to black voting-age population does not tell

^{16/} Approximately 57.5 % of all new voter registration applications in Georgia between the close of registration for the November 2002 general election and the November 2004 general election were received from Georgia motor vehicle offices, according to Georgia's response to the EAC Voter Registration Survey. Available at: http://www.epic.org/foia_docs/eac/georgia.pdf. However, this report does not discuss the racial identity of persons who register to vote at DDS.

whether blacks are ahead or behind whites in card ownership. Were blacks behind on April 1, and registered at the same rate, or even at a higher rate, they might well still be behind in comparison to whites. If blacks were five times more likely to lack a DDS card on April 1, and obtained cards at a higher rate than whites, they might well be only four times more likely to lack a card by 2005.

(v) Other Data Limitations

The DDS data, and the population data, are of a quality far below what we are accustomed to using in the Voting Section. The number of people we are trying to identify, those without a license, is a fraction of the total VAP. There is also reason to believe that lack of card ownership varies with many attributes beyond race, including age, poverty, and perhaps urban or rural location. Even with good data on both sides of the equation (population and licenses), it would be a considerable task to derive conclusive relationships on an ecological basis. Survey work, Census data on vehicle accessibility, or qualitative data may provide better evidence.

Removing segments of the population at the county level eliminated one source of error and bias only to replace it with another, given the correlation between group quarters population and race at the county level, and the uncertainty surrounding ID ownership by military personnel, students and prisoners. Nonetheless, dealing with the issue appears to be key to deriving any usable estimates.

We also do not have a perfect grip on the current VAP in Georgia, particularly at the county level, although the error here is more unavoidable and probably less significant across counties. But our grasp of the base population, particularly in fast-growing counties, is shaky. This is a source of error but one that can only be minimized, not eliminated.

In sum, Dr. Moore concluded that use of the Georgia DDS data to infer the number or race of people who lack DDS cards is unsupported.

Analogous Wisconsin Study

A similar analysis of race and driver's license ownership was recently conducted in Wisconsin based on data from that state's Department of Transportation, which appears to contain more complete records, particularly with respect to racial identification, than Georgia. The study compared Wisconsin licensed drivers contained in the database of driver records on January 31, 2002, along with age, race, gender, and geography, and compared this information to Census population estimates. See John Pawasarat, "The Driver License Status of the Voting Age Population in Wisconsin," Employment and Training Institute, University of Wisconsin-Milwaukee (June 2005), available at <http://www.uwm.edu/Dept/ETI/barriers/DriversLicense.pdf>. The study found that minority and poor populations "are the most likely to have drivers license problems." Among voting age Wisconsin residents statewide, 80 percent of white males and 81 percent of white females have driver's licenses, compared to 45 percent of black males and 51

percent of black females. In Milwaukee County, 80 percent of white males and 75 percent of white females have driver's licenses, compared to 61 percent of black males and 56 percent of black females.

Moreover, the study finds that 24 percent of the African-American voting age population in Wisconsin live in a household with no vehicle, compared to eight percent of white VAP. See id. at 16. This is nearly the same ratio as the disparity among black and white vehicle access in Georgia households, four times more black households lack access to vehicles compared to white households. This data suggests that complete records, or at least a more representative sample, from Georgia would be expected to yield a stronger correlation between driver's license ownership and race. As this study shows strong patterns of racial disparity among driver's license ownership in Wisconsin, it further underscores our concerns about the reliability of the Georgia DDS data, and suggests that predictions of driver's license ownership may be better analogized from vehicle access data.

Vehicle Access Data

Vehicle access has been used as a proxy for drivers license ownership on the assumption that people who lack access to a vehicle have less reason to get a license, as well as a more difficult time reaching a licensing office. Vehicle access data from the Census and Blueprint 2030 shows that 20 percent of black households and 4.4 percent of white households in Georgia lack access to a vehicle. Further, the Blueprint 2030 data show that among the nine counties with the largest lack of vehicle ownership, among households that lack access to a vehicle, 65 to 75 percent are headed by an African-American householder. This strongly supports an inference that African American residents in Georgia are less likely to have driver's licenses compared to whites.

If the relationship between driver's license ownership and vehicle access is similar in Georgia and Wisconsin, this would indicate potential gaps in driver's license ownership of 20-35% between blacks and whites. Approximately 9.7 percent of records in the Georgia DDS database are persons who hold only state ID cards, which would close this gap somewhat. As it is logical to infer that the relationship between owning a car and having a driver's license are similar in the two states, and the ratio of black to white households without vehicles are similar in Georgia and Wisconsin, an inference that a racial gap exists in driver's license ownership is appropriate.

