

SECTION 5 RECOMMENDATION MEMORANDUM: August 25, 2005

Re: Act No. 53 (H.B. 244)(2005), which amends and provides: definitions of election terms, summaries of proposed constitutional amendments, duties of municipal governing authorities, training requirements for election officials, candidate qualification schedules and procedures, nonpartisan election schedules and procedures, ballot procedures and format, voter registration procedures, polling places and election equipment, voting method and machines for municipalities, absentee voting procedures, poll watchers, electioneering prohibitions, provisional voting requirements and procedures, voter information at polling places, majority vote requirement, special election procedures, penalties for violation of election code, Uniformed and Overseas Citizens Absentee Voting Act changes, and voter identification requirements.

TIME LIMIT

Submission Received:	June 13, 2005
Supplemental Information Received:	July 25, 2005
	July 28, 2005
	August 1, 2005
	August 22, 2005
Interim Letter Sent:	August 2, 2005
Due Out Date:	September 30, 2005

FACTUAL INVESTIGATION AND LEGAL REVIEW

By: Robert Berman, Deputy Chief
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Heather Moss, Civil Rights Analyst^{1/}
Joshua Rogers, Trial Attorney
Toby Moore, Geographer/Social Science Analyst

RECOMMENDATION: Objection to Section 59 (supported by Berman, Zubrensky, Moss, and Moore); no objection to remaining changes;^{1/} no objection to all changes including Section 59 (supported by Rogers).

^{1/} A complete description and analysis of all changes other than Section 59, which amends the state's voter identification requirements, are contained in a separate memorandum, and the proposed letter informs state officials that no objection will be interposed to these changes.

I. BACKGROUND

A. Demographics and statistics

According to the 2000 Census, the State of Georgia has a total population of 8,186,453, of whom 2,348,626 (28.7%) are black and 5,128,661 (62.6%) are white. The state has a total voting age population of 6,017,219, of whom 1,595,631 (26.5%) are black and 3,925,585 (65.2%) are white. On August 11, 2005, the Census Bureau released its 2004 estimates of a total population for the state of 8,829,383, of whom 2,658,068 (30.1%) were black and 5,936,829 were white.

B. Benchmark standard, practice, or procedure

Voters in Georgia may present any one of the following 17 forms of voter identification to establish their eligibility to cast a ballot:

- (1) Valid Georgia driver's license;
- (2) Valid identification card issued by a branch, department, agency, or entity of the State of Georgia, any other state, or the United States authorized by law to issue personal identification;
- (3) Valid United States passport;
- (4) Valid employee identification card containing a photograph of the elector and issued by any branch, department, agency, or entity of the United States government, the State of Georgia, or any county, municipality, board, authority or other entity of Georgia;
- (5) Valid employee identification card containing a photograph of the elector issued by any employer of the elector in the ordinary course of business;
- (6) Valid student identification containing a photograph of the elector from any public or private college, university, or postgraduate technical or professional school located within the State of Georgia;
- (7) Valid Georgia license to carry a pistol or revolver;
- (8) Valid pilot's license;
- (9) Military ID;
- (10) Birth certificate;
- (11) Social security card;
- (12) Naturalization documentation;
- (13) Copy of court records showing adoption, name, or sex change;
- (14) Utility bill;
- (15) Bank statement showing name and address of the elector;
- (16) Government check or payment with name and address of the elector; or
- (17) Other government document showing name and address of the elector.

Ga. Code Ann. § 21-2-417

An elector who is unable to produce an acceptable form of identification may sign a statement under oath swearing and affirming that he is the person identified on the elector's voter certificate under penalty of law and may vote a regular ballot,^{2/} unless he is a first time registrant by mail in which case he may vote a provisional ballot.

To vote absentee, an elector must qualify according to the following list of enumerated acceptable reasons:

- I am required to be absent from my precinct all day on primary or election day (7:00 a.m. to 7:00 p.m.).
- I am unable to vote in person because of a physical disability.
- I am unable to vote in person because I am required to give constant care to someone who is physically disabled.
- I am an election official who will perform official acts or duties in connection with the primary or election.
- I will be unable to be present at the polls because the date of the primary or election falls on a religious holiday which I observe.
- I will be unable to be present at the polls because I am required to be on duty in my place of employment for the protection of the health, life, or safety of the public during the entire time the polls are open and my place of employment is within my precinct.
- I am 75 years of age or older.
- I am a citizen of the United States permanently residing outside the United States, was last domiciled in Georgia, and am not domiciled or voting in any other state.
- I am a member of the Armed Forces or Merchant Marines of the United States, or a spouse or dependent of the member, residing outside the County.

