

BACKGROUND

No. 3069 | JANUARY 12, 2016

Faulty Data Fuel Challenges to Voter ID Laws

Don Palmer

Abstract

The use of photo identification to confirm the identity of voters serves an essential election security function in America's polling places and boosts citizens' confidence in the voting process. In perhaps their most prevalent means of attack, opponents of laws requiring photo ID greatly exaggerate the number of voters without a valid ID. In legislative, litigation, and public relations battles, opponents use wildly inflated numbers in an attempt both to portray these laws as burdensome and to gain partisan electoral advantage. They cite a highly inflated number of voters who do not possess a driver's license as the universal number of those who are not able to vote, even though, under all state photo ID laws, various other forms of ID, such as federal and state government IDs, U.S. passports, tribal IDs, or even employer-issued or university student IDs, are also acceptable.

Obtaining accurate statistics regarding voters is incredibly important because the courts rely on them in analyzing the legal issues and assessing the validity of a photo identification requirement. Election administrators also need accurate data to allocate resources for issuing free voter photo IDs. Policymakers need accurate data to formulate sound legislative decisions. Perhaps most important, the public deserves to know how truly small is the universe of voters that are actually affected, and they should be reminded that those voters who lack a photo ID can get one for free.¹

This tactic of inflating the number of ID-less voters began years ago with the debate surrounding and subsequent litigation challenging Indiana's photo ID law, which the U.S. Supreme Court upheld in 2008 in a 6–3 decision,² and continued in Georgia, Wisconsin, and

KEY POINTS

- In case after case, plaintiffs challenging photo ID laws and critics of those laws have used highly inflated statistics of voters who allegedly lack an acceptable form of photo ID.
- It is not surprising that such misleading statistics have been criticized by the U.S. Supreme Court and other federal appellate courts. Many litigants and critics of photo ID fail to conduct a comprehensive comparison of voter registration lists with databases listing other relevant categories of citizens (outside of current DMV databases) who possess other acceptable forms of ID.
- The use of wildly inaccurate data inhibits a rational legislative or policy debate on the likely effect of photo identification laws and bleeds into the debate about other important election reform proposals across the country.
- Policymakers and the public deserve the truth about the relatively small universe of affected voters, not inflammatory assertions that hundreds of thousands or millions of voters are going to be negatively affected by such laws.

This paper, in its entirety, can be found at <http://report.heritage.org/bg3069>

The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400 | heritage.org

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

other states. Often, press reporting has not spoken accurately with respect to statistics. For example, even though both the data and reasoning used by a Wisconsin district court judge were later criticized as “questionable” by the Seventh Circuit, the statistics cited by that judge are still widely circulated by ID opponents and by media outlets such as MSNBC in reports about photo ID in Wisconsin.³

Another notable recent example of incorrect use of statistics occurred in Virginia when *The Washington Post* and advocacy groups claimed that anywhere from 450,000 to over 1.1 million Virginians would be unable to vote because they lacked a photo ID. Those claims failed to include any data on registered Virginia voters who possess forms of ID other than a driver’s license that are also acceptable under the law, such as a U.S. passport; a university-issued photo ID; a federal, state, or local government employee photo ID card; or a military identification card.

Those claims also took no account of the official fiscal impact report developed by state election and budget professionals for the state legislature that predicted that only 25,219 Virginians would need to request free state-issued IDs over a four-year period and that only 4,299 voters would request an ID in fiscal year (FY) 2014.⁴ In fact, only 3,912 registered voters requested a state-issued ID in FY 2014—10 percent less than the predicted number.⁵

Misinformation Campaign in the Courts

Indiana. The misinformation campaign began with *Crawford v. Marion County* when the Indiana

plaintiffs put forth an “expert report” estimating that as many as 989,000 registered voters in Indiana did not possess a Bureau of Motor Vehicles ID.⁶ The district court judge excluded the report because its conclusions and methodology failed to satisfy the basic reliability principles required by the rules of evidence.⁷ The district court severely criticized the report’s failure to account for inflated voter registration rolls,⁸ for comparing demographic information from different years without explanation, for not including data about other forms of state and federal IDs that are acceptable under the law, and for failing to include (or account for) absentee voters who were not required to provide a photo ID when voting.

In reality, a simple comparison of Census voting-age population data to the state driver’s license records showed that only 43,000—or approximately 1 percent of voters—did not possess a state-issued driver’s license or ID card.⁹ Ultimately, in *Crawford*, a majority of the justices on the U.S. Supreme Court refused to rely on such sketchy and incomplete statistics on the number of Indiana residents who supposedly did not hold a driver’s license, instead quoting the district court judge’s opinion that the numbers provided by the plaintiff’s expert witness were “utterly incredible and unreliable.”¹⁰

Georgia. The challenge to Georgia’s photo ID law that came on the heels of *Crawford* saw more of the same allegations using “incomplete and unreliable” data.¹¹ The NAACP and the individual plaintiffs claimed that “between 289,000 and 505,000

1. All states that have implemented a photo ID requirement arguably provide a free ID to any individual who does not already have an ID, essentially reducing the ID requirement to an insubstantial burden.

