

**The Georgia Voter Identification Requirement: Is it a Form of Voter Disenfranchisement?**

by

LaKerri ReJai Mack

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Approved by

Christa Slaton, Chair, Dean of Arts and Sciences at New Mexico State University, Emeritus  
Professor of Political Science at Auburn University  
Caleb Clark, Co-chair, Alumni Professor of Political Science, Director of the M.P.A. Program  
Clifton Perry, Hudson Professor of Political Science  
Denise Davis-Maye, Associate Professor of Sociology at Auburn University-Montgomery

## Abstract

As an American citizen, my observation reveals that access to the franchise has been prohibited or limited for African Americans and the poor since 1863. Congress and the Supreme Court have been consistent in their legislation and rulings that assume voting rights are given and made equally accessible to all American citizens since the passage of the 1965 Voting Rights Act. However, there remains a gap in the current literature regarding modern-day tactics and forms of voter disenfranchisement. For some, voter photo identification requirements, particularly those outlined in Georgia Law O.C.G.A. § 21-2-417, are an early 21st century version of voter disenfranchisement for the poor and minorities. To others, it is perceived as a method to prevent voter fraud.

In this qualitative study, I explore the historical voting experiences and practices in the United States. Secondly, I examine the political culture and voting climate in Georgia, a pre-clearance state that has a strong and consistent legacy of disenfranchisement in its voting practices and regulations. A primary focus of this study is to explicate the rationale and explore the language used to promote the passage of the Georgia Voter Identification Legislation. Through the use of a case study approach nested within the context of a policy analysis, legislative records and proceedings, documented hearing(s) testimonies from various federal and state officials, inter-office memoranda, party-affiliated media resources, and periodicals were analyzed extensively and chronologically to better understand the arguments of this legislation.

Findings from this research will clarify the rate of voter fraud in Georgia while highlighting its voting practices to determine if voter disenfranchisement remains prevalent in the United States. This research and findings will make an important contribution to the existing literature as it goes beyond the surface of the legislative and political rationale of voter photo identification requirements and practices, and should enhance election reform initiatives by exposing the realities of voter disenfranchisement.

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## **Chapter 1: Introduction**

Since the immigration to the Americas by Europeans seeking religious and political freedoms and the establishment of the republic we now know as the United States of America, democracy has been a vital aspect of society. Unfortunately, in the early history of the U. S., access was granted to only a few. Many were deprived of the rights of citizenship, particularly the right to vote though many forms of voter disenfranchisement.

### **Statement of the Problem**

Practices exhibited during elections can result in historically marginalized populations being excluded from civic participation. Scholarship focusing on disenfranchisement is vital to the maintenance of democracy. In this respect, it is critical to illuminate the historical voting practices of the deep Southern states. The inquiry presented here will examine Georgia's voting policies and practices.

This research is driven by Georgia's historic voting practices of voter disenfranchisement and specifically focuses on Georgia law O.C.G.A § 21-2-417. After the signing of HB 244, the list of valid forms of government-issued photo identification only included: 1) a Georgia driver's license, even if expired; 2) a valid state or federal issued photo ID, including a free Voter ID card issued by the county registrar's office or the Georgia Department of Driver Services (DDS); 3) valid US passport; 4) valid employee photo ID from any branch, department, agency, or entity of the US government, Georgia, or municipality, board, authority or other entity of this state; 5) valid US military photo ID; and 6) valid tribal photo ID (GA SOS, 2007). The stated purpose of the law was to prevent voter fraud in Georgia, specifically in-person voter fraud by requiring that all registered voters present valid government-issued photo identification

as a legal and mandatory requirement to vote in-person (GA SOS, 2007). This law was implemented for the September 18, 2007 Special Election and is effective for all future elections.

### **Voter Photo Identification Requirements**

After the controversy surrounding the *Bush vs. Gore* case in 2000, requirements for voter registration increased drastically (*Bush vs. Gore*, 531 U.S. 98 (2000)). This case involved presidential candidates, Democrat Al Gore and Republican George W. Bush. Florida was the deciding vote for this election. After a mandatory recount, the case entered the judicial system and the President of the United States for the term 2000-2004 was decided by the United States Supreme Court. The events of the 2000 election caused most American voters and non-voters to distrust every aspect of the voting process from ballot casting to verifying ballots cast. As a consequence, voter registration methods gained great attention and voter identification requirements have become most stringent. Republicans make the argument that voter photo identification “is a necessary tool to prevent voting fraud, such as voting by non-citizens or people who are otherwise ineligible to register” (Logan & Darrah, 2008, p. 1). Many states including Georgia followed Indiana on legalizing such requirements claiming that voter fraud led to stricter voter identification requirements (Pastor, Santos, Prevost & Stoilov, 2010, p. 461).

There still exists a strong partisan debate on how to secure the ballot, increase access, and maintain integrity at the voting polls. Due to partisan struggles, these three objectives have become divided. While both parties seek to secure the ballot, Democrats want to increase access to it and Republicans seek to maintain integrity within it. This causes both parties to be at odds vying for their specific concern. Therefore, these issues of how the electoral process is to be

conducted, how it is accessed and how integrity is maintained are at the center of the voter identification requirements debate and implementation (Pastor et al., 2010, p. 461).