These are the benchmark standards, practices, and procedures for our analysis.

C. Proposed standard, practice, or procedure

Act No. 53 (H.B. 244)(2005) amends portions of state's election code. The Act contains numerous changes that are not controversial and do not raise retrogression concerns. Controversy centered on Section 59, which amends Ga. Code Ann. § 21-2-417 regarding the state's voter identification requirement.

The proposed practice eliminates twelve forms of identification accepted under the benchmark practice and adds one new form, resulting in the six following forms of acceptable identification:

^{2/} Under the benchmark practice, falsely swearing or affirming such a statement under oath is punishable as a felony. This penalty is distinctly set forth on the face of the statement. Additional penalties may apply (e.g., repeat voting in the same election, a violation of Ga. Code Ann. § 21-2-572, is punishable as a felony).

- (1) Georgia driver's license, which was properly issued by the appropriate state agency;
- (2) Photographic identification card issued a branch, department, agency, or entity of the State of Georgia, any other state, or the United States authorized by law to issue personal identification;
- (3) United States passport;
- (4) A valid employce identification card containing a photograph of the elector and issued by any branch, department, agency, or entity of the United States government, Georgia, or any county, municipality, board, authority or other entity of Georgia;
- (5) United States military photographic identification card; or
- (6) Tribal photographic identification card.

The identification need not contain the elector's address. The affidavit of identity for electors who cannot produce acceptable photo identification is eliminated. As proposed, a voter who cannot produce an acceptable photo identification may vote a provisional ballot, but must thereafter produce a valid photographic identification to the registrar within 48 hours of the election in order for his vote to be counted.

Section 66 of the bill permits indigent persons who do not otherwise have approved photo identification and cannot afford to pay the fees to obtain such identification to receive one free of charge from the Georgia Department of Public Safety. Section 50 broadens the ability of electors to vote absentee without providing a reason. Absentee voters are not subject to the identification requirement, though "advance" voters who vote in person at clerks' offices must present photo ID pursuant to these requirements.

Finally, there is a new provision applicable to first time voters who registered by mail and who have not otherwise verified their identification through government issued photographic identification. Such voters shall present to the poll workers one of the six forms of acceptable photographic identification listed above, or may present a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the elector. If the elector does not have any of the acceptable forms of identification, he may vote a provisional ballot upon swearing or affirming that the elector is the person identified in the elector's voter certificate. Such provisional ballot shall only be counted if the voter is able to produce current and valid identification to the registrar for verification with 48-hours as provided Ga. Code Ann. § 21-2-419.

II. FACTS

A. **Information obtained from the submitting authority**

The state's initial submission, received on June 13, 2005, consisted of a nine-page cover letter, copies of Act No. 53 including a "redlined" copy of the Act, charts identifying changes to

and the Section 5 history of each affected provision, a list of minority community contacts, newspaper articles regarding the legislative process, and editorials regarding the Act. The cover letter references the legislature's website for the legislative history, including previous versions of the bill, proposed amendments, and roll call votes.

In its initial submission, the state indicated that the Act contains a number of provisions designed to clarify provisions of the Georgia Election Code in order to increase the efficiency of the electoral process, especially as it relates to municipal elections in many instances. The state also indicated that the state enacted the voter identification provisions to address legislative concerns regarding voter fraud.

During a June 25, 2005, telephone conversation with Deputy Attorney General Dennis Dunn (W), we requested information regarding the legislative history of the bill, including expert testimony, witness statements, and transcripts or tapes of hearings. The state provided this information on July 25, 2005. Upon our informal request, the state also provided a spreadsheet containing data from the Georgia Department of Driver's Services ("DDS") regarding persons holding valid driver's licenses and state identification cards. We received these data on July 28, August 1, and August 22, 2005. The data are set forth in part II.C.2.

