

LET'S SEE SOME I.D.—A NEW PROPOSAL FOR VOTER IDENTIFICATION IN IOWA

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I. INTRODUCTION

As he walked up to the doors of an elementary school, the chilly November wind was rattling a sign that had been neatly placed on the grounds of the schoolyard earlier that morning. There were not many people around at this time of night. As he walked to the entrance, all he heard was the wind beating on that yard sign and a faint buzzing coming from the single streetlight that illuminated the mostly empty parking lot. In the streetlight's yellowish glow, he read the words on that battered sign: "Vote Here."

He would in fact be voting there. This was his last stop of the night. By now these polling places were starting to look and feel the same. They even smelled the same. As he passed through the doors of the schoolhouse, he felt his stomach curl a bit when he got a whiff of that potent scent produced by the mixture of musty old building and recently applied floor wax. Inside, he followed the signs pointing him in the direction of the polling station and, after passing the third bank of miniature-sized lockers, he finally arrived at the check-in table. The table was manned by a fierce-looking octogenarian whose demeanor suggested that although 8:45 p.m. was well past her bedtime, she took her job here seriously and was going to play it by the book. He recognized immediately that she might pose a problem.

"State your name, and sign this form."¹ While he signed his fifth form of the night she repeated aloud the name he told her.² He sensed some suspicion in her voice, and even through the Coke-bottle lenses she wore he could see that her hostile eyes were evaluating whether the man in front of her was who he claimed to be. He had been right—this time was not going to be as easy as the others.

This was not the way this scheme was supposed to play out. At the other polling places, he had not even been given a second glance when he declared a name—he was simply handed a ballot.³ When he got his ballot, he would not pay much attention to the federal candidates—he and the other guys figured they could not affect much in those races. He would make sure to cast a vote for the local candidate that he and the others were trying to get elected—there, they could make a difference.⁴ Voter turnout

1. *See Iowa Code § 49.77(1) (2007).*

2. *See id. § 49.77(2).*

3. *See id.*

4. In 2008, Iowa had a number of remarkably close state legislative elections,

is generally not impressive,⁵ and many voters typically do not bother to cast a vote in the local races at the bottom of the ballot.⁶ His five votes surely would not decide the race, but together with the handful of others doing the same thing, they figured they could pull out a victory for their guy in a close one.

For most of the night, he was not overly concerned about his identity being challenged. While this plan probably could not have worked in a small town, the city he was in was big enough to afford him somewhat of a cloak of anonymity. There was nothing in his looks or demeanor to suggest he was anything but one of the good, upstanding Iowan citizens whose names he used. The poll workers were usually pleasant as well—even though the city was large, its citizens were still Iowans and retained that Midwestern small-town attitude that has led people to generally trust one another.

But for some reason, this old lady did not seem to trust him. In a surprisingly polite tone considering her perpetual frown, she asked, “Sir,

with Renee Schulte winning by 13 votes out of 18,162 cast; Dolores Mertz winning by 43 votes out of 14,843 cast; Wes Whitead winning by 55 votes out of 12,671 cast; and Chris Hagenow winning by 93 votes out of 17,175 cast. IOWA SECRETARY OF STATE, STATE OF IOWA OFFICIAL CANVASS SUMMARY, Nov. 4, 2008 GENERAL ELECTION (2008), available at <http://www.sos.state.ia.us/pdfs/elections/2008/OfficialCanvass2008General.pdf>.

5. In Iowa, turnout of registered voters in the 2006 and 2002 midterm elections was 52.71% and 56% respectively. IOWA SECRETARY OF STATE'S OFFICE, REPORT OF VOTERS REGISTERED AND VOTING, 2006 GENERAL ELECTION, <http://www.sos.state.ia.us/pdfs/2006Statewidestats.pdf> (last visited Apr. 14, 2009); IOWA SECRETARY OF STATE'S OFFICE, REPORT OF VOTERS REGISTERED AND VOTING, 2002 GENERAL ELECTION, <http://www.sos.state.ia.us/pdfs/elections/2002/results/2002StateDemoGE.pdf> (last visited Apr. 14, 2009). In the 2004 and 2000 general elections, Iowa experienced an unusually high turnout of 76.0% and 72% of registered voters, respectively. IOWA SECRETARY OF STATE'S OFFICE, REPORT OF VOTERS REGISTERED AND VOTING, 2004 GENERAL ELECTION, <http://www.sos.state.ia.us/pdfs/elections/2004/general/2004StatewideStats.pdf> (last visited Apr. 14, 2009); IOWA SECRETARY OF STATE'S OFFICE, 2000 STATEWIDE STATISTICAL REPORTS, <http://www.sos.state.ia.us/pdf/2000StateWithLinnDemo.pdf> (last visited Apr. 14, 2009). A preliminary report estimates that 69.9% of eligible voters cast a ballot in the 2008 general election. See UNITED STATES ELECTIONS PROJECT, 2008 GENERAL ELECTION TURNOUT RATES, http://elections.gmu.edu/Turnout_2008G.html (last visited Apr. 14, 2009).

6. See, e.g., Shaun Bowler et al., *Ballot Propositions and Information Costs: Direct Democracy and the Fatigued Voter*, 45 W. POL. Q. 559, 560–62 (1992) (discussing the fact that fewer votes are cast in some candidate elections and ballot propositions when a ballot presents a large number of races or issues to be decided).

would you please provide me with some identification?"⁷ This lady was going to do it by the book—but he knew that this was not going to pose a problem for him or his scheme. He and the others had done their research on Iowa's election laws. First, they had discovered that in many cases no form of identification was required,⁸ although a precinct official may request identification from a voter the official does not know.⁹ What made their plan feasible, however, was the fact that Iowa had lax requirements for acceptable identification in such circumstances. A voter whose identity is challenged is not required to provide valid photo identification.¹⁰ If tendered, a precinct worker must accept as sufficient identification “[a] copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.”¹¹

He went to each polling place prepared for such a challenge and smiled as he reached into the inside pocket of his jacket and handed the poll worker a copy of a utility bill for the man whose name he had used this time. Even with all the warnings in the media about the perils of identity theft, it was not hard for him to find a discarded document that would suffice to identify him at the polls. The old lady examined the bill for a moment and her concerns were allayed. She smiled as she handed him his ballot and unbeknownst to her, he cast his fifth ballot of the night.

Although the events recounted above are fictional, the permissive laws are real. As demonstrated, it is not difficult for a person or group of people to manipulate an election under current Iowa law because Iowa's current voter identification requirements needlessly open up the possibility of voter fraud. The legislation proposed in this Note, which would require photo identification in order to vote, conforms to the Constitution and the rough outline of requirements that has been provided by recent cases. Although there is little clear evidence that voter fraud is a serious problem in Iowa, the legislature should act proactively rather than reactively when it comes to protecting such an important function of our democracy. Additionally, this Note will provide a defense against common criticisms of voter identification laws, including arguments that identification

7. IOWA ADMIN. CODE r. 721-21.3(1) (2007).

8. *See generally* IOWA CODE § 49.77.

9. *Id.* § 49.77(3); IOWA ADMIN. CODE r. 721-21.3(6) (stating that if the voter does not have identification at that time, the voter may cast a provisional ballot in accordance with Iowa Code § 49.81).

10. IOWA ADMIN. CODE r. 721-21.3(3).

11. *Id.* r. 721-21.3(3)(b).

requirements have a disparate impact on particular groups of voters, that identification requirements function as a poll tax, that question the effectiveness of identification requirements, and that raise political considerations.

II. SUMMARY OF RECENT VOTER IDENTIFICATION CASES

Voter identification laws have been challenged in a number of recent cases. The differing results from case to case provide a rough set of boundary lines for what kinds of provisions a court might uphold or strike down. Additionally, the differing results in each case reflect the different statutes at issue as well as the different legal contexts found in the state in which that statute operates—including the effect of state law, the amount of time given to voters to meet the new identification requirements, and the state's efforts to educate voters of the new requirements. The United States Supreme Court's decision in *Crawford v. Marion County Election Board* also provides answers to the constitutional questions raised by voter identification laws.¹²

A. Missouri

In 2006, the Missouri state legislature passed a statute requiring voters to provide photo identification at the polls.¹³ The photo identification requirement was intended to prevent voter fraud or the appearance or perception of voter fraud by preventing the “impersonation of a registered voter.”¹⁴ The law required voters to “present as identification a document issued by the state or federal governments that contains the person’s name as listed in the voter registration records, the person’s photograph, and an expiration date showing that the ID is not expired.”¹⁵ In an attempt to ease the financial burden of this requirement, the Missouri law contained a provision to provide a nondriver identification to voters at no cost and provided “mobile processing units” as a means to distribute such forms of identification to those who were physically unable to obtain them.¹⁶ In order to obtain photo identification, other documents, such as a birth certificate or marriage license, were

12. See generally *Crawford v. Marion County Election Bd.*, 128 S. Ct. 1610 (2008) (upholding Indiana’s voter identification law against constitutional challenges).

13. MO. REV. STAT. § 115.427 (Supp. 2008); see also *Weinschenk v. State*, 203 S.W.3d 201, 204 (Mo. 2006).

14. *Weinschenk*, 203 S.W.3d at 204–205.

15. *Id.* at 205 (citing MO. REV. STAT. § 115.427.1 (2006)).

16. *Id.* at 206 (citing MO. REV. STAT. § 115.427.7 (2006)).

necessary, however, and the law failed to provide such documentation at no cost to those who could not otherwise obtain it.¹⁷

The Missouri law allowed voters to cast provisional ballots “if they sign[ed] an affidavit swearing that the reason they [had] no acceptable photo ID [was] that they [were] unable to obtain such identification because of a disability or handicap, because of a sincerely held religious belief, or because they were born on or before 1941.”¹⁸ However, the law did not allow a voter to cast a provisional ballot if the voter was unable to obtain identification due to lack of funds or other reasons.¹⁹ Additionally, the Missouri Supreme Court’s interpretation of the provisional ballot law required matching a signature on the provisional ballot with that voter’s signature on file with the election authority.²⁰ In sum, if a voter was unable to obtain photo identification for the specified reasons, the voter could cast a provisional ballot which would be counted if the signature on the ballot matched that voter’s signature on file with the election office.

Missouri’s photo identification law was struck down on state constitutional grounds in *Weinschenk v. State*.²¹ Voting is a fundamental right under the Missouri Constitution;²² therefore, the state supreme court applied strict scrutiny in invalidating the law based on equal protection grounds.²³ The court examined the burdens the law placed on voting, such as the monetary and practical costs to voters of obtaining identification.²⁴ The court stated that although photo identification was available at no monetary cost, the documents needed to obtain that identification were not free.²⁵ Although such an indirect cost could not be considered a poll tax per se, “it is a fee that qualified, eligible, registered voters who lack an approved photo ID are required to pay in order to exercise their right to

17. *Id.* at 207–08.

18. *Id.* at 206 (citing MO. REV. STAT. § 115.427.4 (2006)) (using the cutoff date of 1941 presumably to ease the burden on those who were sixty-five years of age or older at the time of the statute’s passage).

19. *Id.*

20. *Id.* at 206–07.

21. *Weinschenk v. State*, 203 S.W.3d 201, 221–22 (Mo. 2006).

22. *Id.* at 211 (quoting MO. CONST. art. I, § 25 (“[A]ll elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”)); and citing MO. CONST. art. VIII, § 2 (establishing “an exclusive list of qualifications necessary to vote in Missouri”).

23. *Id.* at 215.

24. *Id.* at 213–16.

25. *Id.* at 213.

free suffrage under the Missouri Constitution.”²⁶ The court also pointed to the practical obstacles the photo identification requirement presented to voters, such as the necessities of time and an ability to “navigate bureaucracies” in order to obtain the proper documentation.²⁷ The court concluded that the financial and practical difficulties presented by the photo identification requirement fell hardest on the poor, elderly, and disabled.²⁸

Having determined the photo identification requirement placed a heavy and substantial burden on the right to vote,²⁹ the court identified the state’s compelling interests. The court held that “Missouri’s broad interests in preserving the integrity of the election process and combating voter fraud are significant, compelling and important.”³⁰ The court concluded, however, that the statute was neither necessary nor narrowly tailored to accomplish those interests because: (1) the statute only addressed in-person voter impersonation fraud and failed to address other types of fraud (e.g., absentee voter fraud or fraudulent voter registration); (2) the court was not convinced voter impersonation fraud was a significant problem in Missouri; and (3) the court decided that previous regulations, which did not require photo identification in order to vote, had been sufficient to prevent voter impersonation fraud while being less burdensome on the right to vote.³¹

B. *Arizona*

In 2004, Arizona voters approved a photo identification law.³² In addition to the requirement of photo identification in order to vote, the law—known as Proposition 200—sought to combat fraud through other measures, such as requiring proof of citizenship for voter registration.³³ As for the election day photo identification requirement, Arizona provided a procedure for voters to cast provisional ballots if they were unable to

26. *Id.*

27. *Id.* at 214.

