

Written Testimony of
Robert A. Simms, Georgia Deputy Secretary of State
Before the United States Senate
Committee on Rules & Administration

Executive Summary

To date, much of the opposition to photo identification requirements in connection with voting has been driven by rhetoric and hyperbole but completely lacking in facts and data.

The fact is that the activity the photo identification requirement was designed to prevent -- in-person voter fraud -- does occur and has occurred in the state of Georgia. One analysis conducted by the Atlanta Journal-Constitution and WSB-TV found that over 5,000 votes had been cast in the names of deceased voters over the prior 20 years. A 1997 investigation in Dodge County, Georgia uncovered one of the nation's largest voting fraud cases.

Opponents of photo identification requirements are quick to point out that only a nominal number of prosecutions for in-person voter fraud have been brought nationally. However, there is no acceptable level of voter fraud. Photo identification requirements ensure the integrity of elections by preventing illegally cast votes from cancelling votes cast legally.

The opponents of photo identification frequently assert that large numbers of elderly, poor and minority voters will be disenfranchised by the requirement. However, in his September 2007 ruling for the State of Georgia in the federal court challenge to the state's photo identification law, United States District Court Judge Harold T. Murphy found that "Plaintiffs have not demonstrated that the Photo ID requirement places an undue or significant burden on the right to vote." Judge Murphy added, "Plaintiffs have failed to produce any evidence of any individual... who would undergo any appreciable hardship to obtain photo identification in order to be qualified to vote."

In the three months after Judge Murphy's decision, more than 100 Georgia counties and municipalities held elections with the photo identification law in place. All occurred without incident or legal challenge. The first statewide test of the law occurred on February 5, 2008 with the administration of Georgia's Presidential Preference Primaries. Voter turnout for the primaries surpassed expectations and set state records. In fact, more than 2,000,000 votes were cast in the primaries for president with only 409 voters lacking identification for voting purposes. This represented 0.02% of all of the votes cast, and, after voters returned with photo ID, less than 0.01%.

Georgia also saw a substantial increase in voter registration in the six months prior to the primaries, particularly among minority voters. Registration among African American females increased by more than 20%, while registration among African American males increased by more than 14%. In short, the predictions of mass disenfranchisement simply did not come to fruition.

Our experiences in Georgia show that states can take real and meaningful steps to combat voter fraud by passing photo identification laws without disenfranchising voters.

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Chairwoman Feinstein, Senator Bennett and members of the Committee: I would like to thank you for the opportunity to testify before you today about voter fraud, voter identification laws and ways in which states are addressing these issues.

Today's hearing is very important, and it is my hope that this occasion will be the beginning of a substantive discussion on the important issue of voter fraud and steps elections officials are taking to combat it. Unfortunately, much of the debate on the issue of photo identification requirements in connection with voting is driven by rhetoric, hyperbole, and lacking in facts and data. In this regard, I view my testimony today as an opportunity to be a "Myth-buster" of sorts, because in-person voter fraud has in fact occurred in Georgia, and our state's photo identification law has been successfully implemented and enforced without incident, controversy and, most importantly, without a negative impact on Georgia's voters.

I think all of us can – and should – agree that everyone involved in this dialogue is motivated by the best of intentions. It has been too easy for individuals on both sides of the debate to resort to the basest forms of criticisms of those on the other side. Supporters of photo identification requirements are too often derided as 'insensitive'; 'racist'; or part of some conscious conspiracy to suppress voters who may not support a particular party's candidates. On the other hand, those who oppose voter identification laws are often accused of supporting cheating and fraud; lacking common sense or judgment; or being motivated by purely partisan political motives. For the elected state officials charged by their citizens with making these policy decisions, the considerations are very real. Ultimately, it is the best interests of the state – and the people – that truly motivate our elected officials.

I'd like to address one of the myths being discussed by the Committee today which has been hotly debated: does in-person voter fraud ever occur? Opponents of photo identification laws say that it does not; proponents say that it can and does occur.

In-person voter fraud does in fact occur and has occurred in the state of Georgia. Deceased voters have cast votes in Georgia elections. This is a fact. Analysis conducted by the Atlanta Journal-Constitution and WSB-TV found that more than 5,000 votes had been cast in the names of deceased voters over the past 20 years. (Davis, Jingle. "Even death can't stop some voters. The Atlanta Journal-Constitution 6 November 2000: p. A1.)

Georgia has also been the site of one of the largest voting fraud cases prosecuted in the country. A 1997 federal and state investigation in Dodge County led to the indictments of more than 20 local residents who were engaging in a vote-buying scheme for 2 local candidates. *Id.* at A1.