Additionally, Deputy Attorney General Dunn clarified that with regard to implementation of Subpart (c) of Section 59, first-time voters who had provided identification upon registering would be required to show photo identification at the polls, while those first-time voters who had not previously provided identification upon registration would be permitted to show any of the non-photo IDs listed in Subpart (c) (e.g. current utility bill, bank statement, government check, paycheck, or other government document) or a photo ID.

According to the Georgia General Assembly's website, Representative Sue Burmeister (W) of Augusta sponsored HB 244. Numerous amendments were proposed during the bill's consideration; a majority of the amendments were proposed by members of the Black Caucus who sought to retain some forms of voter identification that were eliminated by the bill. Senator Kasim Reed (B) also proposed an amendment making the identification requirement effective after the state appropriated funds to educate voters about the proposed identification and registration requirements. All of these proposed amendments failed.

The legislation passed the House on March 11, and the Senate on March 29, 2005. The vote on final passage in the House was 91 yea, 7 nay (with 9 abstaining and 5 excused), and in the Senate was 31 yea, 20 nay (with 2 abstaining and 3 excused). All black legislators with the exception of Representative Willie Talton voted against, abstained or were excused from voting on the bill. Of the three Hispanic legislators in the General Assembly, two, Senator Sam Zamarripa and Representative Pedro Martin, joined with the Black Caucus in opposing the bill. The third Hispanic legislator, Representative David Casas, supported the bill.

B. Information obtained from other sources

1. Proponents and Arguments in Favor of Preclearance

We received numerous letters from elected officials, both in the state legislature and in other offices, and private individuals expressing their views that the proposed legislation was not retrogressive either in purpose or effect. Many of the letters presented similar points in support of their position; all are set forth at Tab 6A to this memorandum. We have summarized those of state officials above, as well as a representative sample of letters from other supporters.

Representative Burmeister, the sponsor of the legislation, informed Voting Section staff that September 11 caused her to reflect on the ease with which the terrorists obtained IDs. She stated that voter fraud is serious but hard to prove because fraud, by its nature, is subversive. She is aware of vote buying in certain precincts, and specifically related an incident in which the former mayor of Augusta, Mayor Ed McEntyre, approached her and offered to put her name on a palm card, pick up voters in a van, and pay them to vote for the candidates on the card, in exchange for \$2,000. Rep. Burmeister also read "Stealing Elections" by John Fund and was concerned about how elections could be stolen by such means. Rep. Burmeister said that if there are fewer black voters because of this bill, it will only be because there is less opportunity for fraud. She said that when black voters in her black precincts are not paid to vote, they do not go to the polls. She added the 48-hour provisional ballot allowance so that people who legitimately have identification can vote in response to concerns about voters whose identification is stolen.

Rep. Burmeister also explained the exemption of absentee ballots from the identification requirement. She does not support this but accepted this into the final version because the absentee voting process creates a paper trail which will prevent vote fraud, and will ensure that rural voters can vote even if they cannot make it to a DDS office.^{3/} Senator Cecil Staton (W), who authored the parallel Senate bill, supports preclearance and provided a letter mirroring the arguments made by Rep. Burmeister.

Susan Laccetti Meyers, Chief Policy Advisor to the Georgia House of Representatives, who worked with Rep. Burmeister in developing the legislation, told us that the Legislature did not conduct any statistical analysis of the effect of the photo ID requirement on minority voters. Instead, they relied on the statistic that more citizens had driver's licenses than were registered to

^{3/} Rep. Burmeister stated that the Governor had passed legislation to mandate a DDS office in every county, and that individuals can obtain state IDs in Kroger grocery stores. Neither statement is correct. The Governor's Office has confirmed that the Georgia General Assembly has passed no legislation mandating a DDS office in every county. The latter statement refers to a program that was discontinued in 2003 whereby the state had operated satellite driver's license renewal centers in some Kroger stores.

vote, the John Fund book, and other anecdotal information. Members of the leadership noted that citizens need identification for everything these days, so concluded that the requirement did not seem arduous. In addition, Rep. Talton (B) told her that minorities were more vulnerable to having mail, such as bills and checks, stolen from their mailboxes. She said that private-sector employee and student ID cards were eliminated because members felt insecure about private sector controls, and believed that procedures used by government entities would be more reliable. She said that legislators heard testimony from several county election board members about the potential for vote fraud; and also considered the experience of states such as Florida, Wisconsin, and Indiana with voter ID laws, along with the National Conference of State Legislatures list of state voter ID requirements. Ms. Meyers said that opponents simply denied that there was any fraud of which they were aware, but did not present evidence or witnesses to contradict the evidence that proponents brought forth.