28. *Id.* at 214–15.

29. *Id.* at 215.

30. *Id.* at 217.

31. *Id.*

32. ARIZ. REV. STAT. ANN. § 16-579 (2006); Arizona Sec’y of State’s Office, Proposition 200, § 5, <http://www.azsos.gov/election/2004/info/PubPamphlet/english/prop200.htm> (last visited Apr. 14, 2009).

33. ARIZ. REV. STAT. ANN. §§ 16-152(A)(14), 16-166(F); Arizona Sec’y of State’s Office, *supra* note 32, at §§ 3–4.

present proper identification.³⁴ In order for the provisional ballot to be counted,

the voter is allowed five business days to return to a designated site and present proper identification. In addition any voter who knows he or she cannot secure identification within five business days of the election has the option to vote before election day during the early voting period. The State has determined that, because there is adequate time during the early voting period to compare the voters' signatures on the ballot with their signatures on the registration rolls, voters need not present identification if voting early.³⁵

In 2006, a number of plaintiffs sought a preliminary injunction of the enforcement of the law.³⁶ While the district court denied the injunction, a two-judge panel of the Ninth Circuit Court of Appeals granted the injunction without stating its reasoning.³⁷

In *Purcell v. Gonzalez*, without reaching the merits of the case, the United States Supreme Court issued a per curiam opinion reversing the appellate court's grant of an injunction, citing the court of appeals' lack of deference to the district court's judgment.³⁸ The Court also pointed to the "necessity for clear guidance to the State of Arizona," expressing that, in light of the elections that were only weeks away, it was best for the law to remain in effect in order to avoid voter confusion.³⁹ The Court's dicta could be interpreted as favorable to the validity of photo identification laws:

Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy. Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised. “[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.”⁴⁰

34. *Purcell v. Gonzalez*, 549 U.S. 1, 2 (2006).

35. *Id.*

36. *Id.* at 3.

37. *Id.*

38. *Id.* at 5.

39. *Id.*

40. *Id.* at 4 (quoting *Reynolds v. Sims*, 377 U.S. 533, 555 (1964)).

In a concurring opinion, Justice Stevens indicated that vacating the injunction would allow courts to better examine the constitutionality of voter identification laws in the future by providing real-world examples of the extent of disenfranchisement caused and the extent of the fraud such laws were intended to address.⁴¹

C. Georgia

In 2005, Georgia passed a very restrictive photo identification law under which presenting photo identification was an absolute condition to voting.⁴² The 2005 law contained no “fail-safe” alternative measures—it provided no opportunity to cast a provisional ballot for those without proper identification, nor did it provide the opportunity for a voter to sign a statement swearing or affirming the voter’s identity, nor did it provide photo identification at no cost to those who otherwise could not obtain it.⁴³ Additionally, when the photo identification law was passed, the Georgia legislature doubled the minimum fee charged to obtain photo identification.⁴⁴ The 2005 photo identification law was preliminarily enjoined by the United States District Court for the Northern District of Georgia in October of 2005 on the basis that the plaintiffs “had a substantial likelihood of success on their claims that the 2005 Photo ID Act unduly burdened the right to vote, and that the 2005 Photo ID Act constituted a poll tax.”⁴⁵

In January of 2006, the Georgia legislature responded by passing a new photo identification law that repealed the 2005 statute.⁴⁶ In order to cast a ballot, in most cases a voter was required to present one of many forms of accepted photo identification.⁴⁷ The 2006 law created a new form of photo identification, a “Georgia voter identification card,” which was to be given to voters at no cost if they could provide certain identifying

41. *Id.* at 6 (Stevens, J., concurring).

42. Common Cause/Ga. v. Billups (*Billups I*), 439 F. Supp. 2d 1294, 1305 (N.D. Ga. 2006).

43. *See id.*

44. *Id.* at 1304–05.

45. *Id.* at 1298.

46. *See id.*

47. A voter could provide nearly any government issued identification if it contained a photograph, such as a Georgia driver’s license, a U.S. passport, a military identification card, or even a government employee identification card. GA. CODE ANN. § 21-2-417(a) (2006).

documents.⁴⁸ Under Georgia Code section 21-2-417.1(e), in order to obtain the free voter identification, the voter had to show:

- (1) A photo identity document, except that a nonphoto identity document is acceptable if it includes both the person's full legal name and date of birth;
- (2) Documentation showing the person's date of birth;
- (3) Evidence that the person is registered to vote in this state; and
- (4) Documentation showing the person's name and address of principal residence.⁴⁹

Under the administrative regulations implementing the new voter identification card provision, voters without any form of photo identification could present documents such as a birth certificate, marriage certificate, their previous year's tax return, or even a voter registration application as proof of identity.⁵⁰ Additionally, if voters were unable to present proper identification, the 2006 law allowed them to cast a provisional ballot which would be counted if the election registrars could "verify current and valid identification" of the voter within the period of time provided for verifying provisional ballots.⁵¹

The operation of the 2006 law was preliminarily enjoined four days before a primary election in *Common Cause/Georgia v. Billups*.⁵² The plaintiffs claimed the 2006 law "violated the Georgia Constitution, the federal Equal Protection Clause, the Fourteenth and Twenty-Fourth Amendments to the federal Constitution, the Civil Rights Act of 1964, and Section 2 of the Voting Rights Act of 1965."⁵³ The court rejected the plaintiffs' argument that the numerous burdens imposed by the photo identification requirement (e.g., gathering the necessary documentation to acquire the photo identification and traveling to various agencies in order to obtain the identification) amounted to a constructive poll tax in violation

48. *Billups I*, 439 F. Supp. 2d at 1305 (citing GA. CODE ANN. § 21-2-417.1 (2006)).

49. GA. CODE ANN. § 21-2-417.1(e) (Supp. 2008).

50. GA. COMP. R. & REGS. 183-1-20.01(4)(b) (2006).

51. GA. CODE ANN. § 21-2-417(b) (Supp. 2008). The verification process for provisional ballots is governed by Georgia Code Annotated section 21-2-419 (2003).

52. *Common Cause/Ga. v. Billups (Billups I)*, 439 F. Supp. 2d 1294, 1360 (N.D. Ga. 2006).

53. *Id.* at 1298.

of the Twenty-Fourth Amendment.⁵⁴ The court concluded that it would be a stretch to consider such tangential burdens a poll tax.⁵⁵ The court also rejected the plaintiffs' Civil Rights Act and Voting Rights Act claims.⁵⁶

The preliminary injunction was granted on the basis of the plaintiffs' Equal Protection claim.⁵⁷ Although the state's interests in preventing voter fraud were considered important, the court held the law was not narrowly tailored to that interest.⁵⁸ In reaching this conclusion, the court considered such factors as: the lack of proof that in-person voter fraud was a problem;⁵⁹ Georgia's weak efforts in educating voters of the change in the law;⁶⁰ less burdensome alternatives to the law;⁶¹ and most importantly, the short time period before the election.⁶² The court was careful to make clear that it was not ruling on the validity of voter identification laws generally. Instead, the court held the law invalid as applied to this specific election.⁶³

Georgia's law was again challenged in 2007.⁶⁴ The court refused to declare the law unconstitutional and denied the request for a permanent injunction, finding the regulation was reasonably related to Georgia's interest in preventing voter fraud.⁶⁵ Additionally, in distinguishing this challenge from the court's previous grant of a preliminary injunction, the court noted the state's considerable efforts in educating the public about the change in the law.⁶⁶

54. *Id.* at 1355.

55. *Id.* at 1354–55 (citing *Ind. Democratic Party v. Rokita*, No. 1:05-CV-0634-SEB-VSS, 2006 WL 1005037, at *38 (S.D. Ind. Apr. 14, 2006)).

56. *Id.* at 1355–58.

57. *Id.* at 1343–45.

58. *Id.* at 1350–51.

59. *Id.* at 1350.

60. *Id.* at 1346–47.

61. *Id.* at 1351.

62. *Id.* at 1351–52.

63. *Id.*

64. *CommonCause/Ga. v. Billups (Billups II)*, 504 F. Supp. 2d 1333, 1337 (N.D. Ga. 2007), *aff'd*, 554 F.3d 1340 (11th Cir. 2009).

65. *Id.* at 1382.

66. *Id.* at 1378–79. The court also noted differences in the legal standards applied when a party is seeking a permanent rather than a preliminary injunction. *Id.* at 1379.

D. Indiana

In 2005, the Indiana legislature passed a voter identification law known as Senate Enrolled Act (SEA) 483.⁶⁷ Although the law required most voters to provide photo identification in order to vote in person, the legislature included certain exceptions to that requirement.⁶⁸ Under SEA 483, a voter casting an absentee ballot does not have to provide photo identification.⁶⁹ Additionally, voters who reside in a state-licensed care facility are exempted from the requirement.⁷⁰ The law also created a provisional ballot procedure, which allowed a person lacking proper identification to cast a provisional ballot that would be counted if—within a specified period of time—the voter presented proper identification, signed an affidavit of indigency, or signed an affidavit indicating a religious objection to being photographed.⁷¹ The Indiana law also contained a provision allowing non-driver photo identification cards to be provided at no cost to any person lacking identification if that person would be eighteen years old by the date of the next election.⁷²

Indiana's law was challenged on a number of grounds in *Indiana Democratic Party v. Rokita*.⁷³ The plaintiffs argued, among other things, that the law placed an undue burden on the fundamental right to vote and that the identification requirement amounted to a poll tax.⁷⁴ In balancing the individual's right to vote⁷⁵ against the state's right to regulate

67. Ind. Democratic Party v. Rokita, 458 F. Supp. 2d 775, 782 (S.D. Ind. 2006). The Act was “codified at Ind. Code §§ 3-5-2-40.5, 3-10-1-7.2, 3-10-8-25; scattered section of Ind. Code ch. 3-11-8; several sections of Ind. Code art. 3-11.7; and Ind. Code § 9-24-16-10.” *Id.*

68. IND. CODE ANN. § 3-11-8-25.1 (LexisNexis 2002 & Supp. 2008).

69. *Id.* § 3-11-10-1.2.

70. *Id.* §§ 3-10-1-7.2(e), 3-11-8-25.1(e).

71. *Id.* §§ 3-11.7-5-1, 3-11.7-5-2.5(b)–(c). The period of time is set in Indiana Code section 3-11.7-5-1. Under that provision, “provisional ballots must be counted by not later than noon ten (10) days following the election.” *Id.* § 3-11.7-5-1 (LexisNexis Supp. 2008).

72. *Id.* § 9-24-16-10.

73. Ind. Democratic Party v. Rokita, 458 F. Supp. 2d 775, 782 (S.D. Ind. 2006) (claiming violations under the First and Fourteenth Amendments, 42 U.S.C. § 1971, and the Indiana Constitution).

74. *Id.* at 783–84.

75. *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (“It is beyond cavil that ‘voting is of the most fundamental significance under our constitutional structure.’” (quoting *Illinois Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979))).

elections,⁷⁶ the court refused to apply strict scrutiny, stating: “[T]o subject every voting regulation to strict scrutiny and to require that the regulation be narrowly tailored to advance a compelling state interest . . . would tie the hands of States seeking to assure that elections are operated equitably and efficiently.”⁷⁷ Important to the court’s refusal to apply strict scrutiny was the fact that the plaintiffs presented no evidence of any individuals who would in fact be harmed by the law.⁷⁸

The plaintiffs also argued that the photo identification requirement amounted to a poll tax because, although such identification was provided for free, documents needed to obtain that identification—such as a birth certificate—often require payment of a fee.⁷⁹ Additionally, the plaintiffs pointed to other incidental costs of the photo identification requirement such as:

the cost in time and of transportation, especially to those without driver’s licenses, who will have to either use public transportation (for a fee) to travel to the [Bureau of Motor Vehicles] location, quite possibly after a trip to the health department to obtain (for a fee) a certified copy of a birth certificate, not to mention the additional costs in time and money for voters who were born in other states.⁸⁰

The court held that including such tangential burdens in its analysis would result in “a dramatic overstatement of what fairly constitutes a ‘poll tax.’”⁸¹ The court further stated that “the cost of time and transportation cannot plausibly qualify as a prohibited poll tax because these same ‘costs’ also result from voter registration and in-person voting requirements, which one would not reasonably construe as a poll tax.”⁸²

The court ultimately rejected each of the plaintiffs’ claims and Indiana’s photo identification law was upheld.⁸³ This result was affirmed by the Seventh Circuit Court of Appeals in *Crawford v. Marion County*

76. U.S. CONST. art. I, § 4, cl. 1 (“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof . . .”).

77. *Rokita*, 458 F. Supp. 2d at 822 (quoting *Burdick*, 504 U.S. at 433).