2. *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 128 S. Ct. 1610 (U.S. 2008).

3. Emma Margolin, “SCOTUS Lets Wisconsin Voter ID Law Stand; Jurists See Silver Lining,” MSNBC, March 23, 2015, <http://www.msnbc.com/msnbc/scotus-lets-stand-voter-id-law-legal-experts-see-silver-lining> (accessed September 10, 2015).

4. Virginia Department of Planning and Budget, “2013 Fiscal Impact Statement,” SB1256, <http://leg1.state.va.us/cgi-bin/legp504.exe?131+oth+SB1256FER122+PDF> (accessed September 10, 2015).

5. Virginia Department of Elections, “Voter Photo ID Statistics Report,” November 10, 2014, <http://elections.virginia.gov/webdocs/VoPholdOutreach/documents/VoterPhotoIDProductionStats2014-11-10.pdf> (accessed September 10, 2015).

6. *Ind. Democratic Party v. Rokita*, 458 F. Supp. 2d 775, 803 (S.D. Ind. 2006).

7. *Ibid.*

8. Indiana’s state registration roll was “inflated” with large numbers of duplicate registrations by the same individuals and ineligible voters who had died, moved away, or become felons without being removed from the list.

9. *Ind. Democratic Party v. Rokita*, 458 F. Supp. 2d at 803.

10. *Ibid.*

11. *Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1357 (11th Cir. Ga. 2009); *cert. denied*, 129 S. Ct. 2770 (2009).

[Georgia] voters lack a photo identification issued by the Department of Driver Safety” (Georgia’s DMV) and that it was “implausible” that these voters would have another form of valid ID.¹²

In upholding Georgia’s photo ID law, the Eleventh Circuit Court of Appeals rejected both contentions, noting errors and inaccuracies in the match between the driver’s license records and the list of registered voters, among other problems. In an ironic example of the multiple matching errors, the court noted that the district court judge “erroneously appeared on one of the data match lists as not having a driver’s license.”¹³

No analysis was ever completed to account for voters who possessed one of the many other forms of non-DMV IDs permitted under the Georgia law. For example, although the Georgia voter ID law accepts student IDs issued by the state university system, the plaintiffs’ expert failed to compare the voter registration list with the student records maintained by the state university system. Nor was a comparison run with state records of public employees, whose IDs are also acceptable under the ID law. The report was so riddled with errors that the court *excluded* it as evidence.¹⁴

Wisconsin. The importance of getting an accurate estimate of those who lack a valid, acceptable photo ID was on display in *Frank v. Walker*, the now-dismissed challenge to Wisconsin’s photo ID law under the Voting Rights Act.¹⁵ In *Walker*, the federal district court judge used a highly suspect number for the number of citizens without an ID and used inflated statistics to distinguish the Wisconsin law from the Indiana ID law that was upheld in *Crawford*. The Wisconsin judge even suggested inaccurately that the Supreme Court had upheld Indiana’s law merely because “99% of

Indiana’s voting-age population already possessed photo IDs.”¹⁶

Overestimating the number of those without a DMV ID and failing to account for the universe of voters with a different but allowable form of photo ID were two of many significant flaws in the reasoning of the district court judge in *Walker*. The plaintiffs’ expert witness, a “marketing consultant,” estimated that over 317,735 or approximately 9.4% of registered voters in Wisconsin lacked either a driver’s license or a state ID.¹⁷ The defendants provided their own expert witness, a political science professor who estimated that at most, 167,351 or 4.9% of voters did not possess a DMV-issued ID.

Calling the state expert’s methodology “suspect,” the trial court gave “greater weight” to the marketing consultant’s numbers, using the plaintiffs’ 317,735 number in its analysis of the law’s impact.¹⁸ In determining how many of these voters might possess a different form of photo ID acceptable under the law, the court failed to require a substantive comparison of other databases and instead relied solely on a phone survey of eligible voters in Milwaukee County. When surveyed, 0.3 percent of eligible voters responded that they had an ID other than a driver’s license or a state ID card.¹⁹

Even though Milwaukee had been singled out by both the district court and the plaintiffs as having the highest percentage of voters without an ID in the state, the judge concluded that the 0.3 percent figure for Milwaukee could be extrapolated for the whole state: “[T]here is no reason to think that the percentage of registered voters in the state who possess only a form of ID other than a driver’s license or a state ID card is much higher than 0.3%.”²⁰ Based on this highly questionable logic, the judge “estimate[d] that about 10,000 voters in Wisconsin possess only

12. *Ibid.*

13. *Ibid.* at 1354.