Since the 1960s, Democrats have been concerned with the civil rights of social groups that have been historically disenfranchised on the basis of race, class and/or gender. Even today, they continue to show a strong concern for protecting the voting rights of such persons by advocating against restrictive voter photo identification requirements. They align with the argument “that individual voter fraud is rare and that more stringent ID requirements may cause a larger problem by impeding the ability of some eligible citizens—particularly the poor, minorities, or the elderly—to vote” (Pastor et al., 2010, p. 461). Atkeson, Bryant, Hall, Saunders and Alvarez (2010) contend “there is little *systematic* evidence of voter fraud and argue that restrictive voter identification requirements create institutional barriers to voter participation” (p. 66). Moreover, opponents of the legislation are more concerned with the effect of the requirement than its intent. According to Logan and Darrah (2008), voter photo identification laws are intended to prevent voter fraud but can have an unintended effect of suppressing minority electoral participation (p. 1).

In sum, there are conflictual stances on how to administer elections with respect to voter registration. The issue then transforms into a question of who has the most political power to either maximize ballot access or minimize voter fraud. Those who support the voter photo identification requirements in Georgia, “claim voter fraud is a large problem and advocate for strict voter identification policies to ensure the integrity” of its election system (Atkeson et al., p. 66).

Another concern surrounding the issue of ballot access and integrity is possession of valid photo identification. Pastor et al. (2010) conducted a study that found only 1.2% of registered voters in Indiana, Maryland, and Mississippi lacked photo identification (p. 461). Indiana reported only 0.3% of its registered voters lacked photo identification and it is the state that has one of the most stringent voter photo identification requirements (Pastor et al., 2010, p. 461). Moreover, more than two-thirds of respondents believe the U.S. electoral system would be trusted more if voters were required to show a photo identification (Pastor et al., 2010, p. 461). The primary research interest of this study was to determine if voter photo identification requirements posed a problem to registered voters, however “it does not consider the problems posed to eligible voters who are not yet registered but desire to be” (Pastor et al., 2010, p. 461). The photo voter identification laws are implemented at the registration stage. This causes one to question the rationale of these laws, particularly how they impact eligible voters who are not yet registered to vote and the impact it could have on an election’s outcome.

Logan and Darrah (2008) also found that voter identification requirements reduce voter participation and naturalization rates (p. 1). A finding of this nature demonstrates implications for a lack of political participation and representation by members of every racial and ethnic group (Logan & Darrah, 2008, p. 1). Their study also determined in states which have a voter identification policy that the number of naturalized residents was reduced by more than 5%, with the Hispanics being impacted most, in the year 2000 (Logan & Darrah, 2008, p. 1). In states with voter identification requirements during election years 1996 to 2004, Whites 18 years and older were about 15% more likely to be registered to vote than non-White or naturalized citizens (Logan & Darrah, 2008, p. 1). In this same period, the number of Asian registered voters was reduced due to voter identification policies and voter turnout among Blacks and Hispanics

plummeted (Logan & Darrah, 2008, p. 1). The study estimated net reduction of more than 400,000 in minority voting in these states in 2004 (Logan & Darrah, 2008, p. 1).

### **Purpose of Study**

We have done our level best. We have scratched our heads how we could eliminate every last one of them. We stuffed ballot boxes. We shot them. We are not ashamed of it.

—*Senator “Pitchfork Ben” Tillman (1900)*

The purpose of this study is to examine the intent of the 2005 Georgia Voter Photo Identification Law by analyzing the arguments presented by the proponents and the opponents of the legislation and to identify the individuals or groups that will likely be negatively or positively impacted by the law. Strict Voter Identification laws, which require a government-issued photo ID for registration and/or voting, have been passed in recent years by seven states, Georgia, Indiana, Kansas, Mississippi, South Carolina, Tennessee, Texas, and Wisconsin. These laws are now the source of heated debates that have divided citizens as well as elected officials and election administrators (National Conference of State Legislators [NCLS], 2011). Although the study will focus in depth on the state of Georgia, political divisions have been similar in each state that has managed related conflicts and raised the following questions: Is the law intended to reduce voter fraud, as the proponents maintain, or to create additional barriers to voting for racial minorities and the poor, as many critics maintain? Is it a ploy by Republicans to reduce voting participation by segments of the population more likely to vote Democratic or is it a mechanism to clean up corruption in voting practices?

These questions cannot be fully answered until first examining Georgia’s history of disenfranchising African Americans and the poor. Furthermore, questions surface regarding the role the federal government has played in protecting the right to vote of U.S. citizens. Qualitative



research methods will be used in this case study of Georgia to provide the historical, legal, and political context that is necessary to understand the intent and likely impact of the Georgia Voter Photo Identification Law. The case study will also document the incidents of voter fraud in Georgia to determine if the law will serve as a deterrent to the voter fraud that exists.

### **Significance of Study**

This dissertation examines the arguments against and for the implementation of the Georgia Photo Voter Identification Requirement. Voting has become a more complex avenue to democracy because of registration regulations that entail meeting photo identification requirements. To better understand the tension of maximizing access to the ballot and maintaining voter integrity by minimizing and eliminating voter fraud, this study focuses on the implementation of voter identification laws in one state, Georgia, which has a documented history of disenfranchising people of color within the electoral process.

### **Organization of Dissertation**

This dissertation contains six chapters: (1) Introduction, (2) Literature Review, (3) Georgia, (4) Methodology, (5) Findings, and (6) Conclusion and Recommendations. Chapter one provides an introduction of voter identification laws and overview of the Georgia Photo Voter Identification Requirement. Chapter two presents a historical and legal analysis of voting disenfranchisement in the United States of America and the federal government's role in addressing it since 1863. The franchise is one of the most powerful political and social tools an individual and/or social group possesses in the United States of America. Thus, it has become an ongoing process to ensure that those who have historically been disenfranchised and sensitive to discrimination are protected and not denied access. The literature presented in this chapter is

essential to better understanding the basis and premises for questioning the intentions and effect of Georgia Law O.C.G.A § 21-2-417 and House Bill 244 within a historical, legal and political context. Both Georgia's Senate and House of Representatives were controlled by the Republican Party at the time this legislation was passed under the governorship of Republican Sonny Perdue. In this chapter, the literature review includes a discussion of the motivation of Georgia's Republican Party's quest to enact this specific photo voting identification requirement particularly given the political culture and voting trends of the state during this time. Specific historical federal voting legislation is presented as a means to establish the voting history and climate of the south, especially Georgia, while introducing the arguments of opposition to and support for the requirement of those who align themselves with particular political parties. Additionally, it explores the history of voter disenfranchisement as consequences of racial discrimination in the American South and the implications of its impact on current and future voting legislation.