78. *Id.* at 822–23.

79. *Id.* at 826–27.

80. *Id.* at 827.

81. *Id.*

82. *Id.*

83. *Id.* at 845.

Election Board,⁸⁴ and the case was appealed to the United States Supreme Court. In April of 2008, the Supreme Court affirmed the district court and the court of appeals, concluding Indiana's law was not facially unconstitutional.⁸⁵

A three-justice plurality, in an opinion authored by Justice Stevens and joined by Chief Justice Roberts and Justice Kennedy, applied a balancing test which required the court to "weigh the asserted injury to the right to vote against the precise interests put forward by the State as justifications for the burden imposed by its rule."⁸⁶ The court identified a number of legitimate state interests, including interests in deterring and detecting voter fraud, improving and modernizing election procedures, and safeguarding voter confidence.⁸⁷ Significantly, the Court concluded Indiana had a legitimate interest in preventing voter fraud despite the absence of any evidence of in-person fraud occurring in Indiana—the fact that such fraud had occurred in other parts of the country was sufficient.⁸⁸ The plurality concluded that these state interests justified the burdens the photo identification requirement imposed on persons who were eligible to vote but did not possess the required identification.⁸⁹

E. Boundaries Provided by Case Law

The cases challenging voter identification laws in Missouri, Arizona, Georgia, and Indiana can provide guidance for how reviewing courts will examine such laws in the future. In each case, the reviewing court acknowledged the magnitude of the state interests involved in regulating

84. Crawford v. Marion County Election Bd., 472 F.3d 949, 954 (7th Cir. 2007).

85. Crawford v. Marion County Election Bd., 128 S. Ct. 1610, 1615 (2008).

86. *Id.* at 1616 (citing *Burdick v. Takushi*, 504 U.S. 428, 434 (1992)) (internal quotations omitted). A concurring opinion, authored by Justice Scalia and joined by Justices Thomas and Alito, reached the same result but took issue with how this test was applied. The concurring justices argued that rather than examining the special burden imposed on some individual voters, the *Burdick* test required the court to examine the effect of the law on "voters generally." *Id.* at 1624–25 (Scalia, J., concurring).

87. *Id.* at 1617.

88. *Id.* at 1618–20. In addition, at least two U.S. circuit courts of appeals have relied on *Crawford* to uphold voter ID laws. See generally *Common Cause/Ga. v. Billups*, 554 F.3d 1340 (11th Cir. 2009) (upholding a Georgia voter identification law); *ACLU of N.M. v. Santillanes*, 546 F.3d 1313 (10th Cir. 2008) (upholding a voter identification law passed by the City of Albuquerque, New Mexico).

89. *Id.* at 1623.

elections.⁹⁰ In the cases summarized in this Note, one law was explicitly upheld on the merits,⁹¹ one was allowed to operate without a decision on the merits,⁹² one was preliminarily enjoined but not based on the fundamental issue of requiring photo identification *per se*,⁹³ and one was struck down on state constitutional grounds.⁹⁴ Reviewing courts were generally reluctant to consider a photo identification requirement a poll tax so long as an identification card was available at no cost.⁹⁵ This reluctance existed even in cases in which a fee was assessed in order to obtain the documentation necessary to get that free photo identification.⁹⁶ It is also significant that each law had fail-safe provisions, such as specific exemptions allowing voters to cast provisional ballots or sign an affidavit if they could not provide adequate proof of identification for such reasons as age, disability, indigence, or religious objection.⁹⁷ In sum, a court is more likely to uphold a voter identification law if photo identification is provided at no cost, adequate efforts exist to educate the electorate of the new requirements, and the law contains adequate fail-safe provisions.

90. *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (“Confidence in the integrity of our electoral process is essential to the functioning of our participatory democracy.”); *Common Cause/Ga. v. Billups (Billups I)*, 439 F. Supp. 2d 1294, 1350 (N.D. Ga. 2006) (holding that the state’s interest in curbing voting fraud is undoubtedly important); *Ind. Democratic Party v. Rokita*, 458 F. Supp. 2d 775, 825 (S.D. Ind. 2006) (“It is beyond dispute that Indiana has a compelling interest in ascertaining an individual’s identity before allowing the person to vote. It is also well-established that Indiana has an important interest in preventing voter fraud.”); *Weinschenk v. State*, 203 S.W.3d 201, 217 (Mo. 2006) (“Missouri’s broad interests in preserving the integrity of the election process and combating voter fraud are significant, compelling and important.”).

91. *See Crawford*, 128 S. Ct. at 1615.

92. *See Purcell*, 549 U.S. at 3.

93. *See Billups I*, 439 F. Supp. 2d at 1351–52 (indicating that the law was held unconstitutional based on the circumstances surrounding that particular election, such as the short time period before the election and the lack of adequate voter education efforts). The court later refused to grant a permanent injunction on the operation of Georgia’s law. *Common Cause/Ga. v. Billups (Billups II)*, 504 F. Supp. 2d 1333, 1382 (N.D. Ga. 2007), *aff’d*, 554 F.3d 1340 (11th Cir. 2009).

94. *See Weinschenk*, 203 S.W.3d at 219.

95. *See, e.g., Crawford*, 128 S. Ct. at 1620–21; *Billups I*, 439 F. Supp. 2d at 1354–56. *But see Weinschenk*, 203 S.W.3d at 213–14.

96. *See Ind. Democratic Party v. Rokita*, 458 F. Supp. 2d 775, 827 (S.D. Ind. 2006).

97. *See, e.g., IND. CODE ANN. § 3-11.7-5-2.5(c)* (LexisNexis 2002 & Supp. 2008) (allowing a provisional ballot to be counted if the voter signs an affidavit stating the voter is indigent or has a religious objection to being photographed).

III. CURRENT IOWA LAW

Laws currently in place in Iowa are inadequate to protect against voter fraud. In most cases, Iowa voters are not required to present any form of identification.⁹⁸ Even if a voter's qualifications are challenged, the identifying documents a voter is allowed to present do not adequately guarantee the voter is the person she claims to be.⁹⁹

Under current law, a voter who chooses to vote in person will arrive at the polling place, state his or her name, and be asked to sign a declaration of eligibility.¹⁰⁰ The declaration operates as the voters' affirmation that they are residents of that precinct, are registered to vote, and will not vote in any other precinct.¹⁰¹ In most cases, Iowa voters do not have to provide any further identification—as long as they state a name and sign the form, they are allowed to cast a ballot.¹⁰² The voter's name is then announced aloud so any election observers (from political parties or other organizations) have the opportunity to challenge that voter's qualifications.¹⁰³

If the voter's name is not listed in the election register, the election official must request identification from the voter.¹⁰⁴ The election official may—if he does not know the voter—request identification bearing the voter's signature before allowing the voter to cast her ballot.¹⁰⁵ The voter's qualifications may be challenged by an election official or any registered voter.¹⁰⁶ If the election official knows or suspects the voter is not duly qualified—a suspicion that the voter is not the person she claims to be or does not actually live in the precinct—the official has a duty to challenge the voter.¹⁰⁷

98. *See generally* IOWA CODE § 49.77 (2007) (requiring only a voter's signature on a declaration of eligibility unless the voter's name is not present on the election register).

99. *Id.* § 49.81(2) (allowing a challenged voter to cast a provisional ballot after he or she provides a utility bill, bank statement, paycheck, government check, or another government document verifying his or her eligibility).

100. *Id.* § 49.77.

101. *Id.*

102. *See id.*

103. *Id.* § 49.77(2).

104. *Id.* § 49.77(3).

105. *Id.*

106. *Id.* § 49.79.

107. *Id.*

If the voter's qualifications are challenged, the election official has the option of placing the voter under oath and inquiring about the voter's place of residence.¹⁰⁸ If after this examination the challenge is not withdrawn, or if the examination was never conducted in the first place, the voter may only cast a provisional ballot.¹⁰⁹ The provisional ballot will only be counted if the voter later provides identification.¹¹⁰

Herein lies another major problem: the identification accepted at the polls or when determining whether a provisional ballot should be counted does not adequately guarantee the person is actually who she claims to be. While photo identification is one accepted form of identification, if photo identification is not provided an election official must accept such documents as “[a] copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.”¹¹¹ In sum, if a voter is asked to produce identification (which usually is not the case), the types of identification officials are required to accept do not adequately prove that person's identity.

The Iowa legislature has recently taken steps in the right direction. For example, in 2007 the legislature passed a law allowing Election Day voter registration.¹¹² As a way of preventing potential fraud, a voter who registers on Election Day is required to provide photo identification.¹¹³ However, the legislature did include a way around the photo identification requirement, allowing an Election Day registrant's identity to be established by sworn oath of another registered voter from that precinct.¹¹⁴ While this loophole diminishes the effectiveness of the law in preventing voter fraud, the law as a whole does embody a recognition of the importance of clearly establishing a voter's identity.

IV. A NEW PROPOSAL FOR VOTER IDENTIFICATION IN IOWA: TIME FOR A CHANGE

It is time for a change in Iowa law. The legislation described in this

108. *Id.* § 49.80.

109. *Id.* §§ 49.79–49.81.

110. *Id.* § 49.81(2).

111. IOWA ADMIN CODE r. 721-21.3(3) (2007); *see also* IOWA CODE §§ 49.77(3), 49.81(2).

112. IOWA CODE § 48A.7A.

113. *Id.* § 48A.7A(1)(b).

114. *Id.* § 48A.7A(1)(c).

Part, the actual text of which is included as an Appendix, will provide a more secure democratic process for all Iowans and at the same time make accommodations for the blocs of voters who are most typically burdened by photo identification laws. The bill described in this part is an amalgam of voter identification laws from across the country¹¹⁵—incorporating the provisions that provide the most secure voting process while ensuring wide access to the ballot box. The bill also addresses the concerns that have been identified in the voter identification case law.

Most importantly, the bill provides the opportunity for free photo identification to all Iowans.¹¹⁶ While Iowans would still be required to pay a fee associated with the privilege of obtaining a driver's license, the bill provides free non-driver photo identification to Iowans who do not have a driver's license and will be eligible to vote in upcoming elections.¹¹⁷ Further, to mitigate the costs an indigent person may face in obtaining the documentation necessary to obtain photo identification, the bill provides free certified copies of birth certificates to indigents.¹¹⁸ To make photo identification more widely available to those who would face difficulty in traveling to the nearest Department of Transportation licensing station (in particular, the elderly, disabled, and indigent) the bill creates "mobile processing units."¹¹⁹ The mobile processing units will act as a supplement to the "satellite" licensing stations the Iowa Department of Transportation already operates and will have the ability to travel to places such as homeless shelters and nursing homes to distribute photo identification.¹²⁰ In addition to these efforts, the bill requires the Secretary of State to implement a wide-ranging voter education program to alert voters of the new identification requirements and how they may be met.¹²¹ The photo identification requirement would not take effect until the 2012 elections, giving the state adequate time to educate voters and giving voters adequate time to obtain proper identification.¹²²

115. See, e.g., GA. CODE ANN. § 21-2-417 (Supp. 2008); IND. CODE ANN. § 3-5-2-40.5 (LexisNexis Supp. 2008); MO. ANN. STAT. § 115.427 (West Supp. 2008); S.F. 84, 82nd Gen. Assem., Reg. Sess. (Iowa 2007); S.F. 342, 79th Gen. Assem., Reg. Sess. (Iowa 2001).

116. See Appendix *infra*, at § 6(1)(d).

117. *Id.*

118. *Id.* § 7.

119. *Id.* § 8.

120. *Id.*

121. *Id.* § 9.

122. *Id.* § 2.