United States passports: Rates of passport ownership by Georgia citizens were not addressed in the Senate and House debates, nor is it discussed by the submitting authority or any of the proponents in support of preclearance. As less than 20 percent of all United States citizens hold passports, it is reasonable to assume that no more than 20 percent of all Georgia citizens hold passports. Among this group, a much smaller proportion are likely to be black, given that blacks' per capita income is less than half that of whites, their representation in poverty more than twice that of whites, and the fact that passports are held in greater numbers by wealthier

individuals for the purpose of international travel. Moreover, the pool of individuals who lack a driver's license or ID card is very unlikely to include persons who hold passports, since the latter document is more expensive and difficult to obtain.

Employer-Issued ID: Our analysis of employer-issued identification points to no demonstrable conclusions. Approximately 77 percent of employed black Georgians work for private sector employers, and 19 percent work for public sector employers. Those in the public sector would not be affected by the change to the voter ID law if they have been issued photo identification by their employer. Our research showed employees of the state's largest counties were the most likely to have county-issued photo identification, while employees of small counties were generally not issued such identification. Most employees of mid-size counties were also not routinely issued photo identification unless they were in certain professions or locations such as courthouses. As a result, the option to use one's government issued photo identification will apply primarily to residents of large counties in urban centers.

For those individuals working for the private sector, any such persons with an employer-issued photo identification would now be unable to use that ID for voting. This will affect employees of the state's largest employers, including Delta Airlines, Wal-Mart, Home Depot, Brown & Williamson Tobacco, and others. However, outside of limited anecdotal information, we have no information regarding the issuance of photo identification by private employers, it is difficult to draw conclusions about whether any voters who previously had acceptable employer identification will now be excluded.

Among all persons employed in either the public or private sector, all are more likely to have access to other photo identification compared to those who are unemployed. The Department of Labor statistics reveals that the unemployment rate for blacks in Georgia is double the rate of unemployment for whites. Unemployed individuals have no access to any employer-issued identification, and are likely to fall below the poverty line.

College and university ID: Analysis of college and university-issued identification also points to no demonstrable conclusions. Without data regarding the number of white and black students who attend private colleges, universities, community colleges and technical schools in Georgia, we cannot compare the rates of acceptable student ID ownership between public and private schools among whites and blacks.

As a general matter, students are less likely than other segments of the adult population to have acceptable photo identification aside from their college identification. Since students move frequently during their school years, they often retain their parents' address on driver's licenses or bank accounts. Contemporary student photo identification cards usually have a magnetic stripe and bar code containing students' personal information, which they use to gain access to libraries, gyms, and dining halls, cash checks, access health care, purchase tickets to university events, and even use as a debit or credit card on campus and at nearby businesses. Opponents of the legislation point to students at historically black colleges and universities as particularly

burdened by the elimination of private school identifications. However, because we do not have data regarding private school ID ownership among students, or financial status by race by type of institution, we cannot draw meaningful conclusions about the potential retrogressive effect of retaining public school identification while eliminating private school identification.

Non-Photo ID/Government documents: The higher rates of poverty and participation in government benefit programs among African-Americans suggest that the elimination of government documents as acceptable ID for voting will disproportionately affect African-American voters. Black citizens in Georgia receive government benefits such as TANF, food stamps, and unemployment insurance, in higher proportions than whites due to their over representation in poverty and unemployment status. Neither the submitting authority nor any of the proponents addressed the potential for retrogression that is likely from repealing the use of government documents as identification for voting.

Ms. Meyers noted that mail can be stolen, suggesting that a utility bill would be unreliable as proof of identity because it could be presented by an individual who had stolen it. However, as Rep. Watson responded, persons who steal mail, such as benefits checks, do so for economic gain and would be unlikely to risk getting caught by presenting such documents to commit voter fraud. Additionally, as noted earlier, there have been no reported instances of voter fraud involving stolen non-photo identification.

For certain low-income populations, individual citizens may have one form of ID but not another, such as a TANF check but not a bank statement if they receive government benefits but do not have sufficient assets to open a bank account. Another citizen may have a Social Security card, but not a driver's license if they do not own a car. The ability to present any of the seventeen forms of photo or non-photo identification gives low income individuals a wider range of acceptable options and may be the only key to such persons' ability to vote.

Tribal ID: The addition of tribal identification containing a photo as a form of acceptable identification could potentially offset the retrogressive effect of the photo ID requirement for those tribal members who lack other forms of ID. This would be the case if the tribal ID contained the voter's photograph, which is currently unknown, but anecdotal evidence suggests that for Native Americans in Georgia it is doubtful. We conclude that the addition of this form of identification is not retrogressive because it adds, rather than removes, an option for voters.

Firearms permit/hunting or fishing license/pilot's license: In the absence of any data in this area, we can draw no conclusions about the potential retrogressive effect of the elimination of firearm permits, hunting and fishing licenses, or pilot's licenses, as acceptable voter identification.