Chapter three examines the voting climate of Georgia by highlighting its most recent voting trends. Understanding the political culture of Georgia and its current voting legislation is used to evaluate the impact and direction of current and future voting policies in the state. Chapter four details the research method of this dissertation. Data have been collected from reports and documents accessed through the U.S. Census Bureau, the Georgia Secretary of State's Office, the U.S. Department of Justice (DOJ), the Brennan Center for Justice, and other reputable agencies that address and focus on the voting demographics and pre-clearance process of the state of Georgia.

Most importantly, this chapter provides a description of the study design of this dissertation that examines the rationale for the implementation of the Georgia photo voter

identification requirement through qualitative research methods, specifically policy analysis within a case study design. It analyzes two research questions with four sub-questions posed in an effort to draw conclusions about the motivation(s) and current and future impact of this specific voting legislation.

Chapter five assesses the application and results. It outlines the findings of this dissertation. It also examines the political agenda(s) set forth by the state of Georgia, particularly its Republican Party, to “prevent voter fraud,” maximize or minimize access to the franchise, promote or deter voter participation of traditionally disadvantaged social groups in Georgia, and/or maintain political power. Chapter 5 also provides documentation of the extent of actual voter fraud through cases successfully prosecuted in Georgia and questions the relevance of the law to prevent voter fraud. Chapter six concludes the dissertation and makes recommendations for election reform especially in states with a history of voter disenfranchisement. Finally, it discusses the current and future implications of its findings to be considered for future reference and research in the area of Elections Administration, Public Policy and Public Administration.

## Chapter 2: Literature Review

“Well, chillen, whar dar’s so much racket dar must be som’ting out o’ kilter. I tink dat, ‘twixt the niggers of de South and de women at de Norf, all a-talking ‘bout rights, de white men will be in a fix pretty soon. But what’s all this here talking ‘bout?”

—*Sojourner Truth* (1851)

### Legislation

Akhil Amar (2005) credits the United States Constitution as the primary path to equality for African Americans and other non-White social groups (p. 349). The 13th Amendment ended slavery; the 14th Amendment made all citizens equal with civil rights (Amar, 2005, p. 349). As these rights were not conveyed by the political sector, the 15th Amendment gave Black men the right to vote (Amar, 2005, p. 349).

This section illuminates the path of suffrage forged by abolitionists for people of color and women to gain access to the franchise in the United States. It includes the following voting legislation:

1. The Emancipation Proclamation, issued on *January 1, 1863*
2. 13th Amendment, ratified on *December 6, 1865*
3. 14th Amendment, ratified on *July 9, 1868*
4. 15th Amendment, ratified on *February 3, 1870*
5. 19th Amendment, ratified on *August 18, 1920*
6. 24th Amendment, ratified on *January 23, 1964*
7. Voting Rights Act of 1965 (Sections 2 and 5), signed on *August 5, 1965*.

### Emancipation Proclamation

On January 1, 1863, President Abraham Lincoln issued the Emancipation Proclamation (National Archives and Records Administration [NARA], 2011). It ended slavery and set all enslaved persons within the Confederate southern states free. States that seceded from the Union, including Georgia, were expected to comply. The Emancipation Proclamation read as follows:

“That on the first day of January, in the year for our Lord one thousand eight hundred and sixty-three, all persons held as slaves within any State or designated part of a State, the

people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free; and the Executive Government of the United States, including the military and naval authority thereof, will recognize and maintain freedom of such persons, and will do no act or acts to repress such persons, or any of them, in any efforts they may make for their actual freedom.”

“That the Executive will, on the first day of January aforesaid, by proclamation, designate the States and parts of the States, if any, in which the people thereof, respectively, shall then be in rebellion against the United States; and the fact that any State, or the people thereof, shall on that day be, in good faith, represented in qualified voters of such State shall have participated, shall, in the absence of strong countervailing testimony, be deemed conclusive evidence that such State, and the people thereof, are not then in rebellion against the United States.” (NARA, 2011)

The most significant aspect of the Emancipation Proclamation is that it not only removed the economically-based power from the Confederate South, but it was the first step taken to obtain citizenship for emancipated Blacks. This legislation led to the need for more progressive constitutional laws that served to advance colored people nationwide. It was the initial stage in a long process of gaining full citizenship rights for African Americans.

### **13th Amendment**

At the end of the Civil War, the 13th Amendment was proposed by the 38th Congress to the state legislatures. It was ratified in December of 1865 and constitutionally ended slavery.

“The 13th Amendment prohibits slavery in the United States and gives Congress power to enforce this article” (Laney, 2003, p. 1). Under the 13th Amendment, the declaration was made that “Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction” (The United States Constitution [USC], 1865).

Dwight Dumond (1958) argues that the authors of the Constitution were democratic in their efforts to create “a government which drew its powers from the people” (p. 175). The terms “slave and slavery” are not present in the Constitution because the “foreign slave trade was

prohibited in 1807” (Dumond, 1958, p. 175). The goal was to prevent the expansion of slavery and use this power to abolish it by controlling the foreign slave trade, interstate commerce, and admission of states. The central events that led to the abolition of slavery were the Civil War, Emancipation Proclamation and 13th Amendment. These avenues to citizenship gave fundamental rights to non-Whites, specifically African American males.