Turning to the mechanics of the photo identification requirement, on Election Day, Iowa voters would be required to produce identification issued by a government entity.¹²³ The bill states: “The identification must contain a photograph of the voter, the printed name of the voter, the address of the voter’s residence within the precinct, and a validity expiration date showing the identification is not expired or non-expiring.”¹²⁴ The bill excepts certain groups of voters if they execute an affidavit asserting that they have been unable to obtain photo identification due to a physical or mental disability, religious objection to being photographed, are age seventy or older on Election Day, or are indigent.¹²⁵ These exceptions would sunset in 2020,¹²⁶ which should give these groups of voters plenty of time to obtain proper photo identification.¹²⁷

The bill also includes a number of other fail-safe mechanisms. The bill allows voters who cannot present photo identification on Election Day (for example, those who forget or lose their identification) to cast a provisional ballot that will be counted if the voter later appears at a hearing and presents proper identification.¹²⁸ Additionally, there are times when a voter’s photo identification may not display the voter’s current address within the precinct, like when a voter recently moved into the precinct or when the voter is a college student lawfully registered to vote at school but whose identification lists a permanent home address. In these circumstances, the bill allows the voter to present the photo identification combined with certain other documentation proving the voter’s address within the precinct.¹²⁹ The bill also requires “uniform standards to be applied by precinct election officials in verifying [a voter’s] identity and residence.”¹³⁰ This requirement was added so that voters are not turned away in some precincts while they would be allowed to vote under the standards applied in others. Additionally, as the law currently stands, voters who know that they cannot obtain photo identifications have the ability to vote absentee.

123. *Id.* § 3.

124. *Id.*

125. *Id.* § 4.

126. *Id.* § 2.

127. As to the exception for religious objectors, hopefully wisdom obtained from observing the operation of the law for a number of years will provide an answer for how best to handle these voters. As it stands, the bill provides an exception for such voters until 2020. *Id.*

128. *Id.* § 5.

129. *Id.* § 3.

130. *Id.*

In sum, the bill proposed in this Note goes above and beyond the requirements outlined in the voter identification case law—it provides free photo identification to all voters and free documentation to indigents; it provides a number of exceptions and fail-safe provisions, including provisional ballots, hearings, and affidavits; and it would take effect for the 2012 elections, giving the state adequate time to educate voters and giving voters adequate time to obtain proper identification.

V. WHY IOWA NEEDS A VOTER IDENTIFICATION LAW: ADDRESSING COMMON CRITICISMS

There are a number of common criticisms voter identification laws must face in the political and legal arenas: If there is scant evidence of significant voter fraud, is a law really needed? Why should we enact a law that seems to fall hardest on minorities, the poor, the elderly, and the disabled? Does it seem like requiring photo identification is effectively a poll tax? Photo identification requirements address in-person fraud but not voter registration and absentee voting fraud. Isn't voter fraud already a crime? Are there other, less burdensome methods available that would be just as effective? Isn't this whole thing a Republican ploy to decrease voter turnout generally, and especially among likely Democratic voters? This Part will examine how the law proposed in this Note addresses these criticisms to provide greater security for the integrity of our electoral system.

A. Lack of Evidence Indicating Significant Amounts of Voting Fraud

Critics of voter identification laws have argued that there is scant evidence that voter fraud is a problem in the United States.¹³¹ The same argument would likely be made for Iowa specifically—even though Iowa has had its fair share of concerns.¹³² Critics also point out that most

131. See, e.g., Ind. Democratic Party v. Rokita, 458 F. Supp. 2d 775, 792 (S.D. Ind. 2006) (stating that opponents of voter identification laws tend to argue that there is no evidence of voter fraud).

132. Thomas Beaumont, *Caucuses Drew Few Ineligible Voters*, DES MOINES REG., Apr. 20, 2008, at 1B (discussing statistics indicating that only 1.5% of over 22,000 new voters who registered on the day of the Iowa Caucuses provided addresses which could not be verified as valid Iowa addresses); Adam Belz, *12 in Linn County Charged with Voting as Felons*, CEDAR RAPIDS GAZETTE, Feb. 13, 2009, available at <http://www.gazetteonline.com/apps/pbcs.dll/article?AID=/20090213/NEWS/702139948/1006> (indicating forty-six voters were being investigated for allegedly giving false addresses when they registered on election day); Editorial, *Caucus Fraud Unlikely, But Why Take the Chance?*, SIOUX CITY J., Nov. 20, 2007, available at

evidence of fraud is anecdotal and, therefore, is inadequate to make conclusions about the necessity of a photo identification requirement.¹³³ Additionally, it is argued that even if fraud does exist, it is not significant enough to affect election results.¹³⁴

One mistake critics make is to conclude that a lack of prosecutions for voter fraud is evidence that fraud does not exist.¹³⁵ As Judge Richard Posner has explained, “the absence of prosecutions is explained by the endemic underenforcement of minor criminal laws (minor as they appear to the public and prosecutors, at all events).”¹³⁶ Oftentimes prosecutors simply lack the resources and time to prosecute allegations of voter fraud, which are often difficult to prove.¹³⁷

http://www.siouxcityjournal.com/articles/2007/11/20/news_opinion/editorial/554c8da15da3085a86257398007a82eb.txt (discussing voter fraud committed by columnist Dan Savage in 2000, when he registered to vote in Iowa with a Des Moines hotel as his residence); Mike Glover, *Flood of Campaign Operatives Cause Worry*, USA TODAY, Dec. 14, 2007, available at http://www.usatoday.com/news/politics/2007-12-14-4036067917_x.htm (discussing concerns about the potential for out-of-state citizens to be able to fraudulently cast votes in the 2008 Iowa caucuses); Tim Higgins, *Hanusa Begins with Quick Jabs at Mauro*, DES MOINES REG., Aug. 18, 2006, at 4B (discussing allegations of voter fraud in a 1998 Polk County Supervisor race); *ISU Police Look into Possible Voter Fraud*, CEDAR RAPIDS GAZETTE, Dec. 12, 2002, at 7B (discussing allegations that a student at Iowa State University voted twice); Eileen Mozinski, *Iowa GOP Tight Lipped*, DUBUQUE TELEGRAPH HERALD, Nov. 9, 2006, at A7 (discussing concerns that incomplete lists of absentee voters opened the opportunity for repeat voting); Lynn Okamoto, *Iowans Get Unrequested Absentee Ballots*, DES MOINES REG., Oct. 22, 2002, at 2B (discussing allegations of forged signatures on absentee ballot requests); Ed Tibbets, *Republicans Criticize Iowa Same-Day Voting Laws*, QUAD CITY TIMES, Jan. 1, 2009, available at http://www.qctimes.com/news/state-and-regional/iowa/article_b4242e31-b2f8-52cf-832f-ca29fe9500d2.html (discussing evidence that in Scott County in 2008, the addresses of twelve election day registrants were unable to be confirmed, and three of those registrants apparently provided Illinois addresses).

133. E.g., Spencer Overton, *Voter Identification*, 105 MICH. L. REV. 631, 644–50 (2007) (noting that “[v]oter-fraud anecdotes are often misleading, incomplete, and unrepresentative” and thus voter identification requirements may not be an appropriate response to voter fraud).

134. E.g., Richard Tyler Atkinson, Note, *Underdeveloped and Overexposed: Rethinking Photo ID Requirements*, 33 J. LEGIS. 268, 275 (2007).

135. E.g., *Crawford v. Marion County Election Bd.*, 472 F.3d 949, 953 (7th Cir. 2007) (stating the plaintiff’s claims that there have been very few prosecutions for impersonating a voter).

136. *Id.*

137. Brief for Evergreen Freedom Foundation as Amicus Curiae Supporting Respondents at 19, *Crawford v. Marion County Election Bd.*, 128 S. Ct. 1610 (2008)

Additionally, lack of evidence of voter fraud is at least partially explained by how difficult it is to detect. Consider the hypothetical posed by Judge Posner in the Seventh Circuit's *Crawford* decision:

[A voter impersonator] enters the polling place, gives a name that is not his own, votes, and leaves. If later it is discovered that the name he gave is that of a dead person, no one at the polling place will remember the face of the person who gave that name, and if someone did remember it, what would he do with the information? . . . And anyway [discovering it in the first place would be difficult because] the impersonated voter is likely to be dead or in another district or precinct or to be acting in cahoots with the impersonator . . .¹³⁸

This difficulty in detection was also recognized by the U.S. Supreme Court Justices in their questions to counsel during oral arguments in *Crawford*.¹³⁹ For example, Chief Justice Roberts discussed how the lack of a photo identification requirement makes it difficult to catch a person who is impersonating someone else:

[T]here may be two entries [in the voter rolls] for John Smith because John Smith has moved and the voter registration hasn't been updated. So all you need is somebody else to go in and say: I'm John Smith, this is my address. And later in the day somebody else comes in and says: I'm John Smith and this is my address. And because they're duplicates it's really difficult to check.¹⁴⁰

Difficulty in detection was also recognized by Justice Stephen Breyer:

How could you get evidence? It used to be common [to hear] of political bosses voting whole graveyards of dead people. All right. Now, that would be almost impossible to catch, I think. Someone walks in, saying: I'm Joe Smith. He doesn't say: I'm Joe Smith dead.

(Nos. 07-21, 07-25) (quoting JOB SEREBROV & TOVA WANG, ELECTION CRIMES: AN INITIAL REVIEW AND RECOMMENDATIONS FOR FUTURE STUDY 9 (U.S. Election Assistance Comm'n 2006)).

138. *Crawford*, 472 F.3d at 953; see also Transcript of Oral Argument at 21, *Crawford*, 128 S. Ct. 1610 (Nos. 07-21, 07-25), available at http://www.supremecourtus.gov/oral_arguments/argument_transcripts/07-21.pdf [hereinafter Transcript of Oral Argument] (Scalia statement: "[Y]our assertion that . . . it's not much of a problem because the person whom you're impersonating would find out about it. . . . [T]hat's certainly not the case for people who have moved away or people . . . in the graveyards that are still on the rolls").

139. Transcript of Oral Argument, *supra* note 138, at 20-22.

140. *Id.* at 20.

He says, I'm Joe Smith, and he signs something.¹⁴¹

In addition to being difficult to detect at the time of voting, statistical studies after the fact would prove difficult as well. Common sense indicates that people contacted in a random sample survey are unlikely to admit to having engaged in voter fraud even if they had done so. Another method would be to survey citizens asking if they voted and then compare the results of those who say they voted with the official list of who actually voted.¹⁴² However, this method would be inadequate because when asked if they voted, people tend to lie and say they cast a ballot even if they did not, which would mask evidence of voter fraud.¹⁴³

Due to the difficulty of detecting voter fraud at the time it happens and the difficulties posed by statistical studies after the fact, one is forced to rely largely on anecdotal evidence of fraud—and there are anecdotes aplenty from across the country.¹⁴⁴ There are instances in New Mexico of legitimate voters being denied the opportunity to vote because someone fraudulently voted in their place earlier that day.¹⁴⁵ There are instances from Wisconsin, Missouri, and Kansas of people voting multiple times in the same election.¹⁴⁶ In 2008, reports from Ohio discussed how a ninety-five year old woman with advanced Alzheimer's disease had somehow managed to register and vote for the first time in her life.¹⁴⁷ Instances of dead people casting ballots are disturbingly common—with examples from Pennsylvania, Mississippi, Georgia, Washington, Missouri, Texas, Florida, and Illinois just to name a few.¹⁴⁸ In Georgia alone, a report concluded

141. *Id.* at 22.

142. Overton, *supra* note 133, at 655.

143. *Id.* ("Because many respondents would perceive voting as a social good, some who did not vote might claim that they did, which may underestimate the extent of fraud.").

144. See generally JOHN FUND, STEALING ELECTIONS: HOW VOTER FRAUD THREATENS OUR DEMOCRACY (2004); LARRY J. SABATO & GLENN R. SIMPSON, DIRTY LITTLE SECRETS: THE PERSISTENCE OF CORRUPTION IN AMERICAN POLITICS (1996).

145. Brief for American Unity Legal Defense Fund as Amicus Curiae Supporting Respondents at 10–11, *Crawford v. Marion County Election Bd.*, 128 S. Ct. 1610 (2008) (Nos. 07-21, 07-25).

146. Brief for Texas et al. as Amici Curiae Supporting Respondents at 7–8, *Crawford*, 128 S. Ct. 1610 (Nos. 07-21, 07-25).

147. Jill Riepenhoff, *Possible Voter-Fraud Cases Keep Cropping Up*, COLUMBUS DISPATCH, Oct. 29, 2008, available at http://www.dispatch.com/live/content/local_news/stories/2008/10/29/fraud30.html.