Representative Talton (B), who is Chief Deputy Sheriff in the Houston County Sheriff's Department, supports preclearance. He stated that identity fraud is common, and that officers in Houston County arrest individuals every day with fraudulent driver's licenses and IDs. He concludes that the law is color blind, and does not unduly burden any race, class, or ethnic group.

We received several comment letters from members and directors of county boards of registrars, including Gary J. Smith, Director of Registrations and Elections of Forsyth County, and Frank Strickland and Harry MacDougald, members of the Fulton County Board of Registrations and Elections. The registrars emphasized that requiring photo ID would diminish the potential for fraud. Each provided the following additional information.

Mr. Smith reviewed the affidavits of identity that had been used by voters who lacked identification at the November 2004 election. In Forsyth County, 37 voters had signed affidavits of identity in lieu of presenting identification. This constituted 0.08 percent of those voting at precincts (i.e., excluding absentee and early voters) in Forsyth County.

Mr. Strickland stated that 2,456 fraudulent voter registration forms were submitted to the Fulton County elections board prior to November 2004. These have been referred to the FBI. Mr. Strickland also stated that he relied on data from the Secretary of State that showed 6,675,100 driver's licenses and state identification cards issued to Georgians aged 18 or older, and 4,414,663 Georgians registered to vote, as of February 2005. He concluded that these numbers demonstrate that an overwhelming majority of registered voters already have a state-issued ID.

Mr. MacDougald stated that prior to November 2004, Fulton County received 8,112 applications containing "missing or irregular" information. The board sent letters to all 8,112 applicants and received only 55 responses. Mr. MacDougald concluded that all of the remaining applications were "bogus." He also stated that 15,237 of 105,553 precinct cards mailed to registered voters in the county were returned as undeliverable. In addition, 3,071 precinct cards

mailed to 45,907 new registrants were returned as undeliverable. Of these 3,071 returned cards, 921 persons voted. He concludes that 11,128 total registration applications were either "bogus or problematic in a serious way" and that this crisis will be addressed by requiring photo identification for voter registration.

2. Proponents and Arguments in Favor of Objection

As with those who support the legislation, we received many letters from elected officials, organizations and individuals urging the Attorney General to interpose an objection to the proposed changes. Many of the letters presented similar points which are summarized below; the complete set of letters are set forth at Tab 6B. Opponents of the changes argue that the proposed changes are retrogressive in both purpose and effect based on the following factors: (1) the discrepancy between black and white ownership of photo identification; (2) the discrepancy between black and white access to motor vehicles as a proxy for driver's license ownership; (3) the poverty gap between blacks and whites, which both causes blacks to have less ownership of acceptable photo ID, and creates higher barriers for blacks without ID to obtain it; and (4) the ineffectiveness of the mitigating factors (i.e., no-fault absentee voting and free ID for indigent persons) to counteract the potential retrogressive effects on minority voters.

Representative Stan Watson (B), Chairman of the Georgia Legislative Black Caucus, stated that proponents provided no evidence to support the elimination of each form of identification. They spoke only generally about voter fraud and mail being stolen. He responded that mail is stolen for financial gain (credit card fraud, benefit checks, etc.) and that persons are unlikely to risk being caught by using stolen mail to impersonate a voter. Rep. Watson believes that proponents knew they had a majority and thus made little effort to gain support during the legislative process, and that this bill is an attempt to test Section 5.