### **14th Amendment**

The 14th Amendment was proposed to state legislatures in June of 1866 (Laney, 2003, p. 1). It was ratified two years later on July of 1868 and guarantees all men equal protection and due process under federal law. It was passed to give citizenship to those formally in slavery who were liberated by the Emancipation Proclamation and the 13th Amendment to the Constitution. Thus, the 14th Amendment guarantees all men equal protection, in an effort to prevent the denial of citizenship rights for non-Whites by state governments, especially former slaveholding ones.

Section one of the 14th Amendment gives all individuals who are born or naturalized in the United States citizenship of the United States and the State wherein they reside. “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws” (USC, 1868).

Max West (1900) acknowledges that all citizens, whether natural born or naturalized, should have equal rights and access to any outlined means of democracy, including the right to vote. It is clear that the intentions of the first section of the 14th Amendment were to benefit Black males through equal treatment and to increase the number of Black male civil servants and office-holders (West, 1900, p. 248). He went on to suggest “The denial of the right to vote,

whether by brute force, by fraud, or under the forms of law, whether by armed mobs or by constitutional conventions, is a more serious matter” (West, 1900, p. 249). James (1965) supports this theory by stating the very few Southern Whites who had “associated themselves with radical purposes for the South...were not very influential except in certain border states like Tennessee, where they gained temporary ascendancy” (p. 477).

The purpose of the second section of the 14th Amendment was to reduce the number of states in Congress that supported the abridgement of the suffrage (West, 1900, p. 250). This amendment was aimed at directly preventing the disenfranchisement of former slaves as it alluded to future tactics of voter discrimination. West (1900) argues that this amendment was strategic and prophetic in nature as “it was expressed in such general terms that it unquestionably applies even to disenfranchisement through educational tests; yet its language is so mathematically explicit that it requires no interpretation, but requires simply to be enforced” (p. 250). Section two of the 14th Amendment states:

Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice-president of the United States, representatives in Congress, the executive and judicial officers of state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of male citizens twenty-one years of age in such state (USC, 1868).

After two years of debate, the 14th Amendment was ratified on July 9, 1868 under the 89th Congress. Georgia ratified it days later on July 21, 1868 after denying its earlier ratification on November 9, 1866. Georgia was initially against ratifying it but conceded because “their right of representation was denied by a portion of the States” (Georgia House Journal [GHJ], 1866, pp.

66-67). The Georgia legislature submitted the following resolution on November 9, 1866, in protest of ratifying the amendment:

“Since the reorganization of the State government, Georgia has elected Senators and Representatives. So has every other State. They have been arbitrarily refused admission to their seats, not on the ground that the qualifications of the members elected did not conform to the fourth paragraph, second section, first article of the Constitution, but because their right of representation was denied by a portion of the States having equal but not greater rights than themselves. They have in fact been forcibly excluded; and inasmuch as all legislative power granted by the States to the Congress is defined, and this power of exclusion is not among the powers expressly or by implication, the assemblage, at the capitol, of representatives from a portion of the States, to the exclusion of the representatives of another portion, cannot be whole.

This amendment is tendered to Georgia for ratification, under that power in the Constitution which authorizes two-thirds of the Congress to propose amendments. We have endeavored to establish that Georgia had a right, in the first place, as a part of the Congress, to act upon the question, ‘Shall these amendments be proposed?’ Every other excluded State had the same right.

The first constitutional privilege has been arbitrarily denied.

Had these amendments been submitted to constitutional Congress, they never would have been proposed to the States. Two-thirds of the whole Congress never would have proposed to eleven States voluntarily to reduce their political power in the Union, and at the same time, disenfranchise the larger portion of the intellect, integrity and patriotism of eleven co-equal States.” (GHJ, 1866, pp. 66-67)

Other southern states such as Virginia, Alabama, Texas, Kentucky and Mississippi also rejected the initial ratification and conformed at later dates. The rejection to ratifying this constitutional amendment illustrates the southern states’ efforts to postpone suffrage for African American males. Southern states were more concerned with losing political power. Even after the successful ratification of the 14th Amendment, African American males were still hindered from participating in the franchise by European American males who used disenfranchising tactics of voter intimidation, lynching, beatings, and voter fraud by armed and racist mobs. This created a need for legislation that catered specifically to the ailments of Black men.



## 15th Amendment

The Emancipation Proclamation, 13th, 14th, and 15th amendments of the Civil War were passed to establish, protect and advance the condition of African Americans after their freedom was won by the Union. Traditionally, the right to vote was only afforded to “White males who owned property, of protestant faith, and of a specific age and citizenship” (Keyssar, 2000, p. xvi). The 15th Amendment was established to further solidify the rights outlined in the 14th Amendment for African American men. Ducat (2008) claims that the 15th Amendment “specifically prohibited race as a qualification for voting” (p. 1390). It guaranteed African American males the right to vote, outlining that “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude” (USC, 1870).