148. See *Ind. Democratic Party v. Rokita*, 458 F. Supp. 2d 775, 793–94 (S.D.

that “between 1980 and 2000, there were more than 5,000 documented cases of people voting in Georgia after their deaths.”¹⁴⁹

Critics may assert that even assuming voter fraud does occur, it does not occur in amounts significant enough to affect the outcome of an election.¹⁵⁰ However, that argument fails to consider how competitive elections in the United States can be—and how much is therefore at stake. For example, a senatorial election in New Hampshire in 1974 was decided “by a margin of only 2 votes, out of 223,363 cast;” the race for Virginia Attorney General in 2005 was decided by a margin of 323 votes out of 1,943,250 cast; a United States House race in Colorado in 2002 was decided by 121 votes out of 175,938 cast; and in Florida in 2000, the presidential election was decided by 537 votes out of millions cast.¹⁵¹ In 2006, “at least five races were won by margins less than 1,000 votes,” with a United States House race in Connecticut decided by only 83 votes.¹⁵² The 2008 United States Senate elections saw extremely close finishes in Alaska and Minnesota.¹⁵³ The regular occurrence of close elections was well described

Ind. 2006); Brief for Texas et al. as Amici Curiae Supporting Respondents, *supra* note 146, at 8; Brief for Evergreen Freedom Foundation as Amicus Curiae in Support of Respondents, *supra* note 137, at 29–30; *Dead People Voting Throughout Florida* (WFTV Orlando broadcast, Oct. 30, 2008), available at <http://www.wftv.com/news/17848541/detail.html> (indicating that a woman died in 2004 yet voted in 2006 as reporters discovered over 1,600 registered voters in Central Florida who were dead); *Local 2 Investigates Dead Voters* (KPRC Houston Broadcast, Oct. 8, 2008), available at <http://www.click2houston.com/news/17671375/detail.html>.

149. Brief for Texas et al. as Amici Curiae Supporting Respondents, *supra* note 146, at 8 (citing Frank B. Strickland & Anne W. Lewis, *It's About Fraud, Not Jim Crow*, WASH. POST, Aug. 30, 2005, at A17).

150. See Atkinson, *supra* note 134, at 275 (“Voter impersonation does not disenfranchise legitimate voters through vote dilution.”).

151. Brief for Washington Legal Foundation as Amicus Curiae Supporting Respondents at 27, *Crawford*, 128 S. Ct. 1610 (Nos. 07-21, 07-25) (citations omitted).

152. Brief for the Republican National Committee as Amicus Curiae Supporting Respondents at 13, *Crawford*, 128 S. Ct. 1610 (Nos. 07-21, 07-25) (citations omitted).

153. ALASKA DIVISION of ELECTIONS, STATE OF ALASKA, 2008 GENERAL ELECTION OFFICIAL RESULTS (Dec. 3, 2008), available at <http://www.elections.alaska.gov/08general/data/results.pdf> (showing that Mark Begich defeated incumbent Senator Ted Stevens by a margin of 3,953 votes out of 317,723 cast); Kevin Duchscherer, *Coleman Files Appeal To Supreme Court*, MINNEAPOLIS-ST. PAUL STAR TRIB., Apr. 21, 2009, available at <http://www.startribune.com/politics/national/senate/43301772.html> (discussing Al Franken's 312 vote victory—out of nearly three million votes cast—over incumbent Senator Norm Coleman after a tedious recount and in the midst of post-election litigation).

in a report by the National Commission on Federal Election Reform, headed by former presidents Jimmy Carter and Gerald Ford:

“In presidential elections since 1948, nearly half of all the states have had at least one occasion when the winner of their electoral votes was decided by less than one percent of the vote. In 1948 Truman carried California and Illinois each by margins of less than 1%; had he lost both states the election would have gone to the House of Representatives for a decision. In 1960 the winner in six states was decided by this tiny margin, more than enough to have changed the outcome. In 2000 the winners in four other states, in addition to Florida, was decided by less than 1% of the vote. In a given election, past experience indicates a 90% chance that at least one state will have a presidential election decided [within a margin of 1%]. Very close elections are also common in elections for other federal offices or for governor. Since 1948 half of the states have had at least one senatorial race decided by less than 1% of the vote; some have had as many as three such narrowly decided senatorial races.”¹⁵⁴

In 2008, Iowa had a number of remarkably close state legislative elections with Renee Schulte winning by 13 votes out of 18,162 cast; Delores Mertz winning by 43 votes out of 14,843 cast; Wes Whitehead winning by 55 votes out of 12,671 cast; and Chris Hagenow winning by 93 votes out of 17,175 cast.¹⁵⁵

The fact of close elections means even a small amount of fraudulent votes can significantly affect the outcome of an election.¹⁵⁶ For example, the 2004 gubernatorial election in Washington state was ultimately decided by a margin of 129 votes out of nearly three million cast.¹⁵⁷ It was discovered that over 1,600 fraudulent votes were cast in that election, and when the result was challenged in court, “Chelan County Superior Court

154. Brief for Evergreen Freedom Foundation as Amicus Curiae Supporting Respondents, *supra* note 137, at 7–8 (quoting NAT’L COMM’N ON FED. ELECTION REFORM, TO ASSURE PRIDE AND CONFIDENCE IN THE ELECTORAL PROCESS 51 (2001), available at http://www.tcf.org/Publications/ElectionReform/99_full_report.pdf).

155. IOWA SECRETARY OF STATE, *supra* note 4.

156. Brief for Washington Legal Foundation as Amicus Curiae Supporting Respondents, *supra* note 151, at 30 (citing BUILDING CONFIDENCE IN U.S. ELECTIONS, REPORT OF THE COMMISSION ON FEDERAL ELECTION REFORM 18 (2005), available at http://www.american.edu/ia/cfer/report/full_report.pdf).

157. Brief for the Republican National Committee as Amicus Curiae Supporting Respondents, *supra* note 152, at 15–16 (citation omitted).

Judge John E. Bridges upheld the election of Christine Gregoire because he concluded that it was ultimately impossible to correctly subtract and attribute those votes to either candidate.”¹⁵⁸ With such a close result, it is safe to assume “fraudulent behavior more likely than not altered the outcome of the election,”¹⁵⁹ and the state had no way to remedy the harm after the fact.

Evidence of voter fraud across the country, combined with its potential to affect close elections, undoubtedly contributes to Americans’ low confidence in our electoral system.¹⁶⁰ The U.S. Supreme Court recognized this fact in its decision in *Purcell*:

Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy. Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised. “[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.”¹⁶¹

Voter identification laws can combat this lack of confidence in our electoral process by helping to protect the integrity of the ballot—they ensure the most basic requirement that the people appearing at the polls

158. *Id.* at 17 (citing *Borders v. King County*, No. 05-2-0027-3, slip op. at 5 (Chelan County Super. Ct. June 24, 2005)).

159. *Id.* at 16.

160. See *Ind. Democratic Party v. Rokita*, 458 F. Supp. 2d 775, 794 (S.D. Ind. 2006) (citing studies indicating that 67% of voters had low confidence in the way votes are cast in the U.S. and 59% of voters believed there was fraud in elections).

161. *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (quoting *Reynolds v. Sims*, 377 U.S. 533, 555 (1964)); *Crawford v. Marion County Election Bd.*, 128 S. Ct. 1610, 1620 (2008) (“[P]ublic confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process.”). See also Brief for Evergreen Freedom Foundation as Amicus Curiae in Support of Respondents, *supra* note 137, at 3, stating:

Ensuring ballot integrity is compelling, but preserving public confidence in the election process is equally important. Citizen participation in our form of representative democracy is critical, and voter fraud (or even the appearance thereof) harms lawful participation. Voters who recognize that ballots are not secure lose confidence in the conduct of elections. Rather than participating in a farce, honest citizens decline to vote, and lack confidence in political leaders appointed through our electoral process.

are in fact who they claim to be. Voter identification laws have broad, bipartisan support.¹⁶² Even if one is left with inconclusive evidence about the effect of voter fraud on election results and the perception of the process as a whole, legislatures should be allowed to address problems prospectively.¹⁶³

The process in Iowa cannot be segregated from the effects of fraud that have been seen nationwide.¹⁶⁴ Iowa's current identification requirements are too lax to ensure the integrity of the election process or to change the perception that our democracy is corrupt or can be corrupted. As discussed above, in most cases a voter is not asked for identification and when a voter is asked, she is not required to produce documentation that adequately establishes identity. While documented evidence of voter fraud in Iowa may be scant, the legislature should act proactively rather than reactively and pass the voter identification law proposed in this Note. In addition, Iowa has already recognized through its Election Day voter registration law that requiring photo identification at the polls is an effective way to prevent fraud.¹⁶⁵

162. See *Rokita*, 458 F. Supp. 2d at 794 (citing a 2004 survey of 1000 voters indicating 82% of respondents supported voter identification requirements, "including 89% of Bush supporters and 75% of Kerry supporters"); John Fund, *Voter Fraud Expected to be Rampant*, N.Y. POST, Oct. 5, 2008, available at <http://www.nypost.com/seen/10052008/postopinion/opedcolumnists/> (citing a Rasmussen Research poll indicating that "82% of Americans believed voters should show photo ID, including 70% of Obama voters"). Additionally, the bipartisan Carter-Baker Commission on Federal Election Reform recommended voter identification requirements. Brief for Washington Legal Foundation as Amicus Curiae in Support of Respondents, *supra* note 151, at 20-21.

163. FEC v. Nat'l Right to Work Comm., 459 U.S. 197, 210 (1982) ("Nor will we second-guess a legislative determination as to the need for prophylactic measures where corruption is the evil feared"); Brief for Washington Legal Foundation as Amicus Curiae Supporting Respondents, *supra* note 151, at 30 (quoting *Munro v. Socialist Workers Party*, 479 U.S. 189, 194-95 (1986) ("We have never required a State to make a particularized showing of the existence of voter confusion, ballot overcrowding, or the presence of frivolous candidates prior to the imposition of reasonable restrictions on ballot access."))).

164. See *Crawford v. Marion County Election Bd.*, 128 S. Ct. 1610, 1618-19 (2008) (concluding Indiana had legitimate interest in preventing in-person voting fraud based upon evidence of fraud occurring nationwide in spite of the lack of evidence that such fraud had occurred in Indiana); *Common Cause/Ga. v. Billups (Billups II)*, 554 F.3d 1340, 1354 (11th Cir. 2009) (following the *Crawford* Court's reasoning); ACLU of N.M. v. Santillanes, 546 F.3d 1313, 1323 (10th Cir. 2008) (also following the *Crawford* Court's reasoning).

165. See IOWA CODE § 48A.7A (2007).

B. Voter Identification Laws Fall Hardest on Minorities, the Poor, the Elderly, the Disabled, Students, and Religious Objectors

Another major criticism of voter identification laws is that they tend to disproportionately burden minorities, the poor, the elderly, and the disabled.¹⁶⁶ This argument is based on the notion that these groups are less likely to have photo identification in the first place and, for various reasons, face greater difficulties in obtaining such identification. For example, critics assert it is more difficult for an indigent person to acquire the necessary documentation in order to obtain photo identification and to travel to the various agencies.¹⁶⁷

The first step in addressing this criticism is to examine the interests that must be balanced when regulating elections. Thus, the states' right to require identification at all must be established before arguments about the degree to which identity should be established can be entertained. The Constitution grants to the states the power to regulate elections.¹⁶⁸ As one *Crawford* amici put it, "The right to vote is not absolute. It is a regulated right. This is necessarily so because the right would be meaningless without the restrictions that define it and create an orderly system for its exercise."¹⁶⁹ As the Seventh Circuit panel stated in *Crawford*, "'election laws will invariably impose some burden upon individual voters.'"¹⁷⁰ Therefore, "[a]ny law regulating who can vote, or when, where or how people can vote necessarily burdens to some degree the right of some person to vote."¹⁷¹ The right to vote is thus burdened by laws limiting the vote to those age eighteen or above, by laws requiring people to report to a

166. See, e.g., Atkinson, *supra* note 134, at 276-77 ("Photo ID requirements deepen the voting system's inequitable treatment of minorities and lower-income citizens."); Editorial, *Court's Voter-ID Ruling Undercuts a Basic Right*, DES MOINES REG., May 2, 2008, at 10A (arguing the photo identification requirement "is a problem for unknown numbers of people who do not [have driver's licenses]—including the elderly, the disabled or the poor"); Dahlia Lithwick, *The Vote Fraud Bogeyman*, NEWSWEEK, June 2, 2008, at 45 ("Opponents . . . agree that those turned away from the polls for lacking photo ID will be the poor, minorities, the elderly and the disabled . . .").

167. Weinschenk v. State, 203 S.W.3d 201, 214-15 (Mo. 2006).

168. U.S. CONST. art I, § 4, cl. 1.

169. Brief for Washington Legal Foundation as Amicus Curiae Supporting Respondents, *supra* note 151, at 1-2.

170. *Crawford* v. Marion County Election Bd., 472 F.3d 949, 952 (7th Cir. 2007) (quoting *Burdick v. Takushi*, 504 U.S. 428, 433-34 (1992)).