14. *Common Cause/Georgia v. Billups*, 504 F.Supp.2d 1333, 1370–1371 (N.D. GA 2007); see also Order of September 7, 2007, <http://moritzlaw.osu.edu/electionlaw/litigation/documents/ORDERgrantingtheStateDefendantsMotiontoExcludeReportsandTestimonyofPlaintiffsExperts.pdf> (accessed September 10, 2015).

15. *Frank v. Walker*, 768 F.3d 744, 755 (7th Cir. Wis. 2014), *cert. denied*, 83 U.S.L.W. 3615 (U.S. Mar. 23, 2015) (No. 14-803).

16. *Frank v. Walker*, 17 F. Supp. 3d 837, 846 (E.D. Wis. 2014).

17. *Ibid.* at 881.

18. *Ibid.* at 890.

19. *Ibid.* at 884.

20. *Ibid.*

a form of qualifying ID other than a driver's license or state ID card."²¹ The judge then subtracted those 10,000 from the expert's estimate of 317,735 voters without DMV IDs and rounded down to conclude that 300,000 voters "did not possess a qualifying form of ID" in Wisconsin.²²

The Wisconsin district court opinion is perhaps the most egregious example of a court's failing to engage in meaningful data analysis of the number of voters who lack a driver's license or DMV ID card but who may have one of the other photo IDs permitted under a voter ID law. Even a cursory examination would have revealed that a much larger number of Wisconsin voters (almost 1.5 million) possess non-DMV IDs that are valid for voting, including passports,²³ Indian Tribe ID cards,²⁴ naturalization certificates,²⁵ and military or reserve military ID cards.²⁶

The Seventh Circuit Court of Appeals reversed the district court. In that opinion, Judge Frank Easterbrook criticized the district court's conclusions as to the supposedly large number of individuals without ID as "questionable."²⁷ He added that registered voters without a valid ID were not "disenfranchised," as claimed by the trial court, and that the total number of voters without a valid ID is not the appropriate measure of the law's validity anyway:

If the reason they lack photo ID is that the state has made it impossible, or even hard, for them to *get* photo ID, then "disfranchised" might be an apt description. But if photo ID is available to people willing to scrounge up a birth certificate and stand in line at the office that issues drivers' licenses, then all we know from the fact that a particular person lacks a photo ID is that he was unwilling to invest the necessary time.²⁸

The Supreme Court declined to review the case, and the Wisconsin photo ID law went into effect.²⁹

Plaintiffs in the Wisconsin, Georgia, and Indiana cases overstated the number of potential voters without a valid ID to vote. In these cases, the courts ultimately were wise enough to see through the unreliable statistics and incomplete or nonexistent comparisons of state voter registration lists with state and federal databases of citizens who possess forms of ID *other* than driver's licenses.

Bad Data and the Impact on Public Debate

Even though surveys have shown consistently that roughly 70 percent of the public supports voter ID laws,³⁰ the continued widespread circulation of inaccurate information may have a negative effect on the public's perception.

21. *Ibid.*

22. *Ibid.*

23. There are 1,385,211 U.S. passports issued in Wisconsin. See U.S. Department of State, Bureau of Consular Affairs, "Passport Issuance by State per Fiscal Year (2008 to 2014)," <http://travel.state.gov/content/passports/english/passports/statistics.html> (accessed September 10, 2015).

24. Approximately 35,469 voting-age individuals are enrolled in federally recognized Indian Tribes. See, for example, Wisconsin Department of Administration, Division of Intergovernmental Relations, *Tribes of Wisconsin*, July 2013, <http://witribes.wi.gov/> (accessed September 10, 2015).

25. There were 8,911 newly naturalized citizens in Wisconsin in 2012 and 2013 who possessed a naturalization certificate. Calculated from Table 21, "Persons Naturalized by State or Territory of Residence: Fiscal Years 2004 to 2013," in U.S. Department of Homeland Security, Office of Policy, Office of Immigration Statistics, *2013 Yearbook of Immigration Statistics*, August 2014, p. 57, http://www.dhs.gov/sites/default/files/publications/ois_yb_2013_0.pdf (accessed September 10, 2015).

26. There are 7,700 members of the Wisconsin National Guard. See Wisconsin Department of Military Affairs, "Wisconsin Army National Guard," <http://dma.wi.gov/dma/armg/> (accessed September 10, 2015); Governing, "Military Active-Duty Personnel, Civilians by State," *Governing Data*, <http://www.governing.com/gov-data/military-civilian-active-duty-employee-workforce-numbers-by-state.html> (accessed September 18, 2015).

27. *Frank v. Walker*, 768 F.3d at 748.

28. *Ibid.* (emphasis in original).