Disenfranchisement policies with discriminatory intent resided in Southern states like Mississippi, Virginia, and Louisiana (Ochs, 2006, p. 81). Mississippi’s Constitution required that a voter be a resident of the state for two years before they could cast a ballot (Laney, 2003, p. 4). The state also imposed literacy tests, a property requirement of three-hundred dollars, introduced an annual poll tax of two dollars, and disqualified convicts (Laney, 2003, p. 4). Virginia required registration and poll tax certificates to be shown at the polling site and altered the ballot from an Indiana ballot that listed the names of candidates by party to a Massachusetts or office ballot in 1894 (Laney, 2003, p. 4). In 1898, Louisiana established permanent registration for all male persons whose fathers and grandfathers were qualified to vote on January 1, 1867 (Laney, 2003, p. 4). This provision of Louisiana’s Grandfather clause excluded Blacks because they were denied the franchise in 1867 (Laney, 2003, p. 4). The Supreme Court declared the Grandfather clause unconstitutional 48 years later in 1915 (Laney, 2003, p. 4).

Ratified on February 3, 1870, the requirements of the 15th Amendment would not be fully carried-out for almost a century, with the Voting Rights Act of 1965, due to the continued use of poll taxes, literacy tests, Grandfather clauses, and other means used by southern states to effectively disenfranchise African Americans.

### **19th Amendment**

In the South, tactics and measures of gender and racial discrimination in the forms of poll taxes, literacy tests, Grandfather clauses, Jim Crow laws and other forms of voter intimidation were used to disenfranchise women and African Americans. Such acts of disenfranchisement created a portrait of racism and sexism that has characterized the South as a breeding bed for discrimination and disenfranchisement. The 15th Amendment was critical to protecting the voting rights of Black men. It did not address the enfranchisement of women, Black or White.

Women of all races pursued judicial measures to be enfranchised. In *Minor v. Happersett* (1875) the U.S. Supreme Court—composed of all White males—unanimously decided “that the Constitution of the United States does not guarantee to women the right to vote in federal elections” no matter if she is an American citizen (*Minor v. Happersett*, 1875). The initial U.S. Constitution gave the responsibility of how elections were to be administered as well as who voted to the states. The U.S. Supreme Court further justified their decision in this case by declaring “And the constitution of the State of Missouri thus ordains: Every male citizen of the United States shall be entitled to vote. Under a statute of the State all persons wishing to vote at any election, must previously have been registered in the manner pointed out by the statute, this being a condition precedent to the exercise of the elective franchise” (*Minor v. Happersett*, 1875). This decision solidified the exclusion of women from voting. Because of this ruling, it was necessary to pass an additional amendment to the constitution that granted the right to vote

to women. Fifty years after African American males were granted franchise rights, women received theirs. The 19th Amendment states, “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on the account of sex” (USC, 1920).

### **24th Amendment**

The 24th Amendment prohibited poll tax laws or laws to charge voting fees because states would not comply with the 15th Amendment. Poll tax laws were another mechanism to deny the franchise to Blacks. The use of poll taxes ensured a financial burden on the poor and non-Whites employed by White males and perpetuated the denial of access to the franchise. The poll tax was a double-edged sword that slew both poor Black and White voters. These fees were required to be paid in order to vote. To prove this point, “Georgia initiated the poll tax in 1871 and made it cumulative in 1877,” requiring citizens to pay all back taxes before being permitted to vote (University of Michigan).

When politicians realized that poll taxes were preventing White males from participating in the franchise, they instituted Grandfather clauses. Under Grandfather clauses, citizens who were descendants of persons who had the right to vote prior to 1866 were exempt from state property requirements. Such clauses were enacted and became commonplace in the South as of 1890.

To combat this, the 24th Amendment was ratified on January 23, 1964 establishing that “The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative of Congress, shall not be denied or abridged by the United States or any State by reason of failure

to pay any poll tax or other tax” (USC, 1964). This occurred during the Civil Rights Movement and federal forces were brought in to monitor the adherence of election officials to this law.

The case of *Harper v. Virginia State Board of Elections* (1966) was brought by Virginia residents who claimed that the state’s poll tax was unconstitutional (*Harper v. Virginia State Board of Elections*, 1966). Justice William O. Douglas, in this case of appeal, “concluded that a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard. Voter qualifications have no relation to wealth nor to paying or not paying this or any other tax” (*Harper v. Virginia State Board of Elections*, 1966). This case confirmed that the Equal Protection Clause of the Fourteenth Amendment restrains the States from fixing voter qualifications which invidiously discriminate (*Harper v. Virginia State Board of Elections*, 1966).

Within this context, the Georgia Voter Photo Identification Requirement is like a poll tax. Some argue that the requirement is not racially charged or discriminatory as these are reasonable requirements, but they have not provided convincing evidence to prove that it has not negatively impacted the poor. Due to continued efforts to disenfranchise the poor and people of color, federal legislation continued to protect their voting rights.

### **Voting Rights Act of 1965**

The Supreme Court held that the purpose of the Voting Rights Act (VRA) of 1965 was to rid the American country of racial discrimination in voting (Ochs, 2006, p. 81). In Southern states such as Alabama, Mississippi, Georgia, Arkansas and the Carolinas, all citizens were seeking full access to exercise their fundamental right to vote. Tactics and measures of voter discrimination like Grandfather clauses, poll taxes, literacy tests, Jim Crow laws and other forms of voter intimidation were used for disenfranchisement. The VRA of 1965 led to the

disqualification of several voting barriers and to a drastic increase in Black voters and representation (Shapiro, 1993, p. 549). With exponential growth of Black participation in the franchise, Southern States passed alternative legislation to ensure that illiterate Whites were not disenfranchised (Hannah et. al, 1965, p. 7). Thus, White voters in Louisiana, North Carolina, Alabama, Georgia, and Virginia were exempted from literacy requirements by Grandfather clauses (Hannah et. al, 1965, p. 7). “Grandfather Clauses allowed persons, not otherwise qualified, to vote if there were descended from persons who had voted, or served in the States’ military forces, before a specified date” (Hannah et. al, 1965, p. 7).