171. Brief for Washington Legal Foundation as Amicus Curiae Supporting Respondents, *supra* note 151, at 18.

particular precinct at a particular time on a particular day, by laws requiring registration of voters, and by laws requiring absentee ballot requests to be made by a certain date, to name only a few. If a state was not able to impose any burden on the right to vote, it “would tie the hands of States seeking to assure that elections are operated equitably and efficiently.”¹⁷² Furthermore, if a person fails to make the effort to comply with such requirements (e.g., does not register, does not show up at the polls, or—as this Note asserts—does not obtain the required identification) it can hardly be argued the right to vote has been denied by the state.¹⁷³ Instead, that right has been voluntarily surrendered.¹⁷⁴

Opposite the undoubted right of states to regulate elections is the individual’s right to vote. The United States Supreme Court has stated, “It is beyond cavil that ‘voting is of the most fundamental significance under our constitutional structure.’”¹⁷⁵ In protecting the individual right to vote, however, state regulation is also necessary—“a State’s failure to take reasonable measures to exclude the ineligible would improperly dilute the effect of each eligible voter’s right to affect the outcome of the election.”¹⁷⁶

172. *Crawford*, 472 F.3d at 952 (quoting *Burdick*, 504 U.S. at 433–34); *see also* *Storer v. Brown*, 415 U.S. 724, 730 (1974) (“[A]s a practical matter, there must be a substantial regulation of elections if they are to be fair and honest.”); *Smiley v. Holm*, 285 U.S. 355, 366 (1932) (noting that the Constitution grants to the states “authority to provide a complete code for congressional elections . . . [including] registration, supervision of voting, protection of voters, [and] prevention of fraud and corrupt practices”).

173. Brief for Washington Legal Foundation as Amicus Curiae in Support of Respondents, *supra* note 151, at 3. The Court in *Crawford* maintained that:

[A] voter may lose his photo identification, may have his wallet stolen on the way to the polls, or may not resemble the photo in the identification because he recently grew a beard. Burdens of that sort arising from life’s vagaries, however, are neither so serious nor so frequent as to raise any question about the constitutionality of SEA 483.

Crawford v. Marion County Election Bd., 128 S. Ct. 1610, 1620 (2008).

174. Brief for Washington Legal Foundation as Amicus Curiae in Support of Respondents, *supra* note 151, at 3; *see Crawford*, 472 F.3d at 952 (discussing “the effect of requiring a photo ID in inducing eligible voters to *disenfranchise themselves*”) (emphasis added).

175. *Burdick*, 504 U.S. at 433 (quoting *Illinois Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979)).

176. Brief for Washington Legal Foundation as Amicus Curiae in Support of Respondents, *supra* note 151, at 6; *see also* *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) (“[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the

In sum, the state has the power to regulate elections. Additionally, the state has the duty to protect an individual's right to vote, which includes a duty to provide reasonable regulations to make sure that an individual's vote is not diluted by improper or fraudulent votes. Therefore, it cannot be reasonably disputed that the state must impose some requirement that voters' identities be ascertained—whether it be by asking the voters to state their names or otherwise provide documentation. As the United States Solicitor General stated in the *Crawford* oral arguments, "So the dispute really boils down to, in a system where the States can legitimately ask for some kind of basis to ascertain ID, can they insist on a particularly good one, the photo ID?"¹⁷⁷

In terms of the general population as a whole, imposing a photo identification requirement does not impose a very high hurdle. There is no doubt that most people already have photo identification, as it has become a necessity for everyday functions such as boarding a plane, entering a federal building, cashing a check, or buying alcohol.¹⁷⁸ It is likely that almost everyone in Iowa already has the ability to comply with a photo identification law.¹⁷⁹

Nevertheless, there undoubtedly are people who do not possess photo identification, and such a requirement would fall hardest on them. This is the point where critics assert that the law disproportionately burdens minorities, the poor, the elderly, and the disabled.¹⁸⁰ If a person cannot

franchise.").

177. Transcript of Oral Argument, *supra* note 138, at 52.

178. See, e.g., *Crawford*, 128 S. Ct. at 1618; *Crawford v. Marion County Election Bd.*, 472 F.3d 949, 950–51 (7th Cir. 2007); Brief for Washington Legal Foundation as Amicus Curiae in Support of Respondents, *supra* note 151, at 21. But see *Overton*, *supra* note 133, at 651 (stating that there are higher costs of erroneous exclusion from voting than compared to erroneous exclusion from everyday activities).

179. See UNITED STATES ELECTIONS PROJECT, *supra* note 5 (listing Iowa's voter-eligible population for the 2008 general election at 2,199,849); Iowa Department of Transportation, Iowa Driver Records (2007), available at <http://www.iowadot.gov/mvd/ods/dlrecords.pdf> (listing the number of valid Iowa driver's licenses as of June 5, 2007 at 2,159,398). Taken together, these sources indicate that perhaps 98% of voting-eligible Iowans already have a driver's license—one form of acceptable identification under the law proposed in this Note.

180. See *Weinschenk v. State*, 203 S.W.3d 201, 214–15 (Mo. 2006); *Court's Voter-ID Ruling Undercuts a Basic Right*, *supra* note 166 (arguing the photo identification requirement "is a problem for unknown numbers of people who do not [have driver's licenses]—including the elderly, the disabled or the poor"); *Lithwick*, *supra* note 166 ("Opponents . . . agree that those turned away from the polls for lacking photo ID will be the poor, minorities, the elderly and the disabled . . .").

afford identification, they would be burdened. An elderly or disabled person who does not have the ability to travel to an agency to obtain the identification would be burdened. A person who forgets to bring her identification to the polls would be burdened.¹⁸¹ The law proposed in this Note addresses these concerns in a number of ways. The proposed law would provide free photo identification to all citizens, and free birth certificates to indigents.¹⁸² The elderly, indigents, religious objectors, and those with severe disabilities would not have to provide photo identification at the polls for a time.¹⁸³ The law would institute mobile processing systems, which combined with Department of Transportation satellite offices make obtaining photo identification more geographically accessible.¹⁸⁴ If people cannot produce a photo identification on Election Day for whatever reason, they have the opportunity to cast a provisional ballot that would be counted if they later produced proper identification.¹⁸⁵ A person who knows they could not produce a photo identification would also be able to vote by absentee ballot instead.¹⁸⁶ In sum, while the law proposed in this Note is an election law which will inevitably impose a burden on some classes of people,¹⁸⁷ that burden is reasonable and is mitigated by several provisions of the bill.

Turning to the proposed law's impact on minorities, critics contend photo identification laws violate Section 2 of the Voting Rights Act because of a disproportionate burden on minorities.¹⁸⁸ While this is perhaps the strongest argument against the validity of voter identification laws, the case law does not provide a clear answer, and reviewing courts have been reluctant to find a Section 2 violation.¹⁸⁹ Additionally, a court's

181. *See supra* note 173 and accompanying text.

182. *Infra* Appendix §§ 6, 7.

183. *Id.* § 4.

184. *Id.* § 8.

185. *Id.* § 5.

186. *See generally id.*

187. *See* *Crawford v. Marion County Election Bd.*, 472 F.3d 949, 952 (7th Cir. 2007) (quoting *Burdick v. Takushi*, 504 U.S. 428, 433–34 (1992)).

188. *See* 42 U.S.C. § 1973(a) (2000) (“No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color”); *Overton*, *supra* note 133, at 670–72 (discussing the factors a plaintiff must show to establish a Section 2 violation).

189. *See* *Atkinson*, *supra* note 134, at 281 (stating courts have not been convinced that photo identification requirements result in racial discrimination);

analysis of a Section 2 claim depends heavily on an area's history of racial discrimination—meaning the same law operating in different states could be treated differently under Section 2.¹⁹⁰

It should be noted that the law is evenhanded in the sense that it applies to everyone regardless of race. Additionally, a number of studies have shown that photo identification laws do not discriminate based on race.¹⁹¹ More likely, any racially disparate impact is not due to the law itself, but to socioeconomic differences.¹⁹² In that case, the disparate impact would be mitigated by the provisions of the law discussed above which aid indigents.¹⁹³ Additionally, Iowa does not have a history of racial discrimination to the extent of some southern states, making it less likely that a court would find a violation of Section 2. All of these factors make it less likely a court would find a violation of the Voting Rights Act if Iowa adopted the law proposed in this Note.

C. Requiring Photo Identification Is Effectively a Poll Tax

The Twenty-Fourth Amendment to the United States Constitution bans poll taxes.¹⁹⁴ If a voter had to pay for photo identification, a strong

Daniel P. Tokaji, *The New Vote Denial: Where Election Reform Meets the Voting Rights Act*, 57 S.C. L. REV. 689, 712–13 (2006) (noting that “thus far, the case law applying Section 2 to voter ID requirements is sparse and unenlightening”); *see also* Common Cause/Ga. v. Billups (*Billups I*), 439 F. Supp. 2d 1294, 1358 (N.D. Ga. 2006) (failing to find a substantial likelihood that the plaintiffs would prevail on their Section 2 claim). *But see* United States v. Berks County, Pa., 277 F. Supp. 2d 570, 580–81 (E.D. Pa. 2003) (finding a Section 2 violation when poll workers showed open hostility to Latino voters in obtaining identification from voters).

190. Overton, *supra* note 133, at 672.

191. *See, e.g.*, Brief for the Republican National Committee as Amicus Curiae Supporting Respondents, *supra* note 152, at 6–7 (citing DAVID B. MUHLHAUSEN & KERI WEBER SIKICH, NEW ANALYSIS SHOWS VOTER IDENTIFICATION LAWS DO NOT REDUCE TURNOUT 3 (2007)) (finding that African-Americans in states requiring photo identification are just as likely to vote as African-Americans in states that do not require or request identification and reaching the same conclusion for Hispanic voters); R. Michael Alvarez et al., *The Effect of Voter Identification Laws on Turnout* 18–19 (Cal. Inst. Technology, Social Science Working Paper No. 1267, 2007), available at <http://jkatz.caltech.edu/research/files/wp1267.pdf> (finding that photo identification requirements may decrease participation generally, but finding no evidence the effect is more profound for nonwhite voters).

192. *See, e.g.*, Tokaji, *supra* note 189, at 713 (noting socioeconomic disparities between blacks and whites).

193. *Infra* Appendix § 4.

194. U.S. CONST. amend. XXIV, § 1.

argument could be made that a photo identification requirement would constitute an unconstitutional poll tax. Even when photo identification has been provided for free, the associated costs of acquiring photo identification—such as obtaining the necessary documentation and the opportunity costs of traveling to the various agencies—lead some to conclude such laws are unconstitutional because they effectively operate as poll taxes.¹⁹⁵

Most courts reviewing state laws in which photo identification is provided at no cost have not concluded that the identification requirement operates as a constructive poll tax.¹⁹⁶ Courts have rejected the arguments as “a dramatic overstatement of what fairly constitutes a ‘poll tax.’”¹⁹⁷ As the court in *Rokita* stated, and the *Billups* court recited:

[T]he imposition of tangential burdens does not transform a regulation into a poll tax. Moreover, the cost of time and transportation cannot plausibly qualify as a prohibited poll tax because the same “costs” also result from voter registration and in-person voting requirements, which one would not reasonably construe as a poll tax.¹⁹⁸

Like the laws reviewed in *Rokita* and *Billups*, the law proposed in this Note provides photo identification at no cost to the voter.¹⁹⁹ Additionally, the proposed law provides a number of mechanisms to reduce even the tangential costs of obtaining photo identification, such as providing birth certificates at no cost to indigents.²⁰⁰ It is highly unlikely that a reviewing court would consider the law proposed in this Note an unconstitutional poll tax.

D. Photo Identification Laws Only Address In-Person Voter Fraud

Critics also argue that photo identification laws are only effective against in-person voter fraud and, therefore, leave fraud occurring through

195. See, e.g., *Weinschenk v. State*, 203 S.W.3d 201, 213–14 (Mo. 2006).

196. See *Ind. Democratic Party v. Rokita*, 458 F. Supp. 2d 775, 827 (S.D. Ind. 2006); *Common Cause/Ga. v. Billups (Billups I)*, 439 F. Supp. 2d 1294, 1355–56 (N.D. Ga. 2006).

197. *Rokita*, 458 F. Supp. 2d at 827; *Billups I*, 439 F. Supp. 2d at 1355–56 (quoting *Rokita*, 458 F. Supp. 2d at 827).