29. *Frank v. Walker*, 135 S. Ct. 1551 (2015); Robert Barnes and Mark Berman, "Supreme Court Lets Wisconsin's Voter-ID Law Stand," *The Washington Post*, March 23, 2015, http://www.washingtonpost.com/politics/courts_law/supreme-court-lets-wisconsin-voter-id-law-stand/2015/03/23/9d82b8da-d162-11e4-a62f-ee745911a4ff_story.html (accessed September 10, 2015).

30. Rasmussen Reports, "Support Remains Strong for Showing Photo ID Before Voting," June 3, 2015, http://www.rasmussenreports.com/public_content/politics/general_politics/may_2015/support_remains_strong_for_showing_photo_id_before_voting (accessed September 10, 2015).

Support for photo ID may fall if the public is perpetually fed partial data or inaccurate information. For example, a recent survey by the University of Delaware demonstrated that support for photo ID laws dropped by 12 percent when the survey question stated that requiring the presentation of a photo ID may “prevent people who are eligible to vote from voting.”³¹

Opponents have worked very hard to change the portrayal of photo ID from being a common-sense election administration reform supported by a majority of the public and recommended by experts and organizations such as the bipartisan Commission on Federal Election Reform, otherwise known as the Carter–Baker Commission, to being recast as the reimposition of “Jim Crow.”³² But turnout data from multiple states with photo ID laws show that these laws are not in fact preventing eligible voters from voting.³³

Virginia and SB1256: A Case Study in Disinformation

Virginia provides an excellent example of how the photo ID debate has been waged in state legislatures and reported by the media. Opponents began a campaign immediately upon the introduction of the photo ID bill (SB1256) and were given a huge assist by *The Washington Post*, which on the eve of

the law’s implementation misstated the number of Virginians without a valid, acceptable photo ID.³⁴

SB1256, a bill requiring that all voters who vote in-person provide a photo ID, was introduced during Virginia’s 2013 General Assembly Session.³⁵ The bill was signed into law by then-Governor Bob McDonnell on March 25, 2013, with an effective date of July 1, 2014. The law permits the following forms of ID:

- Virginia driver’s license;
- United States passport;
- Any photo ID issued by the Commonwealth, one of its political subdivisions, or the United States;
- A valid student ID containing a photograph issued by any institution of higher education located in the Commonwealth; and
- A valid employee ID containing a photograph issued by an employer in the ordinary course of business.³⁶

Local election officials must provide a free photo ID to voters,³⁷ who are required to complete an application and an affirmation that the identifying infor-

31. University of Delaware, Center for Political Communication, “Nationwide Study: Racial Images Shape Opinion on Voter ID Laws,” October 10, 2014, <http://www.udel.edu/cpc/research/fall2014/CPCVoterID-Race-final.pdf> (accessed September 10, 2015); David C. Wilson, Paul R. Brewer, and Phoebe Theodora Rosenbluth, “Racial Imagery and Support for Voter ID Laws,” *Race and Social Problems*, Vol. 6, Issue 4 (December 2014), <http://link.springer.com/article/10.1007/s12552-014-9131-4> (accessed September 30, 2015).

32. See *Building Confidence in U.S. Elections: Report of the Commission on Federal Election Reform*, September 2005, <http://www.eac.gov/assets/1/AssetManager/Exhibit%20M.PDF> (accessed September 18, 2015).

33. See, for example, Hans A. von Spakovsky, “Lessons from the Voter ID Experience in Georgia,” Heritage Foundation *Issue Brief* No. 3541, March 19, 2012, <http://www.heritage.org/research/reports/2012/03/lessons-from-the-voter-id-experience-in-georgia>; Hans A. von Spakovsky, “Lessons from the Voter ID Experience in Tennessee,” Heritage Foundation *Issue Brief* No. 4180, March 25, 2014, <http://www.heritage.org/research/reports/2014/03/lessons-from-the-voter-id-experience-in-tennessee>; Hans A. von Spakovsky, “Revisiting the Lessons from the Voter ID Experience in Kansas: 2014,” Heritage Foundation *Issue Brief* No. 4380, April 10, 2015, <http://www.heritage.org/research/reports/2015/04/revisiting-the-lessons-from-the-voter-id-experience-in-kansas-2014>; Hans A. von Spakovsky, “Lessons from the Voter ID Experience in Texas,” Heritage Foundation *Issue Brief* No. 4146, February 11, 2014, <http://www.heritage.org/research/reports/2014/02/lessons-from-the-voter-id-experience-in-texas>.

34. Antonio Olivo and Jenna Portnoy, “200,000 in Va. May Lack Proper ID Needed to Vote,” *The Washington Post*, September 25, 2014, http://www.washingtonpost.com/local/virginia-politics/450000-in-va-may-lack-proper-id-to-vote/2014/09/25/9724f584-44db-11e4-b437-1a7368204804_story.html (accessed September 18, 2015).

35. Senate Bill No. 1256, 2013 Sess., Virginia Legislative Information System, <http://lis.virginia.gov/cgi-bin/legp604.exe?131+ful+SB1256S1> (accessed September 18, 2015).