Opponents of photo identification requirements are quick to point out that only a nominal number of prosecutions for in-person voter fraud have been brought nationally. These individuals argue that the lack of prosecutions is the best evidence that no fraud is really occurring. Therefore, photo identification laws can not really be about fraud; they have to be about something else. This is a fundamentally flawed argument.

It is important to recognize that in-person voter fraud may not even be evident until AFTER the election has occurred or is even certified. In-person voter fraud is a crime for which there are often no witnesses, and the victims may even be unaware that a crime has occurred. Moreover, because elections are typically certified within a week after they are held and statutes typically provide only a very narrow timeframe in which the results of an election can be challenged, states – and their citizens – are left with little recourse to address fraud that may have already occurred. Accordingly, cases of in-person voter fraud are very difficult to pursue and even more difficult to prosecute.

The Commission on Federal Election Reform made these points in its 2005 report:

There is no evidence of extensive fraud in U.S. elections or of multiple voting, but both occur, and it could affect the outcome of a close election. The electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters. Photo IDs currently are needed to board a plane, enter federal buildings, and cash a check. Voting is equally important.

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In addition to federal investigations, state attorneys general and local prosecutors handle cases of election fraud. Other cases are never pursued because of the difficulty in obtaining evidence for prosecution or because of the low priority given to election fraud cases. One district attorney, for example, explained that he did not pursue allegations of fraudulent voter registration because it is a victimless and nonviolent crime.

Commission on Federal Election Reform, *Building Confidence in U.S. Elections - Report of the Commission on Federal Election Reform*, September 2005, at 18, 45.

For the reasons stated in the Report, states must pass laws and develop processes and procedures that ensure the voting rights of all voters. This has to include laws that proactively address the potential for voter fraud. States should take steps to ensure that

votes cast legally are not cancelled out by those who may wish to engage in fraud. This is why photo identification requirements are a necessary and important tool to ensure the integrity of elections.

In his ruling for the State of Georgia in the federal court challenge to the state's photo identification law, United States District Court Judge Harold T. Murphy, a President Jimmy Carter appointee to the bench, recognized the state's interest in passing a photo identification law to prevent fraud:

For the reasons discussed above, the Court finds that Plaintiffs have not demonstrated that the Photo ID requirement places an undue or significant burden on the right to vote. *Additionally, Plaintiffs have failed to demonstrate that the Photo ID requirement is not reasonably related to the State's interest in preventing fraud in voting.* For those reasons, the Court finds that Plaintiffs have failed to succeed on the merits of their claim that the 2006 Photo ID Act violates the Equal Protection Clause because it imposes an undue burden on the right to vote.

Common Cause of Ga. v. Billups, 504 F.Supp.2d 1333, 1382 (N.D. Ga. 2007) (emphasis added).

While opponents of photo identification laws typically dismiss the state's interest in passing these laws by citing prosecution data, they abandon the use of data when their arguments turn to the number of *potential* voters who will be disenfranchised by a photo identification law. Numbers are replaced by rhetoric, typically the kind that gains headline attention but is virtually never supported by real experiences, facts or evidence.

In no state has this been clearer than in Georgia. Lawyers brought separate lawsuits in both state and federal court attempting to challenge the state's photo identification law. The legal challenges and public relations fights lasted more than two years. Opponents of the law were quick to state – emphatically – that passage and implementation of the law would disenfranchise hundreds-of-thousands of Georgia's voters. Not for a lack of trying, the lawyers in both the state and federal court cases simply were unable to find a single individual who would be adversely impacted by Georgia's photo identification requirements.

When the State of Georgia finally had its day in court and evidence was proffered and considered, it became clear that the emotional and hyperbolic rhetoric used to argue against the state's photo identification law was simply empty oratory. Again, Judge Murphy made this abundantly clear in his decision for the state:

As the *Rokita* court noted, voters who lack Photo ID undoubtedly exist somewhere, but the fact that Plaintiffs, in spite of their efforts, have failed to uncover anyone “who can attest to the fact that he/she will be prevented from voting” provides significant

support for a conclusion that the Photo ID requirement does not unduly burden the right to vote.

Plaintiffs simply have not presented sufficient admissible evidence to show that the Photo ID requirement severely burdens the right to vote. Indeed, as the court noted in *Rokita*: “Despite apocalyptic assertions of wholesale voter disenfranchisement, Plaintiffs have produced not a single piece of evidence of any identifiable registered voter who would be prevented from voting pursuant to [the 2006 Photo ID Act] because of his or her inability to obtain the necessary photo identification. Similarly, Plaintiffs have failed to produce any evidence of any individual ... who would undergo any appreciable hardship to obtain photo identification in order to be qualified to vote.”