198. *Rokita*, 458 F. Supp. 2d at 827; *Billups I*, 439 F. Supp. 2d at 1355–56 (quoting *Rokita*, 458 F. Supp. 2d at 827).

199. See *Rokita*, 458 F. Supp. 2d at 827; *Billups I*, 439 F. Supp. 2d at 1355–56; see also *infra* Appendix, § 6.

200. See *infra* Appendix, §§ 7–8.

voter registration and absentee balloting untouched.²⁰¹ Addressing this criticism may be a matter of semantics in classifying fraud. For example, if a person registers to vote with a false name and address and shows up to vote, is that in-person fraud or voter registration fraud?²⁰² If a person diverts a legitimate voter's registration to a different address and shows up to vote as that voter, is it in-person fraud or voter registration fraud? Either way, a photo identification law would help prevent both of these examples because the voter would have to produce photo identification at the polls.²⁰³ In such cases, then, a photo identification requirement would prevent what could be classified as "voter registration fraud."

Admittedly, a photo identification requirement does not present much of a solution for absentee voting fraud. If the purpose of a photo identification requirement is to ensure the person who is casting a vote is the person he or she claims to be, the requirement is without much utility in the absentee voting context. As the Seventh Circuit stated in *Crawford*,

201. See, e.g., *Crawford v. Marion County Election Bd.*, 472 F.3d 949, 954 (7th Cir. 2007); Atkinson, *supra* note 134, at 274–76.

202. The 2008 election revealed a number of concerns regarding fraudulent voter registrations. In particular, the concerns focused around a group known as ACORN, which was alleged to have fraudulently registered voters in states such as Colorado, Indiana, Michigan, Missouri, Nevada, New Mexico, Ohio, Washington, and Wisconsin. Though a number of such fraudulent forms were filled out with names of Disney characters and members of the Dallas Cowboys, those forms that used less obviously fake names (e.g. "James Smith") could potentially result in voter fraud on election day. See, e.g., L.L. Brasier, *Bad Voter Applications Found*, DETROIT FREE PRESS, Sept. 14, 2008, at 1B; Editorial, *Remember 'Voter Fraud'? Scandal Was Mickey Mouse*, PALM BEACH POST, Nov. 20, 2008, available at http://www.palmbeachpost.com/opinion/content/opinion/epaper/2008/11/20/a18a_acornleadedit_1120.html; Kimball Perry, *Connecticut Man Sentenced for Illegal Ballot Here*, CINCINNATI ENQUIRER, December 30, 2008, at 1A (detailing the story of a Connecticut man who fraudulently registered and voted on the same day in Ohio, and was caught only because he voluntarily came forward); Larry Sandler, *Fake Names Get Voter Registration Workers Investigated*, MILWAUKEE JOURNAL SENTINEL, Aug. 7, 2008, available at <http://www.jsonline.com/news/statepolitics/29438284.html>. But see Patrick M. O'Connell & Jake Wagman, *Ex-ACORN Worker Indicted in Voter Fraud Case*, ST. LOUIS POST-DISPATCH, Jan. 6, 2009, available at <http://electionlawblog.org/archives/012769.html> (quoting an ACORN regional director who claims there is no evidence that any of the fraudulently registered "voters" actually voted on election day).

203. See, e.g., Brief for the American Unity Legal Defense Fund as Amicus Curiae Supporting Respondents, *supra* note 145, at 27–28; Terry Garlock, *Liberal Group's Fraud Shows Voter ID Need*, ATLANTA JOURNAL-CONSTITUTION, October 8, 2008, available at http://www.ajc.com/opinion/content/opinion/stories/2008/10/08/garlock_1008.html (arguing a voter ID requirement could foreclose opportunities for voter fraud arising out of ACORN-like voter registration fraud).

[H]ow would that work? The voter could make a photocopy of his driver's license or passport or other government-issued identification and include it with his absentee ballot, but there would be no way for the state election officials to determine whether the photo ID actually belonged to the absentee voter, since he wouldn't be presenting his face at the polling place for comparison with the photo.²⁰⁴

Simply put, the law proposed in this Note, and photo identification laws in general, are ineffective against some forms of voter fraud.

Additionally, one must consider the possibility of in-person fraud occurring despite the operation of a photo identification law. Critics may assert that it is not hard to obtain fake photo identification—one visit to a college-town bar would likely confirm this critique. Until better, tamper-proof and fraud-proof forms of identification are developed, this is a clear weakness. It is unlikely that we will ever have an election that is completely free of fraud or that there will ever be an election law that poses no risk of abuse, but that does not mean the legislature should fail to take steps in the right direction.

This ineffectiveness against certain types of fraud is not fatal to the argument for imposing a photo identification requirement, however. The United States Supreme Court has stated that “[e]vils in the same field may be of different dimensions and proportions, requiring different remedies . . . [o]r the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind.”²⁰⁵ Additionally, “a legislature need not run the risk of losing an entire remedial scheme simply because it failed, through inadvertence or otherwise, to cover every evil that might conceivably have been attacked. . . . [A legislature need not] ‘strike at all evils at the same time.’”²⁰⁶ Therefore, the legislature is under no requirement to take on all the possibilities of voter fraud at once. It can attack the problem bit by bit—and the photo identification law proposed in this Note would be a bold first step.

E. Voter Fraud Is Already a Crime

Critics often argue that voter fraud is already a crime and the penalty

204. *Crawford*, 472 F.3d at 954.

205. *Williamson v. Lee Optical of Okla.*, 348 U.S. 483, 489 (1955).

206. *McDonald v. Bd. of Election Commr's*, 394 U.S. 802, 809, 811 (1969) (quoting *Semler v. Dental Examiners*, 294 U.S. 608, 610 (1935)).

is enough to deter fraud.²⁰⁷ Indeed, Iowa classifies most instances of voter fraud as Class D felonies, punishable by a fine of up to \$7,500 and five years in prison.²⁰⁸ As mentioned above, voter fraud is difficult to detect.²⁰⁹ A severe penalty is without much utility as a deterrent if it is incredibly difficult to catch the underlying crime. The harm caused by voter fraud is the dilution of legitimate votes and even the alteration of election results—harms which cannot be remedied after the fact because it is “nearly impossible to find and retract a ballot.”²¹⁰ Additionally, even if voter fraud is caught, laws such as this are often underenforced by prosecutors, who often decline to prosecute due to lack of time and resources.²¹¹ In short, one way to deter a crime is to impose a severe penalty, and another way to deter crime is to take preventative action.²¹² The law proposed in this Note takes action to stop fraud before it happens, rather than hoping to penalize it after the fact.

F. Less Burdensome Methods of Preventing Fraud Are Available

Critics also argue that less burdensome methods to prevent voter fraud exist.²¹³ One example would be signature verification, when a voter’s signature on the affidavit at the polling place is compared with the signature on the voter’s registration documents in order to establish the voter’s identity.²¹⁴ This method also presents its own problems. Proper signature verification “requires extensive forensic training not possessed by most poll workers.”²¹⁵ Additionally, there are examples where signature verification failed miserably.²¹⁶ Signature verification would also be

207. See *Crawford*, 472 F.3d at 955 (Evans, J., dissenting).

208. IOWA CODE §§ 39A.2, 902.9(5) (2007).

209. See *supra* Part V.A.

210. Brief for Evergreen Freedom Foundation as Amicus Curiae Supporting Respondents, *supra* note 137, at 22.

211. See *Crawford*, 472 F.3d at 953.

212. See *id.*

213. See, e.g., Ind. Democratic Party v. Rokita, 458 F. Supp. 2d 775, 837 (S.D. Ind. 2006).

214. Brief for Evergreen Freedom Foundation as Amicus Curiae Supporting Respondents, *supra* note 137, at 15.

215. *Id.*

216. See, e.g., Brief for the American Unity Legal Defense Fund as Amicus Curiae Supporting Respondents, *supra* note 145, at 27–28 (citing an instance where signature verification was used and an impersonator was allowed to vote despite the fact the signatures were visibly different and the impersonator spelled the actual voter’s name wrong).

ineffective if coupled with registration fraud, such as when a person registers with a fraudulent name or diverts someone else's registration.²¹⁷ Because the underlying registration is fraudulent, the signatures would match, and the person would be allowed to vote.

Other alternatives include programs in which the government would maintain a digital photograph, biometric identifier, or a thumbprint which would identify a voter at the polls.²¹⁸ However, such methods would most likely be extremely costly to the taxpayers and raise a number of privacy concerns.²¹⁹ Borrowing a page from voters in Iraq, another alternative would be to dip a voter's finger in indelible ink.²²⁰ Such a policy would prevent multiple voting, but again would be ineffective because the voter registration process was susceptible to fraud—such as out-of-state voters who are fraudulently registered in-state.

In sum, while other alternatives are available, the photo identification law proposed in this Note would be the most effective means of verifying a voter's identity at the polls and preventing voter fraud, while at the same time ensuring access to the ballot box for legitimate voters.

G. Voter Identification Requirements Are a Republican Ploy to Decrease Turnout

Turning to the politics of a photo identification law, critics contend that a photo identification requirement is simply a Republican ploy to decrease turnout generally and among likely Democratic voters in particular.²²¹ It is argued that “[m]ore restrictive voter identification rules result in lower voter turnout” generally.²²² Additionally, polls show that

217. *Id.* at 28–29.

218. Overton, *supra* note 133, at 679–80.

219. *Id.*

220. *Id.* at 679.

221. See *Crawford v. Marion County Election Bd.*, 472 F.3d 949, 954 (7th Cir. 2007) (Evans, J., dissenting); see also *Court's Voter-ID Ruling Undercuts a Basic Right*, *supra* note 166 (“Voter-ID laws often are little more than a thinly veiled attempt to discourage certain classes of voters from showing up at the polls—namely poor and minority groups that tend to vote Democratic.”); Lithwick, *supra* note 166, at 45 (“Opponents . . . agree that those turned away from the polls for lacking photo ID will be the poor, minorities, the elderly and the disabled—voters that skew Democratic.”); Cynthia Tucker, *Voter ID Laws a GOP Tactic of Cynicism*, ATLANTA JOURNAL-CONSTITUTION, Oct. 5, 2008, available at http://www.ajc.com/opinion/content/opinion/tucker/stories/2008/10/05/tucked_1005.html.

222. See, e.g., Stephen Ansolabehere, *Effects of Voter-Identification Requirements on Voting: Evidence from the Experiences of Voters on Election Day*, 42

those with fewer economic means—the people whom a photo identification law burdens most and are therefore the people least likely to vote—are more likely to vote Democratic.²²³ The argument, then, is that by restricting turnout generally—and particularly among likely Democratic voters—Republicans will have an easier time winning elections.

There is strong evidence, however, that casts doubt on this reasoning. First, studies suggest that voter identification laws do not have a statistically significant negative effect on voter participation.²²⁴ In fact, one study concluded that in “voter-fraud hot spots,” turnout is actually increased when photo identification requirements are put in place, “supporting the hypothesis that ‘[g]reater confidence that the election is fair and that votes will be counted accurately encourages additional voter participation.’”²²⁵ Second, evidence from actual elections suggests turnout is not affected. Similar photo identification requirements are in place in other countries—countries where voter turnout is higher than in the United States.²²⁶ Additionally, evidence from Indiana elections in 2006—after the photo identification requirement was instituted—shows turnout

P.S.: POLITICAL SCIENCE AND POLITICS 127, 128–29 (Jan. 2009) (analyzing data from the 2006 general elections and 2008 primaries, and concluding that requesting photo ID did not present a significant barrier to voting); Jason D. Mycoff, et al., *The Empirical Effects of Voter-ID Laws: Present or Absent?* 42 P.S.: POLITICAL SCIENCE AND POLITICS 121, 121 (Jan. 2009) (examining multiple data sources and concluding strict voter ID laws did not have a statistically significant effect on voter turnout); Brief of Texas et al. as Amici Curiae Supporting Respondents, *supra* note 146, at 20–21 (quoting JOHN R. LOTT, JR., REPORT: EVIDENCE OF VOTER FRAUD AND THE IMPACT THAT REGULATIONS TO REDUCE FRAUD HAVE ON VOTER PARTICIPATION RATES 7–11 (2006) *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=925611); *but see, e.g.*, Matt Barreto, et al., *The Disproportionate Impact of Voter-ID Requirements on the Electorate—New Evidence from Indiana*, 42 P.S.: POLITICAL SCIENCE AND POLITICS 111 (Jan. 2009).