36. Code of Virginia, § 24.2-643 (2014).

37. Code of Virginia, § 24.2-404 (2014).

mation provided is true.³⁸ Voters without an ID can still cast a provisional ballot and have until the Friday after the election to provide a copy of an acceptable form of ID in-person or by mail, e-mail, or fax. Alternatively, a voter can obtain a temporary photo ID certificate from the local General Registrar, created on-site, that will ensure that the voter's provisional ballot is counted.

The Legislative Debate

The American Civil Liberties Union, NAACP, Virginia AFL-CIO, and other progressive groups opposed the legislation. A joint letter sent to the governor urging him to veto the bill claimed that “nearly 870,000 Virginians lack government-issued photo IDs” required under the proposed law.³⁹

These exaggerated numbers were then used to argue that the law would be prohibitively expensive to implement. A Virginia-based policy group, the Commonwealth Institute for Fiscal Analysis, claimed that implementation would cost between \$7.3 million and \$21.8 million.⁴⁰ These numbers were later regurgitated by major Virginia newspapers including the Norfolk *Virginian-Pilot*.⁴¹

How did the Commonwealth Institute arrive at its number? Without citing a source, it claimed that:

[A] total of 16 percent of adult U.S. citizens either lack a government-issued photo identification or have one with a non-matching name. With

5,435,644 registered voters in Virginia as of December 2012, 869,703 currently registered Virginia voters would be forced to obtain a proper photo identification in order to vote.⁴²

Demos, another interest group, added to the flood of misinformation with an even more inflated number, claiming that the law would disenfranchise 1,154,000 Virginia voters.⁴³ Demos's estimated price tag for implementing the law was over \$12.2 million.⁴⁴

Contrary to these claims, the Virginia Department of Planning and Budget estimated the cost to implement the law and to engage in associated public outreach from FY 2014 through FY 2019 at only \$853,964.⁴⁵ That estimate was based on a nationwide review and comparison of implementation costs in other states. The State Board of Elections projected that only 25,219 Virginians would need a free state-issued ID from FY 2014 through FY 2017, with 4,299 of those IDs issued each year during FY 2014, FY 2015, and FY 2016 and 12,322 issued in FY 2017.⁴⁶ To place this estimate of 25,219 voters in context, this is just 0.4 percent of the approximately 5.4 million registered voters in Virginia in 2012.⁴⁷

As it turns out, the *actual* number for 2014 was even *lower* than the state officials estimated: Through November 10, 2014, during a mid-term congressional election year, only 3,912 free IDs were requested by voters.⁴⁸ Through May 2015, the total

38. Voter Photo Identification Card Application, SBE-404-ID, in Virginia Department of Elections, *Virginia Photo Identification User's Manual*, revised September 2014, p. 6, <https://voterinfo.sbe.virginia.gov/FormWarehouse/Docs/Voter+Photo+ID//Software//Voter%20Photo%20ID%20User's%20Guide%20rev.09-14.pdf> (accessed September 18, 2015).

39. American Civil Liberties Union of Virginia, Letter to Governor Robert F. McDonnell, March 11, 2013.

40. Lauren Goren, Sara Okos, and Michael J. Cassidy, “Picture This: SB1256 Requiring Photo ID Brings Big Costs and Big Headaches,” Commonwealth Institute, January 2013, http://www.thecommonwealthinstitute.org/wp-content/uploads/2013/01/130122_picture_this_FINAL.pdf (accessed September 18, 2015).

41. Julian Walker, “Gov. McDonnell Signs Voter Photo ID Bill into Law,” *Virginian-Pilot*, March 26, 2013, <http://hamptonroads.com/2013/03/gov-mcdonnell-signs-voter-photo-id-bill-law> (accessed September 18, 2015).

42. Goren, Okos, and Cassidy, “Picture This: SB1256 Requiring Photo ID Brings Big Costs and Big Headaches.”

43. Liz Kennedy and Tova Wang, “Voter ID in Virginia: An Expensive Mistake,” Demos, February 2, 2012, <http://www.demos.org/publication/voter-id-virginia-expensive-mistake> (accessed September 18, 2015).

44. *Ibid.*

45. Virginia Department of Planning and Budget, “2013 Fiscal Impact Statement,” SB1256.

46. *Ibid.*

47. See Virginia Department of Elections, Registration/Turnout Statistics, “Summary of Virginia Registration and Turnout Statistics, November General Elections: November 1976–Present,” <http://elections.virginia.gov/index.php/resultsreports/registration-statistics/registrationturnout-statistics/> (accessed September 18, 2015).

48. Virginia Department of Elections, “Voter Photo ID Statistics Report,” November 10, 2014.

number of free IDs issued to voters since implementation was 4,117. A total of 1,884 temporary IDs had been issued to voters who needed an interim ID in the weeks approaching an election.⁴⁹ This supports the view that the vast majority of Virginia voters already have a form of photo ID.