Literacy tests were required in seven Southern states, including Georgia, to prevent access to the franchise by Black voters. Mississippi, in 1867, registered 70% of eligible Blacks to vote but by 1889, only 9% were registered (Laney, 2003, p. 4). In Louisiana, 130,334 Blacks were registered to vote in 1869 but only 5,230 were voters in 1900 (Laney, 2003, p. 4). In 1890, Alabama had a 181, 471 Black male voting age population, but after the new constitution was adopted in 1901, only 3,000 were registered (Laney, 2003, p. 4). Literacy tests were first required as a qualification to vote in Georgia in 1908 (Hannah et al., 1965, p. 6).

In states like Virginia during the late 1800s, voters “had a maximum of two-and-a-half minutes to vote, if others were waiting in line” (Laney, 2003, p. 4). The majority of poor Blacks and Whites were illiterate or barely literate. Beyond race, literacy tests mostly impacted poor and elderly voters. Consequently, this became a very stringent requirement because illiteracy was widespread in the South. It was reported that in many of the counties there were high levels of illiteracy among voting age Blacks, especially the elderly (Hannah et al., 1965, p. 19). It estimated that illiteracy was 15% among applicants in urban areas and 65% in rural counties

(Hannah et al., 1965, p. 19). This made it difficult to determine the correct spelling of applicant names, their addresses, and other necessary information (Hannah et al., 1965, p. 19).

Grandfather clauses and literacy tests were forms of unconstitutional disenfranchisement of eligible Black voters that resulted in registration officials who applied them rejecting educated African Americans and registering illiterate Whites (Hannah et. al, 1965, p. 7-8). If the voter was African American, the White registrars would declare his or her answer as incorrect (Laney, 2003, p. 5). In New Orleans, Louisiana, Blacks complained that ignorant Whites employed at registration offices were empowered to decide whether an individual had correctly interpreted the Constitution of the United States (Laney, 2003, p. 5). A Black North Carolina teacher “reported that when she attempted to register to vote, she was told that her request to vote at three places had been reported and she was being watched by hostile observers and used other such statements that implied she could become a victim of violence” (Laney, 2003, p. 5).

Literacy tests were not only about whether one could read, but they usually involved civic tests that most college students today would not be capable of passing. For example, the 1958 Georgia Literacy Test required that the applicant correctly answer 20 of the 30 questions in addition to meeting other qualification requirements. The test included at least 10 of the following questions:

1. What is a republican form of government?
2. What are the names of the three branches of the United States government?
3. In what State Senatorial District do you live and what are the names of the county or counties in such district?
4. What is the name of the State Judicial Circuit in which you live and what are the names of the counties or county in such circuit?
5. What is the definition of a felony in Georgia?
6. How many Representatives are there in the Georgia House of Representatives and how does the Constitution of Georgia provide that they be apportioned among the several counties?

7. What does the Constitution of Georgia prescribe as the qualifications of Representatives in the Georgia House of Representatives?
8. How does the Constitution of the United States provide that it may be amended?
9. Who is the Chief Justice of the Supreme Court of Georgia and who is the Presiding Justice of that court?
10. Who may grant pardons and paroles in Georgia? (Rosenburg, 2008)

In addition, there were no set standards for how an exam should be “graded” and this gave a great deal of discretion to election officials. In order to “eliminate barriers to the right to vote,” literacy tests were dissolved with the 1965 Voting Rights Act (Hannah et al., 1965, p. 10). The prohibition of literacy tests resulted in Southern states also being subjected to pre-clearance procedures under section 5.

In 1965, under the presidency of Lyndon Baines Johnson, the Voting Rights Act was signed into law to remedy the disenfranchisement of non-White voters in the South as well as to prohibit Southern legislators’ resistance to enforcing the 15th Amendment. It was passed to ban direct forms of voter disenfranchisement and intimidation that hindered any American citizen from voting. The VRA of 1965 also served as a weapon against racial discrimination to increase the African American vote and consequent political strength.

After President Lyndon B. Johnson signed the 1965 Voting Rights Act, the United States Commission on Civil Rights (USCCR) recommended that he and Congress abolish all literacy tests used as prerequisites for voting in a federal election because a substantial number of African American citizens were being denied the right to register and vote in the South because they were not White (Hannah, et al., 1965, p. 1). Because of this denial of access to the ballot, an estimated 57% or 2,843,000 of voting age Blacks were not registered to vote in November 1964 in at least 11 Southern states (Hannah et al., 1965, p. 1). In 1962, 167,663 Blacks were registered to vote in Georgia (Bullock & Gaddie, 2006, p. 6). In March of 1965, only 27.4% of Blacks were

registered in Georgia to vote (Grofman, Handley & Niemi, 1992, pp. 23-24). By 1967, 52.6% of Black voters in Georgia were registered to vote (Bullock & Gaddie, 2006, p. 6).

The USCCR found that there were several tools of disenfranchisement used to prevent Blacks from voting in the South. Registration was limited or denied with the continued use of literacy tests and delays in areas that limited the number of days for registration (Hannah et al., 1965, p. 4). Many local officials refused to provide additional days or locate larger facilities for registration (Hannah et al., 1965, p. 4). The consequence of state officials during this time not allowing African Americans to register freely was a sharp decline in the high initial rate of their registration because these previously disenfranchised citizens did not trust the electoral process.