223. JEFFREY M. STONECASH, CLASS AND PARTY IN AMERICAN POLITICS 114 tbl.5.7 (2000); CNN ElectionCenter2008, Exit Polls, <http://www.cnn.com/ELECTION/2008/results/polls/#US00p1> (displaying exit polls regarding voting by income level).

224. Brief for Texas et al. as Amici Curiae Supporting Respondents, *supra* note 146, at 20–21 (quoting JOHN R. LOTT, JR., REPORT: EVIDENCE OF VOTER FRAUD AND THE IMPACT THAT REGULATIONS TO REDUCE FRAUD HAVE ON VOTER PARTICIPATION RATES 7–11 (2006), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=925611).

225. *Id.* at 21 (quoting LOTT, JR., *supra* note 224, at 10).

226. Brief for Washington Legal Foundation as Amicus Curiae in Support of Respondents, *supra* note 151, at 22–23 (citing BUILDING CONFIDENCE IN U.S. ELECTIONS, REPORT OF THE COMMISSION ON FEDERAL ELECTION REFORM 5 (2005), *available at* http://www.american.edu/ia/cfer/report/full_report.pdf).

actually increased compared to prior midterm elections.²²⁷ In sum, it is not clear that voter identification laws do in fact decrease turnout and voter participation.

H. Providing Photo Identification and Other Documents Will Be Far Too Costly

An argument could be made that the amount of money the state would have to spend on providing free identification cards, free identifying documents, and educating the public about the new law would be an unreasonable cost in relation to the benefits that could be derived. It is not clear what the precise price tag on the legislation proposed in the Note would be—indeed, much depends on the extent and form of advertising, among other things. However, in terms of prioritizing government spending, ensuring the integrity of our electoral process ought to be extremely high on the legislature’s to-do list. As such, even a high price tag should be considered reasonable when balanced against the importance of the goal involved—protecting the legitimately-cast votes of Iowans.

VI. CONCLUSION

Current law in Iowa needlessly opens up the possibility of voter fraud. Although there is little concrete evidence of vast amounts of voter fraud in Iowa or nationally, absence of evidence does not necessarily indicate evidence of absence. The Iowa legislature should act proactively rather than reactively in order to maintain confidence in our electoral system and prevent voter fraud from occurring in the first place. Therefore, the bill proposed in this Note should be adopted by the Iowa legislature. While a photo identification requirement will undoubtedly pose a burden to some voters, the proposed law attempts to ease that burden in a number of ways. The proposed law provides photo identification free to all voters and provides certified copies of birth certificates at no cost to indigents. The bill contains a number of fail-safe measures—including provisional ballots, hearings, and affidavits—to ensure voters who are unable to obtain proper identification for legitimate reasons are allowed to vote. The proposed law also makes photo identification more geographically accessible by providing mobile processing systems to distribute photo identifications. Finally, the law contains a provision requiring a massive voter education

^{227.} Brief for the Republican National Committee as Amicus Curiae Supporting Respondents, *supra* note 152, at 8 (citing Indiana Secretary of State turnout statistics).

initiative, ensuring that voters are aware of the new requirements and can act in time to cast their vote without any problems. The law proposed in this Note will protect Iowa's electoral system from fraud, while at the same time protecting the constitutional rights of Iowa voters.

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APPENDIX: VOTER IDENTIFICATION BILL

In the bill proposed below, amending the Iowa Code and proposing new provisions, words that are underlined contain new language, words that are struck through would be eliminated.

Voter identification bill

A Bill For

An Act relating to the conduct of elections by requiring voters to provide certain identification when voting.

Section 1. Purpose

It is the legislature's intent and purpose that this law prevent the occurrence of voter fraud in Iowa, prevent the perception of the occurrence of voter fraud in Iowa, and restore and enhance confidence in the integrity of Iowa's electoral process.

Section 2. Effective date

Sections 3, 4, 5 and 6 of this act shall come into effect on January 1, 2012. Sections 7, 8, 9, and 10 of this act shall be immediately effective upon passage.

Section 5 of this act, unless renewed, shall be of no effect after January 1, 2020.

Section 3. Photo identification required

Section 49.77, subsection 3, Code 2007, is amended to read as follows:

~~3. A precinct election official shall require any person whose name does not appear on the election register as an active voter to show identification. Specific documents which are acceptable forms of identification shall be prescribed by the state commissioner.~~

A precinct election official ~~may~~ shall require ~~of~~ that the voter unknown to the official, identification upon which the voter's signature or mark appears ~~produce for inspection valid and current identification issued by the federal government, a tribal government, the State of Iowa or another State, or an Iowa local government.~~ The identification must contain a photograph of the voter, the printed name of the voter, the address of the voter's residence within the precinct, and a validity expiration date showing the identification is not expired or non-expiring. If

the identification does not contain the address of the voter's residence within the precinct, the photographic identification may be supplemented with other documents that show the voter's name and address within the precinct, such as a utility bill, bank statement, paycheck, government check, or other government document, or any other similar documents as prescribed by the commissioner. The commissioner shall create uniform standards to be applied by precinct election officials in verifying identity and residence. If identification required under this subsection is established to the satisfaction of the precinct election officials, the person may then be allowed to vote.

If a voter is unable to present identification required under this subsection, the precinct election official shall allow the person to cast a provisional ballot in the manner prescribed by section 49.81.

Section 4. Exceptions to photo identification requirement

NEW SECTION. 49.77, subsection 3B

a. An individual who appears at a polling place without identification in the form described in Section 49.77(3) and who is otherwise qualified to vote at that polling place may execute an affidavit asserting that the voter is the person listed in the precinct register and that the voter does not possess a form of identification specified in Section 49.77(3) and is unable to obtain a current and valid form of identification because of:

- i. a physical or mental disability or handicap of the voter; or
- ii. a sincerely held religious belief against the forms of photo identification described in Sections 49.77(3) or 49.77(3B); or
- iii. the voter being age seventy or older on that particular election day; or
- iv. the voter's inability to obtain required photo identification because the voter is indigent.

b. Upon executing such affidavit, the voter shall present two forms of nonphoto identification that show the voter's name and address within the precinct, such as a utility bill, bank statement, paycheck, government check, or other government document. The commissioner shall have the power to prescribe a comprehensive list of acceptable nonphoto identification which may be presented by voters under this subsection.

Section 5. Provisional ballots

Section 49.81, subsection 1, Code 2007, is amended to read as follows:

1. A prospective voter who is prohibited under section 48A.8, subsection 4, section 49.77, ~~subsection 4~~, or section 49.80 from voting except under this section shall be notified by the appropriate precinct election official that the voter may cast a provisional ballot. If a booth meeting the requirement of section 49.25 is not available at that polling place, the precinct election officials shall make alternative arrangements to insure the challenged voter the opportunity to vote in secret. The marked ballot, folded as required by section 49.84, shall be delivered to a precinct election official who shall immediately seal it in an envelope of the type prescribed by subsection 4. The sealed envelope shall be deposited in an envelope marked "provisional ballots" and shall be considered as having been cast in the special precinct established by section 53.20 for purposes of the postelection canvass.

Section 49.81, subsection 2, Code 2007, is amended to read as follows:

2. Each person who casts a provisional ballot under this section shall receive a printed statement in substantially the following form:

Your qualifications as a registered voter have been challenged for the following reasons:

- I. ___, ___, ___.
- II. ___, ___, ___.
- III. ___, ___, ___.

You must show identification before your ballot can be counted. Please bring ~~or mail a copy of~~ a current and valid photo identification card to the county commissioner's office ~~or bring or mail a copy of one of the following current documents that show your name and address:~~

- a. Utility bill.*
- b. Bank statement.*
- c. Paycheck.*
- d. Government check.*
- e. Other government document.*

Your right to vote will be reviewed by the special precinct counting board on False. You have the right and are encouraged to be present and submit evidence to this board supporting your qualifications as a registered voter, or to make a written statement and submit additional written evidence ~~to this board supporting your qualifications as a registered voter.~~

This written statement and evidence may be given to an election official of this precinct on election day or mailed or delivered to the county commissioner of elections, but must be received before . . . a.m./p.m. on ____ at ____ If your ballot is not counted you will receive, by mail, notification of this fact and the reason that the ballot was not counted.

Section 6. Free photo identification

Section 321.190, subsection 1, Code 2007, is amended to read as follows:

1. *Application for and contents of card.*

a. The department shall, upon application and payment of the required fee, issue to an applicant a nonoperator's identification card. To be valid the card shall bear a distinguishing number other than a social security number assigned to the cardholder, the full name, date of birth, sex, residence address, a physical description and a colored photograph of the cardholder, the usual signature of the cardholder, and such other information as the department may require by rule. An applicant for a nonoperator's identification card shall apply for the card in the manner provided in section 321.182, subsections 1 through 3. The card shall be issued to the applicant at the time of application pursuant to procedures established by rule. An applicant for a nonoperator's identification card who is required by 50 U.S.C. app. § 451 et seq. to register with the United States selective service system shall be registered by the department with the selective service system as provided in section 321.183.

b. The department shall not issue a card to a person holding a driver's license. However, a card may be issued to a person holding a temporary permit under section 321.181. The card shall be identical in form to a driver's license issued under section 321.189 except the word "nonoperator" shall appear prominently on the face of the card. A nonoperator's identification card issued to a person under eighteen years of age shall contain the same information as any other nonoperator's identification card except that the words "under eighteen" shall appear prominently on the face of the card. A nonoperator's identification card issued to a person eighteen years of age or older but under twenty-one years of age shall contain the same information as any other nonoperator's identification card except that the words "under twenty-one" shall appear prominently on the face of the card.

c. The department shall use a process or processes for issuance of a

nonoperator's identification card, that prevent, as nearly as possible, the opportunity for alteration or reproduction of, and the superimposition of a photograph on the nonoperator's identification card without ready detection.

d. The fee for a nonoperator's identification card shall be five dollars, except that a card shall be issued without the payment of a fee or charge to a person who (i) does not have a valid Iowa driver's license and (ii) will be at least eighteen years of age at the next general, municipal, or special election. and the The card shall be valid for a period of five years from the date of issuance. A nonoperator's identification card shall be issued without expiration to anyone age seventy or over. If an applicant for a nonoperator's identification card is a foreign national who is temporarily present in this state, the nonoperator's identification card shall be issued only for the length of time the foreign national is authorized to be present as determined by the department, not to exceed two years. An issuance fee shall not be charged for a person whose driver's license or driving privilege has been suspended under section 321.210, subsection 1, paragraph "c".

The nonoperator's identification card fees shall be transmitted by the department to the treasurer of state who shall credit the fees to the road use tax fund. *The total cost associated with issuing nonoperator's identification cards without the payment of a fee shall be borne by the state of Iowa from funds appropriated to the Department of Transportation for that specific purpose.*

Section 7. Free documentation to obtain photo identification

NEW SECTION. 144.13, subsection 3A:

3A. Any fee charged by a state or county registrar for a certified copy of a birth certificate shall be waived if the applicant executes an affidavit stating that the person is indigent, cannot afford to pay the regular fee, and that the certified copy is needed in order to obtain photographic identification in order to vote. Upon signing such affidavit, any requirement of providing photographic identification in order to obtain the birth certificate shall be waived. The state registrar shall promulgate rules for proving identity and purpose. The total cost associated with such waivers shall be borne by the state of Iowa from funds appropriated to the state registrar's office for that specific purpose.

Section 8. Mobile processing units**NEW SECTION. 321.190A:**

The Department of Transportation shall create a mobile processing system with the purpose of making available nonoperator identification cards as described in Section 321.190. Mobile processing systems shall be made available upon request to Iowa citizens who are unable to travel to Department of Transportation agencies due to age, disability, or indigence. The mobile processing systems shall also be made available at public places frequented by the elderly, disabled, and the indigent, and the department shall provide advance notice of the times and places when the mobile processing system will be available. The Transportation Director shall have the power to implement the requirements of this section. The total cost associated with the mobile processing systems shall be borne by the state of Iowa from funds appropriated to the Department of Transportation for that specific purpose.

Section 9. Voter education

The Secretary of State shall implement an education program communicating to Iowa citizens the requirement of voters to produce photographic identification at the polls. The education and communication program shall specifically identify the requirements voters must meet, and identify potential issues voters may face at the polls, and suggest possible resolutions. The voter education and communication program shall include, at minimum, the use of advertisements and public service announcements in print, broadcast television, radio, and cable television media, as well as the posting of information on the opening pages of the official internet web sites of the Secretary of State and the Governor.

The Secretary of State shall have the power to implement the requirements of this section. The total cost associated with the mobile processing systems shall be borne by the state of Iowa from funds appropriated to the Secretary of State's office for that specific purpose.