An Embarrassing Day for The Washington Post

After a relative lull in interest after the signing of the bill in 2013, as implementation neared, the press began once again to report on the potential impact of Virginia's voter ID law. *The Washington Post* dropped a bombshell less than seven weeks before the November 2014 election, claiming that *up to 450,000 voters* in Virginia lacked proper ID to vote.⁵⁰ The Virginia Department of Elections immediately issued a press release saying that the *Post* report "incorrectly stated the number of individuals without a Virginia DMV-issued photo ID" and that the number without a DMV-issued ID was 198,902.⁵¹ The Department of Elections also clarified that the 198,902 number did not account for any of the other forms of photo ID permitted under the law that many voters would likely possess.

After a flurry of criticism, the *Post* changed its story later that day to state: "An earlier version of this story incorrectly stated that 450,000 voters lack proper identification to cast ballots in Virginia. The correct number is 200,000."⁵² However, that "cor-

rection" still distorted the data provided by the state, since the *Post* stated definitively at the top of the article that 200,000 Virginia voters "lack proper identification to cast ballots in Virginia." The Department of Elections had made it clear that its estimate of 198,902 accounted only for those active potential voters *without DMV-issued IDs*.

The *Post* also failed to report data specifically provided by the department that reduced the numbers by an additional 93,117 registrants to only 105,785 active registrants in Virginia without a DMV ID.⁵³ These individuals were not subject to the ID requirement because they were classified as "military, overseas or federal only, who had an active FPCA,"⁵⁴ or voters with a permanent absentee ballot application or inactive voters who had no voter activity for several elections.⁵⁵ After staff analysis and as part of its outreach program, the department subsequently sent 86,000 mailers (some of which would reach more than one voter since several eligible voters may live in the same household) about the new photo ID requirements directly to Virginia citizens who did not have DMV-issued IDs and would be likely to vote in person.⁵⁶

It was eight paragraphs into the article before the *Post* mentioned that other forms of ID were accepted under the new law, and there was no analysis as to how many voters might have one of these other forms of ID. The *Post* also failed to mention that local officials were providing free IDs to those few voters

49. Virginia Department of Elections, "Voter Photo ID Statistics Report," May 13, 2015, <http://elections.virginia.gov/webdocs/VoPholdOutreach/documents/VoterPhotoIDProductionStats2015-05-13.pdf> (accessed September 18, 2015).

50. The original story is no longer available, but the "corrected" version that acknowledges the 450,000 number may be found at Olivo and Portnoy, "200,000 in Va. May Lack Proper ID Needed to Vote."

51. News release, "Voters Impacted by New Photo ID Requirement in Virginia," Virginia Department of Elections, September 26, 2014, <http://elections.virginia.gov/Files/Media/ELECT-PressRelease-09-26-14.pdf> (accessed September 18, 2015).

52. Olivo and Portnoy, "200,000 in Va. May Lack Proper ID Needed to Vote."

53. Virginia Department of Elections, "Voters with No DMV Record by Locality," September 26, 2014, <http://elections.virginia.gov/WebDocs/VoPholdOutreach/documents/Data/Voters%20without%20DMV%20IDs%20by%20Locality%20ELECT%209-26-2014.pdf> (accessed September 18, 2015). Filtered column is calculated from list of active voters who are not military, overseas, or federal-only; who do not have an active FPCA or 703.1 AB application; and whose last activity (for example, voter registration or voting) has been since and including the last presidential election and there is not a match in the DMV data based on the full Social Security number.

54. The FPCA is the Federal Post Card Application that can be submitted by members of the military, their families, and civilians residing overseas to vote by absentee ballot in federal elections.

55. Virginia Department of Elections, "Voters with No DMV Record by Locality," September 26, 2014.

56. News release, "Voters Impacted by New Photo ID Requirement in Virginia." Mailers were not sent to all 105,785 registered voters because the Department of Elections will often send one voter outreach mailing to households where more than one registered voter lives. The press release also states that mailers were sent to those who were likely to vote in person, as opposed to those with a record of voting by absentee ballot.

who did not have one. The sponsor of the bill, Senator Mark Obenshain, penned an op-ed that gave *The Washington Post* a low-credibility score of “Four Pinocchios” for the *Post* article, but most of the damage to voter confidence had already been done.⁵⁷

Many Other Photo ID Options Available to Virginia Voters

Passports and Naturalization Certificates.