The Commission believed that Blacks would continue to be disenfranchised if affirmative steps were not taken to “inform citizens, heretofore excluded from voting, of registration and voting procedures and the importance of participating in all elections for public and party office” (Hannah et al., 1965, p. 4). After all, the VRA of 1965 was an effort to suspend the usage of “literacy tests and similar devices as prerequisites to registration and voting,” (Hannah et al., 1965, p. 1). It was adopted to address the use of such disenfranchising instruments in the South by local election officials, i.e. poll workers and registrars, who discriminated against Black citizens. The VRA of 1965 gives the federal government extensive administrative powers and provides for the automatic suspension of discriminatory tactics and devices in covered jurisdictions without the burden on the government to prove them actually discriminatory. Other laws such as the “Civil Rights Acts of 1957, 1960, and 1964 failed to remedy” this voting rights issue because they “relied entirely on litigation instituted by the U.S. government (Hannah et al., 1965, p. 1).



Brian Lansberg (2007) notes that “The voting rights litigation exposed two fault lines: the chasm between the normative objectives of the 15th Amendment and the practices of Southern voter registrars and the equally deep chasm between practices in the Deep South and those in the rest of the country” (p. x). The VRA of 1965 that was designed to protect and enforce the 15th Amendment was overlooked and undermined by disenfranchising instruments applied by Southern racist Whites to registration requirements and procedures (Lansberg, 2007, p. 1) Due to continued antics to disenfranchise people of color, the VRA of 1965 included vital sections, two and five.

### **Section Two of the VRA of 1965**

The 15th and 19th Amendments enfranchised Black men and Black and White women, respectively. Consequently, Southern voter registration boards continued to use poll taxes, literacy tests, and other bureaucratic deterrents to deny African Americans access to the franchise. With poll taxes being outlawed in 1964 by the passage of the 24th Amendment, other tactics of disenfranchisement and voter intimidation were particularly being used in the South such as literacy tests. Section Two of the VRA of 1965 forbade states from denying or preventing Blacks from voting through the use of any means of discriminatory acts using literacy tests, poll taxes, or other antics of intimidation, on a national basis (Voting Rights Act of 1965).

The second section of the act initially stated, “No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color” (NARA, 2011). Then Section Two of the VRA of 1965 was amended June 29, 1982 to read,

“(a) 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 abridgment of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f) (2), as provided in subsection (b).”

“(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.”  
(Ducat, 2008, p. 1398)

Given these adjustments to the act, further clarification was needed to address the Southern regions of the United States that continued to disenfranchise people of color. Most importantly, legislation was needed to create a standard of accountability to ensure adequate access to the franchise for all citizens residing in the Deep South.

### **Section Five of the VRA of 1965**

Just as the Confederate South did not fully comply with the regulations outlined in the Emancipation Proclamation or 14th, 15th, and 19th amendments, it ignored the initial VRA of 1965. It became apparent that more legislation was needed to remedy new discriminatory devices of the Republican and Democratic Parties to prevent political participation by Blacks because their old ones were banned (Foster, 1985, p. 48). This was the basis for Congress’s enactment of Section Five. It established that “all election law changes enacted in covered jurisdictions after the effective date of the act must obtain federal preclearance before implementation” (Foster, 1985, p. 48). More specifically, Section Five states,

"Whenever a State or political subdivision...shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting...and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: Provided, That such qualification, prerequisite, standard, practice or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision..." (42 U.S.C. 1973)

Section Five of the VRA ensures that the states will be unable to adopt new forms of racial discrimination in voting to replace those suspended by the other provisions of the act because any change in the law on "voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting" must be scrutinized to insure that it "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color" (42 U.S.C.1973). It also places an affirmative burden on those governments to prove that the law will not be racially discriminatory in effect (Laney, 2003, p. 13).

Under this section, the DOJ is required to refuse clearance to state legislation pertaining to voting procedures that are discriminatory in nature and/or that would deny or limit the right to vote on race or color (42 U.S.C. 1973). Therefore, those jurisdictions with a history of discrimination against Blacks and other traditionally underrepresented groups must contact the DOJ in Washington, D.C., for "pre-clearance" before they can make any change in their voting practices and procedures (Binion, 1979, p. 154). This section specifically established enforcement provisions for those states that Congress believed had the greatest potential for voter discrimination (42 U.S.C. 1973). It applies to all or parts of the following states: Alabama, Alaska, Arizona, California, Georgia, Louisiana, Michigan, Mississippi, New Hampshire, New York, North Carolina, South Carolina, South Dakota, Texas, and Virginia (42 U.S.C. 1973).

It would take the passage of the Voting Rights Act of 1965 before the majority of African Americans in the South would be able to participate wholly in the franchise. Once the VRA of 1965 was enacted and carried-out, the percentage of African-Americans casting their ballots in the South increased drastically. This implied that the stipulations of literacy tests, poll taxes, and other racially-inscribed acts of disenfranchisement played a crucial role in the non-voting trends of African Americans.

For over a century, from the passage of the Emancipation Proclamation in 1863 until the enactment of the Voting Rights Act in 1965, the majority of Southern Whites “opposed the enfranchisement of former slaves” (Laney, 2003, p. 2). These persons used fraud, brute force, lynching, blackmail of sharecroppers and other service-oriented jobs held by Blacks, and other blatant racist tactics to prevent them from participating in the democratic process, specifically voting, for fear of losing political power. From the enactment of the VRA in 1965 until the year 1988, there existed a large gap in the percentage of voter participation between Blacks and Whites. **Table 1** depicts the substantial impact of the 1965 VRA on Black voter registration rates in comparison to those of White voters in seven racially-segregated Southern states in 1965 and 1988. It illustrates that voter registration among Blacks increased by an average of 44% by 1988 (Grofman et al., 1992, pp. 23-24). Moreover, Georgia voter turnout by Blacks increased by 29.4%. Blacks only voted at 27.4% in 1965. This increased to 63.9% in 1988. This number was still less than that of their White counterparts.

