

Brief Background on Some Problems With HB 159, Photo ID

"A recent study by the Brennan Center for Justice, *The Cost of Voter ID Laws: What the Courts Say*, is based on a comprehensive review of every court case in which a photo ID law has been challenged. This paper examines the costs states must incur if they decide to implement photo ID requirements for voters. It is available at http://brennancenter.org/resource/the_cost_of_voter_id_laws_what_the_courts_say/ [the text is 8 pages, with 54 endnotes citing all sources].

[From the Introduction to the report]

"Based on a comprehensive review of every court case in which a photo ID law has been challenged, this paper examines some of the costs states must incur if they decide to implement photo ID requirements for voters. Previous Brennan Center publications have laid out the reasons why such requirements are bad policy and may be unconstitutional, regardless of the measures discussed below. While the results of lawsuits challenging photo ID laws have been mixed, the case law to date has established several basic principles that must be satisfied under the Constitution:

First, photo IDs sufficient for voting must be available free of charge for all those who do not have them. States cannot limit free IDs to those who swear they are indigent.

Second, photo IDs must be readily accessible to all voters, without undue burden. At a minimum, most states will likely have to expand the number of ID-issuing offices and extend their operating hours to meet this requirement.

Third, states must undertake substantial voter outreach and public education efforts to ensure that voters are apprised of the law's requirements and the procedures for obtaining the IDs they will need to vote.

"In addition, some courts may require states to ensure that all the documents required in order to obtain photo IDs are free and easily available to prospective voters. While these measures will not guarantee that a state's voter ID law will be upheld in court (there are a number of constitutional problems with voter ID requirements, as discussed below), failure to include these measures will make it likely that courts will find the law deficient.

"All of these measures entail appreciable costs that states must be prepared to incur if they move forward with photo ID requirements...."

Supporters of photo ID often point to the Supreme Court's ruling in *Crawford v. Marion County Board of Elections*, which upheld Indiana's photo ID law.¹ But this does not mean that HB 159 is necessarily constitutional. Photo ID could face legal challenge due to costs imposed on voters, failure to identify and provide ID without cost to those who lack one, and failure to provide adequate education and training on ID requirements.²

For example, HB 159 requires people to spend money to get a state ID, which could render it tantamount to a poll tax. In *Harper v. Virginia State Board of Elections*, the Supreme Court ruled that any fee imposed on voting presents an undue burden on the right to vote. It costs about \$25 to get an Ohio driver's license or state ID.³ While HB 159 requires the state to provide ID for free to those who attest that they cannot afford one, it is unconstitutional to require anyone – not just the poor – to spend money in order to vote.⁴

The Georgia Supreme Court recently upheld Georgia's photo ID law, finding that the state fixed earlier problems in the law by amending it to ensure that the state would provide ID at no cost to all those without ID.⁵ HB 159 also fails to make provisions for reaching out to voters who lack ID or providing voter education or poll worker training. In order to make sure they met their obligation to reach voters who needed ID in Georgia, for example, 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.⁶

There may be other factors as well. The Supreme Court upheld Indiana's photo ID law based on a balancing test, finding insufficient evidence that voters there would be disenfranchised. Evidence in other states may find otherwise.

¹ *Crawford v. Marion County Board of Elections* 553 U.S. 181 (2008)

² See, "The Cost of Voter ID Laws: What the Courts Say," Brennan Center for Justice, Feb. 17, 2011, http://brennan.3cdn.net/2f0860fb73fd559359_zzm6bhald.pdf

³ See, Driver's License and Identification Card Fees, Ohio Bureau of Motor Vehicles, http://www.bmv.ohio.gov/fees_for_services.stm

⁴ *Harper v. Virginia State Board of Elections*, 383 U.S. 663, (1966).

⁵ *Democratic Party of Georgia v Purdue, et al.*, (Case No. S09A0201) (Ga Supreme Court, March 7, 2011), <http://www.gasupreme.us/sc-op/pdf/s10a1517.pdf>

⁶ Tova Wang, "Voter Identification Talking Points and Fact Sheet," Demos, Jan. 5, 2011, <http://www.demos.org/pubs/voterIDtalkingpoints.pdf>, citing, "Handel Begins Phase Three of Voter ID Outreach," AccessNorthGA.com, January 21, 2008