One of the primary forms of federal ID—a U.S. passport—has never been accounted for in these voter list comparisons. In Virginia, 2.4 million passports have been issued since 2010.⁵⁸ Another 78,000 Virginia residents who were naturalized from 2010 to 2013 possess a certificate of naturalization with a photo, which is also an acceptable form of ID under Virginia’s law.⁵⁹

College Students. Over 500,000 students are enrolled in public universities and colleges in Virginia.⁶⁰ Of this total, about 140,000 are out-of-state college students, and only a small percentage of them are registered to vote in Virginia.⁶¹ However, all students, regardless of where they are from or where they are registered to vote, have a university photo ID, which is acceptable for voting in Virginia.⁶²

A comparison of Virginia’s voter registration list to its DMV database reveals that the 11 precincts with the most voters *without DMV IDs* are all locat-

ed around or adjacent to colleges or universities.⁶³ Overall, 24 out of the top 50 precincts with the highest number of voters *without DMV IDs* can safely be labeled “university precincts” in Virginia.⁶⁴ These 24 precincts alone account for over 17,000 voters, or 8.7 percent of the entire 196,902 that the *Post* erroneously labeled as being without ID and unable to cast a vote.⁶⁵ The reality is that each of these students has been issued a university ID, which is acceptable for voting purposes.

Military, Veterans, and Retirees. Virginia is home to a number of military installations with a conservative number of 129,699 active-duty military members, not including reservists or civilian military workers who possess photo ID cards that allow them to enter and conduct business on military installations.⁶⁶ The spouses and dependents of these military members also possess military ID cards for on-base entry and privileges. Military ID cards are a valid form of ID for voting in Virginia elections.

According to the U.S. Department of Veterans Affairs (VA), Virginia has approximately 781,388 military veterans (not including dependents and spouses), the majority of whom possess military retiree or veterans IDs.⁶⁷ For example, according to the Census Bureau, veterans account for 20.9 percent of the population of Hampton, Virginia.⁶⁸ The Census Bureau

-
57. Mark Obenshain, “‘Four Pinocchios’ for *Washington Post* on Photo ID,” PJ Media, September 26, 2014, <http://pjmedia.com/blog/four-pinocchios-for-wapo/> (accessed September 18, 2015).
 58. U.S. Department of State, Bureau of Consular Affairs, Passports Statistics, “Passport Issuance by State per Fiscal Year (2008 to 2014),” <http://travel.state.gov/content/passports/english/passports/statistics.html> (accessed September 18, 2015).
 59. Table 22, “Persons Naturalized by State or Territory of Residence: Fiscal Years 2004 to 2013,” in U.S. Department of Homeland Security, *2013 Yearbook of Immigration Statistics*, p. 57.
 60. State Council of Higher Education for Virginia, “Fall Headcount Enrollments,” All Students, Fall 2014, [http://research.schev.edu/schev_navigator/\(S\(cg5410h0fhxeouexhj3e\)\)/rdPage.aspx?rdReport=E02_Report&rdembedded=true&lbUNITID=XXXALL&lbREPYEAR=1415&lbE2ROWS=01&lbE2COLS=A](http://research.schev.edu/schev_navigator/(S(cg5410h0fhxeouexhj3e))/rdPage.aspx?rdReport=E02_Report&rdembedded=true&lbUNITID=XXXALL&lbREPYEAR=1415&lbE2ROWS=01&lbE2COLS=A) (accessed September 18, 2015).
 61. State Council of Higher Education for Virginia, “Fall Headcount Enrollments,” In-State/Out-of-State Students, 2014, [http://research.schev.edu/schev_navigator/\(S\(lcdywbv5e1pxlf2igrptcqp\)\)/rdPage.aspx?rdReport=E02_Report&rdembedded=true&lbUNITID=XXXALL&lbREPYEAR=1415&lbE2ROWS=05&lbE2COLS=A](http://research.schev.edu/schev_navigator/(S(lcdywbv5e1pxlf2igrptcqp))/rdPage.aspx?rdReport=E02_Report&rdembedded=true&lbUNITID=XXXALL&lbREPYEAR=1415&lbE2ROWS=05&lbE2COLS=A) (accessed September 18, 2015).
 62. Code of Virginia, § 24.2-643 (2014).
 63. Virginia Department of Elections, “Voters Without DMV IDs by Precinct,” October 6, 2014, <http://elections.virginia.gov/Files/VoterRegistration/Information/VotersDMV-IDs-Precinct-10-1-2014.pdf> (accessed September 18, 2015).
 64. *Ibid.*
 65. *Ibid.*
 66. Governing, “Military Active-Duty Personnel, Civilians by State.”
 67. U.S. Department of Veterans Affairs, National Center for Veterans Analysis and Statistics, “Veteran Population: Virginia,” http://www.va.gov/vetdata/Veteran_Population.asp (accessed September 18, 2015).
 68. U.S. Census Bureau, “How Do We Know? A Snapshot of Our Nation’s Veterans,” July 2012, <http://www.census.gov/library/infographics/veterans.html> (accessed September 18, 2015).

has identified the total number of veterans enrolled in VA health care nationwide. Assuming that the national percentage rate of enrollment holds true for Virginia, an estimated 42 percent—or 329,328—of these veterans would be enrolled and would likely have a Veteran Health Identification Card, an eligible photo ID for voting.⁶⁹ Many of these veterans and retirees are also entitled to retirement or veterans benefits, including access to commissary (food); exchange (clothing and department store goods); and other morale, welfare, or recreational privileges. To access these benefits, retirees and eligible dependents are required to possess a military retiree or dependent ID.