Senator Ed Harbison (B) can testify that many of his constituents do not drive or have a non-driver's identification card, though they have types of ID that are eliminated. Senator Harbison stated that the majority would not hear the concerns of the Black Caucus during consideration of the bill, so they staged a walk out of the proceedings, which was reported nationally.⁴

⁴ Media accounts reflect that members of the Georgia Legislative Black Caucus expressed outrage at the enactment of the revisions to the photographic identification provisions. African-American and some white Democratic lawmakers staged walkouts in the House and Senate on March 11, 2005, to protest the photo identification requirements that they likened to poll taxes. Nancy Badertscher, Carlos Campos, "ID Debate Gets Heated," *Atlanta Journal-Constitution*, March, 13, 2005. Senator Emmanuel Jones (B) wore shackles to the well of the Senate, and Representative Alisha Thomas Morgan (B) brought shackles to the well of the House to symbolize the bill's potential to repress the black vote. Mike Phillips, "ID Bill Could Make Georgia Unique in Turn Away Voters," *Macon Telegraph*, March 19, 2005; Carlos Campos, "Firebrand 'Standing Up': Legislator Makes No

Senator Emanuel Jones (B), a member of the Senate State and Local Government Committee, attended all meetings regarding the bill, and proposed numerous amendments to retain specific forms of identification because there were no justifiable reasons for their elimination. Senator Jones stated that these amendments were voted down without any debate. Senator Jones stated that the Black Caucus requested postponement of implementation of the ID portions until DDS locations are established in every county. Senator Jones stated that this request was dismissed and that he knows of no plan by the Governor to make such expansions.

Senator Robert Brown (B) stated that proponents never specifically addressed the reasoning behind the elimination of each form of ID or the discrepancies between whites and blacks ownership of driver's licenses and ID cards. Senator Brown can testify that black voters prefer to vote in person rather than absentee. He noted that he has advocated absentee voting within the black community, particularly to the elderly who have always been authorized to vote absentee, but has found that they still prefer to vote in person on election day. Senator Brown asserted that for these reasons, the extended absentee voting period and the addition of "no excuse" absentee voting will not mitigate the retrogression caused by the proposed ID restrictions.

Secretary of State Cathy Cox (W) opposed HB 244 in an April 8, 2005 letter to Governor Perdue, urging him to veto the law, and submitted a letter opposing preclearance. She provided a list of registered voters who lack birth certificates for whom obtaining a photo ID would be particularly difficult. She can also testify to the absence of any complaints of voter fraud via impersonation during her tenure. Secretary Cox stressed that there are DDS offices in only one-third of the counties, none within the City of Atlanta, and that DDS headquarters is not served by any form of public transportation.

The Mayor of Atlanta, Shirley Franklin (B), opposes preclearance, and can testify to the experience of her mother, who recently moved to Atlanta from Philadelphia, in attempting to obtain a Georgia identification card. Her mother went to several DDS offices before finding one that was open. Her expired Pennsylvania identification was rejected as sufficient documentation to obtain a Georgia ID card, and she was told to produce her original birth certificate. Mayor Franklin's mother has never had a birth certificate, but is currently attempting to obtain an analogous document from North Carolina, where she was born. Mayor Franklin noted that this process would be much more arduous for someone without resources or supportive family in the area. Mayor Franklin believes that even if the intent of the legislation is not to disenfranchise minority voters, it will "inarguably have that result."

Apologies for Her Convictions," *Atlanta Journal-Constitution*, March 24, 2005. Representative Morgan then refused to leave the well of the House after her time to speak expired, instead singing the civil rights anthem, "Ain't Gonna Let Nobody Turn Me Around." *Id.*

A coalition of voting rights organizations^{5/} provided a letter urging an objection. The coalition states that the photo identification requirements carry a retrogressive racial impact because blacks in Georgia are six times more likely than whites to live below the poverty level, and five times less likely than whites to have access to a motor vehicle than whites. As 103 counties lack a DDS location, these two factors result in disparately less access by blacks than whites to DDS locations. In addition, the limited transportation alternatives for those who lack access to motor vehicles, particularly in rural Georgia, add to the economic burdens related to obtaining an identification card, and remain unchanged even if an indigent citizen qualifies for the free ID. The coalition states that the legislature failed to investigate the racial impact of Act 53, and took no action to mitigate the potential racial impact of the legislation by, for example, providing funds for voter education about the new requirements. Finally, the letter asserts that the stated purpose of the photo identification requirement is pretextual because the purported justification of preventing fraud is undermined by the exemption of absentee ballots from the photo identification requirement.

The NAACP Legal Defense and Educational Fund opposes preclearance of HB 244. In addition to arguments similar to those above, Director-Counsel Theodore Shaw analogizes the identification requirements to "reregistration" and "reidentification" measures that the Department has objected to in the past.