Common Cause of Ga. v. Billups, 504 F.Supp.2d at 1380 (emphasis added, citations omitted).

The plaintiffs’ inability to produce a single voter who would be adversely impacted by the law should be a very important consideration for this Committee. The two individual plaintiffs who the lawyers identified less than a month before trial, but almost two years after bringing suit against the state in the Georgia *Common Cause* case, testified in court that they both could obtain an ID if they had to get one. Of the two individual plaintiffs named in the case, one individual testified that she did not mind getting a photo identification and did not think it would be hard to get one, while the other’s lawyers drove him nearly 200 miles to testify at trial while at the same time arguing that traveling seven miles to his county registrar’s office, or voting by absentee ballot, was too great a burden.

As Judge Murphy recognized in referring to the *Rokita* case in Indiana, the inability to produce evidence against a photo identification requirement or an adversely-affected voter isn’t unique to the State of Georgia. Opponents to photo identification requirements in Indiana also failed to produce voters who would be disenfranchised by that state’s law. In fact, the case and the appeal now being considered by the United States Supreme Court is being led by the Indiana Democratic Party. Not a single individual plaintiff is named in that case.

In the three months after the September 2007 federal court challenge to the Georgia law was decided for the state, more than 100 Georgia counties and municipalities held elections with the photo identification law in place. All occurred without incident or legal challenge. The first statewide test of the law occurred on February 5, 2008 with the administration of the Presidential Preference Primaries. Once again, photo identification opponents’ inflammatory rhetoric was shown to be hollow and empty.

Turnout for the Presidential Preference Primaries surpassed expectations and set state records. Over 2,000,000 Georgians cast votes for their preferred nominee, while having to show a photo identification at the polls. For comparison purposes, this turnout

represented a nearly 1,000,000 vote increase from 2004 and accounted for nearly 45% of the state's registered voters. There were nearly 100,000 more votes cast in the Democratic primary than the Republican primary, and turnout in the state's urban areas was also very high.

However, the most important statistic from the primaries is that of the more than 2,000,000 votes cast, only 409 voters did not possess photo identification at the time they came to vote in person. This represents a microscopic percentage of the votes cast, 0.02%.

That figure, however, was even further reduced. Under Georgia's photo identification law, voters who lack photo identification at the time of voting in-person are allowed to cast a provisional ballot. Voters then have two days to return to their local registrar's office to verify their identities and have their votes counted. Of the 409 voters who cast a provisional ballot in Georgia's Presidential Preference Primaries, 155 returned with photo identification to verify their identity. When the results of the election were certified, 0.01% of the voters were not able to have their ballots counted because they did not return to the registrar's office with one of the acceptable forms of identification.

Opponents of the law are eager to argue that even one vote lost because of the law is one too many, but they never have any proof of why the voter failed to return with an acceptable ID. It is important to consider that there are potentially many reasons why a voter may not return to verify his or her identity, not the least of which is the voter may not have been who he or she claimed to be. Furthermore, as neither of the outcomes of the primaries was in dispute, these voters may have decided to not return because their votes were not going to change the outcome of the election.

In short, the predictions of mass disenfranchisement simply did not come to fruition. A very small number of voters showed up at the polls without a Photo ID and an even fewer number chose not to return with one in order to have their provisional votes cast, a decision for which no one knows the reason.

Opponents of the law argue that it is not simply the number of people who show up without an ID or fail to return to validate their ballots that count, but that the law discourages people from bothering to vote at all. The sheer turnout in Georgia on February 5 (and before, due to advance voting) itself casts doubt on that argument. However, there is another statistic that clearly shows that Georgia's voter ID law is not discouraging people from voting. In addition to the huge turnout, Georgia also saw a substantial increase in voter registration in the six months prior to the primaries, particularly among minority voters. Registration among African American females increased by more than 20%, while registration among African American males increased by more than 14%. Thus, while opponents have long contended that the laws would suppress turnout and participation, once again, the experiences in Georgia have proven those arguments to be untrue as well.

It is also important to note that these changes did not occur in a vacuum or that the state changed the law and simply hoped for the best. The Office of Georgia Secretary of State Karen C. Handel developed and implemented a voter education and outreach program to inform Georgia voters of the photo identification requirement. This effort fulfilled a commitment that Secretary Handel made to Georgia voters when she took office in January 2007. As a strong and vocal supporter of photo identification laws, she also understands that the state has a responsibility to the voters to inform them about the law and to help them comply with it.