Federal, State, Local Government, and Private-Sector Employees. Another 332,600 federal⁷⁰ and state employees⁷¹ in Virginia were not included in the analysis conducted by interest groups or *The Washington Post*. Each of these federal and state employees has a photo ID that is acceptable under the law to cast a vote. In addition, counties and cities across the Commonwealth of Virginia employ another 376,000 local employees with an acceptable government ID.⁷²

The Virginia photo ID law also permits the use of a private employee ID card containing a photograph of the voter when it is issued by the voter's employer in the ordinary course of the employer's business.⁷³ While not every private employer provides an ID to its employees, many thousands of Virginia businesses do provide a photo ID to employees that would be acceptable for voting.

All in all, critics of the Virginia photo ID law and *The Washington Post* failed to account for over 708,600 federal, state, and local employees, not including the hundreds of thousands of privately employed Virginians, who have been issued photo IDs that are acceptable for voting purposes.

Conclusion

Requiring voters to authenticate their identities is necessary to protect the integrity of, and public confidence in, U.S. elections. Voter ID can prevent and deter impersonation fraud, voting under fictitious voter registrations, double voting by individuals registered in more than one state, and voting by illegal aliens. Yet, in case after case, plaintiffs challenging photo ID laws and critics of those laws have used highly inflated statistics of voters who allegedly lack an acceptable form of photo ID for voting purposes. Nowhere is this clearer than in Virginia, where critics claimed that between 870,000 and 1,154,000 otherwise eligible Virginians would be disenfranchised because they lack an acceptable form of photo ID, yet the number of Virginians who applied to get a free ID so that they could vote in 2014 was only 3,912. The analysis conducted by state election officials and professional budget experts in Virginia proved to be reasonable, correct, and ignored.

Nationally, as in Virginia, opponents of photo identification laws and a compliant or collusive media feed the public these highly inflated estimates of the number of affected people. Such misleading statistics have been criticized by the U.S. Supreme Court and other federal appellate courts. This is not surprising, as many litigants and critics of photo ID fail to conduct a comprehensive comparison of voter registration lists with databases listing other relevant categories of citizens (outside of current DMV databases) who possess other acceptable forms of ID, such as passports, military, tribal, naturalization, and other federal and state identification cards.

The use of wildly inaccurate and misleading data inhibits a rational legislative or policy debate on the likely effect of photo identification laws and bleeds into the debate about other important election reform

69. U.S. Census Bureau, Health Insurance Tables—HIB Series, Table HB-4, "Health Insurance Coverage Status and Type of Coverage by State—All Persons: 1999–2012," https://www.census.gov/hhes/www/hlthins/data/historical/HIB_tables.html (accessed September 18, 2015). The number of Virginia veterans enrolled is calculated on the national number of VA-enrolled veterans divided by the total veteran population of 21,619,731.

70. Number of state employees in Virginia as of October 2014. U.S. Department of Labor, Bureau of Labor Statistics, State and Metro Area Employment, Current Employment Statistics.

71. Number of federal (civilian, non-military) employees in Virginia as of October 2014. U.S. Department of Labor, Bureau of Labor Statistics, State and Metro Area Employment, Current Employment Statistics.

72. Number of local employees in Virginia as of October 2014. U.S. Department of Labor, Bureau of Labor Statistics, State and Metro Area Employment, Current Employment Statistics.

73. Virginia Department of Elections, "Photo ID Required to Vote," <http://elections.virginia.gov/index.php/registration/photo-ids-required-to-vote/> (accessed September 18, 2015).

proposals across the country. Policymakers and the public deserve to hear the truth about the relatively small universe of affected voters, not inflammatory and inaccurate assertions that hundreds of thousands or millions of voters are going to be negatively affected by such laws.⁷⁴

—*Don Palmer is former Secretary of the Virginia State Board of Elections and Director of Elections in Florida. He previously served as an attorney in the Voting Section of the Department of Justice and the Navy Judge Advocate Generals Corps (JAGC).*

74. Sue Owen and W. Gardner Selby, "Eric Holder Says Recent Studies Show 25 Percent of African Americans, 8 Percent of Whites Lack Government-issued Photo IDs," *Austin American-Statesman*, July 24, 2015, <http://www.politifact.com/texas/statements/2012/jul/11/eric-holder/eric-holder-says-recent-studies-show-25-percent-af/> (accessed September 18, 2015); New York University School of Law, Brennan Center for Justice, "Voter ID," October 15, 2012, <https://www.brennancenter.org/analysis/voter-id> (accessed September 18, 2015).