C. Public Source Data

1. Process & Fees to Obtain Driver's Licenses and Identification Cards

The initial submission provided no information regarding DDS locations, hours, fees, or requirements to obtain a photo ID. Our research shows that the Georgia General Assembly created the Department of Driver Services in House Bill 501 (2005) as a successor to the Department of Motor Vehicles. Effective July 1, 2005, Georgia residents can apply for driver's licences and a state-issued photo identification cards at one of the state's 56 DDS locations, 53 of which are full service centers and 3 part-time sites. The City of Atlanta has not had a DDS location for the past year, although the Governor's August 6, 2005, press release states that negotiations are underway to lease a new site. DDS customer service centers are open to the public Tuesday through Saturday, from 9:00 am to 5:00 pm. Monday hours have been added for select locations for appointment-only road tests. According to the Governor's August 6, 2005, press release, DDS will also begin to issue photo identification cards at certain designated locations on Mondays. According to DDS Commissioner Greg Dozier, the designated sites are all located in the Atlanta area and are as follows: Shannon Mall, North Cobb, Lawrenceville, and Conyers.

^{5/} The groups include the Voting Rights Project of the Lawyers' Committee for Civil Rights Under Law, National Voting Rights Institute, National Voting Rights Project of the ACLU, MALDEF, Georgia Association of Black Elected Officials, Georgia Association of Latino Elected Offices, AARP Georgia, and others.

According to Commissioner Dozier, five DDS locations are accessible via public transportation: the South DeKalb, Shannon Mall, and Sandy Springs sites in the Atlanta area are accessible via the Metropolitan Atlanta Rapid Transit Authority (MARTA); the Marietta location is accessible by Cobb Community Transit; and the Norcross location is accessible via Gwinnett County Transit.⁶¹ The remaining 51 sites are accessible only by personal transportation or taxi service.

The Governor recently announced the creation of the Georgia Licensing on Wheels ("GLOW") program. Announced on August 6, 2005, the GLOW program will use a mobile licensing bus to travel the state with the capacity to issue up to 200 photo identification cards per day. The state estimates that if the mobile unit is operational four days per week, the program has the capacity to serve 38,400 persons a year. According to Commissioner Dozier, the bus will be staffed by four DDS employees licensed to operate the ID-issuing equipment. Commissioner Dozier has stated that the GLOW tours will initially run weekly from Tuesday through Saturday, and may eventually also run on Mondays. DDS is currently mapping out routes and schedules, dividing the state into corridors which the GLOW program will visit based on the following factors: (1) the geographical need based on lack of DDS locations, (2) the population's need regardless of the presence of a DDS location; (3) requests from citizen groups; (4) geographic accessibility for groups and citizens; and (5) convenient times for groups and citizens. Dozier reported that community groups have already begun contacting DDS to make GLOW tour requests.

No information about the GLOW program is currently posted on the DDS website, though Dozier anticipates posting tour information when the routes are determined. Dozier has identified the first 36 counties to be visited by the GLOW program, starting on August 30, 2005 in Fulton County. The initial schedule and map of counties anticipated to be served by the program is attached at Tab **X**. DDS will also conduct a public service campaign, focusing on radio announcements and informational pamphlets issued to organizations by request. Dozier states that DDS plans to continue the program indefinitely.

Individuals may also register to vote through the GLOW program while obtaining an ID card. If an individual wants to register to vote, the DDS employee will click "yes" on the computer, and the registration applications will be batched and transmitted to the SOS every night or when the computers are returned to DDS headquarters. Voter registration applications will be transmitted electronically with no additional forms for applicants to complete.

⁶¹ Public transportation costs are as follows: Marta round-trip fare is \$3.50. Out-of-District Routes, which are routes that travel to Cobb, Clayton, or Gwinnett Counties are an additional \$1.50. Seniors citizens, disabled riders and Medicare recipients pay \$1.70 round-trip within the district and \$2.50 out-of-district. Gwinnett County Transit is \$3.50 round-trip (\$6 express bus round-trip), \$1.70 round-trip for Senior/Youth/Disabled, \$7 for paratransit round-trip. Transfers to MARTA trains and buses are free. Cobb Community Transit is \$2.50 round-trip for an adult, \$1.60 youth round-trip, \$1.20 for senior citizens and disabled, and \$5 for paratransit round-trip.