Affidavits: As the data above show that blacks have disproportionately fewer driver's licenses and DDS cards compared to whites, and lack access to a motor vehicles at higher rates than whites, it is reasonable to assume that blacks and low income persons might have a higher

use of affidavits in lieu of identification particularly under the proposed voter ID restrictions. The information concerning the use of this "fail-safe" procedure during the November 2004 election is maintained by the individual counties within the state. The state did not collect and present an analysis of these data by race, nor did it submit the raw data to the Department for our analysis. The only data we have was provided by Forsyth County finding that .08 percent of residents used an affidavit in lieu of identification. However, Forsyth County is in the bottom tenth of Georgia counties ranked by black population, with a BVAP of 9.7 percent, so it is not particularly representative of how elimination of the affidavit will affect black citizens. Additionally, this figure reflects those voters utilizing affidavits under the current procedure, which provides for 17 forms of acceptable voter identification, and cannot be used to predict the usage rate under the proposed restrictions.

Even those individuals who are indigent^{17/} and, therefore, eligible for the waiver of the ID card fee would be required to pay various other fees to purchase the documents necessary to obtain a photo ID if they did not already possess such documents. These fees would be incurred for purchasing certified copies of a birth certificate or naturalization document, which are not waived by the indigence clause. These costs can range from \$10 for the basic birth certificate, to \$46 if additional services such as rush delivery are necessary, to \$210 if a naturalization document is needed. For someone earning the median income for African-American individuals, \$12,576, or someone who is below the poverty line of \$9,570, these fees are significant. This supports the argument made by opponents of preclearance that the fees constitute a poll tax.

In addition, transportation costs to the DDS to obtain a free photo ID for voting can be relatively burdensome. There are DDS locations in less than one-third of all Georgia counties. Three of the four locations within metropolitan Atlanta are accessible by public transportation. There are no offices, however, within the city limits. As a result, most Georgians must travel significant distances to reach a DDS office. Only five DDS locations are accessible by any form of public transportation. Therefore, most are only accessible via personal transportation, taxi service, or a combination of public transportation and taxi service resulting in potentially prohibitive transportation costs for those who lack access to a vehicle. Such cost for round-trip travel can be significant for a person with a median income or poverty level subsistence. The

^{17/} Persons who sign an affidavit of indigence can obtain a state ID card for voting purposes at no cost. The statute contains no definition of indigence, nor does the law contain income tables or formulas whereby indigence is determined. Rather, it appears to be a self-certifying determination made under oath or affidavit. The Affidavit of Eligibility for the voting identification card contains the following language:

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

Affidavit of Eligibility, Georgia Identification Card for Voting Purposes available at
<http://www.dds.ga.gov/drivers/dldata.aspx?con=1749371755&ty=dl>.

lower level of vehicle access among African-Americans, combined with the lack of public transportation accessibility of DDS offices, will contribute to the disproportionate effect of the proposed voter ID restrictions on African-American voters.

To the extent that the GLOW program goes into effect and becomes a mobile photo ID distribution center that reaches underserved areas, this may mitigate the barriers to obtaining ID for some voters. Of the counties on the state's initial schedule through November, 12 have black populations of 50 percent or higher (2004 estimate of persons age 20 and over), 11 have black populations between 35 percent and 49.9 percent, and 12 have black populations between 23.8 percent and 34.9 percent. This demonstrates that the program is planning to visit counties with higher than average BVAP, and may serve to assist minority voters in those counties, assuming that the program is adequately advertised and fully operational.

While no single piece of data confirms that blacks will be disparately impacted compared to whites, the totality of the evidence points to that conclusion. Governor Perdue estimated that 300,000 Georgia residents were without an acceptable DDS-issued identification card. Census data reflects that blacks lack access to vehicles at roughly four to five times the rate of whites. Other publicly available data reflects that blacks are less likely to have passports, employer ID, and other forms of acceptable photo identification compared to whites, and greater access to some of the forms of non-photo identification that are repealed. Blacks' over-representation in the lowest socioeconomic classes hampers the ability of many individuals to obtain photo IDs. Finally, it appears that neither the legislature nor the submitting authority conducted any analysis or presented any data regarding these racial disparities in access to various forms of photo identification. This leads us to conclude that the state has failed to meet its burden of demonstrating that the change is not retrogressive.

III. LEGAL ANALYSIS

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5 of the Voting Rights Act, 28 C.F.R. 51.52.

A voting change may not be implemented unless and until the submitting authority establishes that, when compared to that jurisdiction's benchmark standard, practice, and procedure, the proposed change does not diminish the ability of minority voters to participate in the political process and that it was not adopted with such an intent. Beer v. United States, 425 U.S. 130, 141 (1976). Georgia v. Ashcroft, 539 U.S. 461 (2003). The Court has emphasized that "§ 5* * * is designed to combat only those effects that are retrogressive," i.e., those that will "worsen the position of minority voters" The voting change at issue must be measured against the benchmark practice to determine whether the opportunities of minority voters will be "augmented, diminished, or not affected by the change affecting voting." Beer, 425 U.S. at 141.