The education and outreach program included direct voter contacts by mail, public service announcements, and commercial radio advertising. In the six months before the primaries, Secretary Handel mailed and distributed more than 2 million brochures to voters and through churches, community groups, and non-governmental organizations. In addition, Georgia utilities and cable service providers provided invaluable help by including messages on customer bills and through newsletters and updates. Consistent with the lack of negative impact that the photo identification law has had on Georgia voters, in the days leading to the primaries, the 1-800 phone number established by Secretary Handel to address potential questions by voters received more complaints about utility bills than questions about the photo identification requirements.

The program designed by our office was another important consideration for Judge Murphy in the *Common Cause* case.

. . . [T]he evidence revealed that the State made exceptional efforts to contact voters who potentially lacked a valid form of Photo ID issued by the DDS and who resided in the twenty-three counties that planned to hold September 18, 2007, elections, and to inform those voters of the availability of a Voter ID card, where to obtain additional information, and the possibility of voting absentee without a Photo ID. The evidence in the record indicates that the State also provided information to voters in general by advertising on the Clear Channel radio network, and by partnering with libraries and nongovernmental organizations. Additionally, the Photo ID requirement has been the subject of many news reports, editorials, and news articles. Under those circumstances, Plaintiffs are hard-pressed to show that voters in Georgia, in general, are not aware of the Photo ID requirement.

Common Cause of Ga. v. Billups, 504 F. Supp. 2d 1378-1379.

It is incumbent upon the Committee to consider that yes, there are myths concerning in-person voter fraud and photo identification laws. And then, there are facts. Contrary to what has been widely reported and what is likely to be heard in testimony

today, the myths are from those who oppose photo identification laws and the facts are with those who have implemented them.

Our experiences in Georgia – much like those in Indiana – show that states can take real and meaningful steps to combat voter fraud by passing photo identification laws without disenfranchising our voters.

I would like to thank the Committee for giving me the opportunity today to testify and for taking the time to conduct a hearing on these very important issues.

Biography of Robert A. (Rob) Simms

Robert Simms is the Deputy Secretary of State for the state of Georgia. Appointed to this position by Secretary of State Karen Handel on January 8, 2007, Rob manages the operations of the agency and serves as the agency's chief operating officer.

During the first year of Secretary Handel's tenure, Simms played an important role in implementing several reforms throughout the agency. He is primarily responsible for the appointment of four new division directors; the creation of a separate unit to manage the investigative functions of the elections, securities and licensing divisions; and for working closely with members of the Georgia House of Representatives and the Senate to pass several pieces of legislation, including the bill that made absentee ballot fraud a felony.

In addition, Simms led the agency's Photo ID team which developed and implemented the statewide comprehensive outreach and education efforts that have proven to be an essential factor in the federal court case challenging the law and in the successful implementation of the law.

Simms joined Georgia Secretary of State's office after having served as an advisor with Fulton County Chairman Karen Handel's campaign for Secretary of State and later directed Secretary-elect Handel's transition team.

As a partner in the Atlanta-based public affairs firm Massey & Bowers, Simms represented and consulted with many clients including: Dell Computers; Rural Metro Ambulance; Motorola; Comcast Cable; and Bank of America. He also worked on several transportation issues including public-private partnerships. Simms served on the Finance Committee for Governor Sonny Perdue's re-election campaign in 2004, as well as the Finance Committee for the Southern Governors' Association in 2004.

Prior to joining Massey & Bowers in 2004, Simms served as the Director of Government Affairs for the Atlanta Apartment Association, representing more than 1000 Association members on issues important to the industry. He also served for three years as the Chief of Staff to Fulton County Chairman Mike Kenn where he participated in budget negotiations; drafted ordinances that reformed ethics, land-use policies and procedures; served as the Chairman's designee on several committees; and worked with members of the legislature on issues important to the county.

Prior to serving Chairman Kenn, Simms was Vice President of Client Services for the political consulting firm Creative Direct, LLC. While there, Rob worked on Virginia House and Senate races during the 1999 elections. In Virginia, he also worked with the campaign of Congressman Eric Cantor and Governor George Allen's campaign for the U.S. Senate. In Georgia, Rob worked on the Mike Bowers for Governor campaign, both of Mike Kenn's successful campaigns for Fulton County Chairman, and Karen Handel's campaign for Fulton County Chairman.

Rob is a graduate of George Mason University. He and his wife Danielle reside in Atlanta, Georgia.