**Table 1: Minority Representation and the Quest for Voting Equality**

	March 1965			November 1988		
	Black	White	Gap	Black	White	Gap
Alabama	19.3	69.2	49.9	68.4	75.0	6.6
Georgia	27.4	62.6	35.2	56.8	63.9	7.1
Louisiana	31.6	80.5	48.9	77.1	75.1	-2.0
Mississippi	6.7	69.9	63.2	74.2	80.5	6.3
North Carolina	46.8	96.8	50.0	58.2	65.6	7.4
South Carolina	37.3	75.7	38.4	56.7	61.8	5.1
Virginia	38.3	61.1	22.8	63.8	68.5	4.7

**Table 1** also illustrates the impact race has on voting trends in the South. Black Georgia residents voted 35.2% less than their white counterparts in 1965 (Grofman et al., 1992, pp. 23-24). By 1988, they still voted 7.1% less than Whites. Consequently, this creates validity for the power of race as it continues to be at the core of the franchise. More importantly, it forces one to examine racism as a factor in the disenfranchisement of Black in the American South.

### **The Black Experience: Race and Electoral Discrimination**

The slave went free; stood a brief moment in the sun; then moved back again toward slavery.  
—*W.E.B. Du Bois* (1935)

Many Blacks viewed the right to vote as an “American promise of equality” (Lansberg, 2007, p. 16). Seeking political power has been difficult for African Americans because of efforts to disenfranchise them. Such tactics contributed to the elimination of Black political participation and power in the South. In the Deep South, Black voting rights were minimal and their legal protections of these rights were non-existent (Lansberg, 2007, p. 1). The use of disenfranchising

tools like poll taxes, literacy tests, good moral character tests, and Constitutional interpretation were highly discriminatory and negatively affected the African American vote. They also had a harmful impact on the poor White vote and their political participation (Ducat, 2008, p. 1390).

Traditionally, racial discrimination in voting was addressed in federal courts but the federal courts continuously proved ineffective in eliminating racial exclusion at the ballot box (Ducat, 2008, p. 1390). With federal courts presiding over disenfranchisement cases, plaintiffs had to file lawsuits causing them to bear the financial burden. Blacks in the South were the poorest and most illiterate of the region and for the nation (Ducat, 2008, p. 1390). This made it simply impossible for them to seek legal protection from the federal court system. The enactment of the Voting Rights Act to end racial discrimination in voting caused the burden of proof to be shifted from the victims to the perpetrators (Ducat, 2008, p. 1390).

### **Racism**

“Of all the groups to whom suffrage has been denied in our nation’s history, none has struggled longer or suffered more in the attempt to win the vote than Black citizens” (Derman-Sparks & Phillips, 1997, p. 9). In order to remedy racism, “The very first thing we need to do as a nation and as individual members of society is to confront our past... We need to recognize it for what it is and not explain away, excuse it, or justify it. Having done that, we should then make a good faith effort to turn our history around so that we can see it in front of us, so that we can avoid doing what we have done for so long” (Derman-Sparks & Phillips, 1997, p. 9).

Derman-Sparks and Phillips (1997) define racism as “an institutionalized system of power...[that] encompasses a web of economic, political, social, and cultural structures, actions, and beliefs that systemize and ensure and unequal distribution of privileges, resources, and power in favor of the dominant racial group and at the expense of all other racial groups” (p. 7).

They suggest “racism equals racial prejudice plus institutional power” (Derman-Sparks & Phillips, 1997, p. 10). Racism is determined by how “individual, cultural and institutional policies and actions” impact people of color (Derman-Sparks & Phillips, 1997, p. 9). Racist relationships do exist and have become a staple in American society. It is a systemic web that causes deep levels of hurt that hinder societal shifts and growth.

Racism is prevalent in institutional, cultural, and individual spheres (Derman-Sparks & Phillips, 1997, p. 10). Institutional racism is embedded in “the mission, policies, organizational structures, and behaviors built into institutional systems and services” (Derman-Sparks & Phillips, 1997, p. 10). Cultural racism is based on the “beliefs, symbols, and underlying cultural rules of behavior that teach and endorse superiority of the dominant American culture (an amalgam of English and other western European cultures)” (Derman-Sparks & Phillips, 1997, p. 10). It “reflects the ideology of the dominant group with an identifiable structure and practice...and plays a critical role in socializing individuals to participate in and maintain institutional racism” (Derman-Sparks & Phillips, 1997, p. 10; Dominelli, 1992, p. 7).

Individual racism consists “of attitudes and behaviors that carry out and maintain the power relationships of racism” (Derman-Sparks & Phillips, 1997, p. 10). This form of racism goes beyond prejudices and stereotypes. It is further clarified as:

“An individual’s personal racial prejudices are transformed into racism by becoming linked to the power of societal systems...Because of this linkage,...prejudices [that] might otherwise be limited to hurtful and ugly behavior in...private encounters becomes a...destructive instrument with far greater scope.” (Derman-Sparks & Phillips, 1997, p. 10)

For the purpose of this dissertation, it is critical to understand the dynamics and interactions of these three forms of racism. It helps one to identify political strategies and practices as well as individual actions that contribute to racism. Furthermore, having the capacity

to identify these forms of racism helps one to classify and operationalize the constructs and dynamics of racism. Four principles that characterize the structural dynamics of racism include: (1) racism operates both overtly and covertly; (2) racism is based on a politically constructed concept of race; (3) the U.S. manifestation of racism is rooted in the development of capitalism and colonialism that Europeans cultivated in the New World; and (4) racism interacts in complex ways with sexism and classism (Derman-Sparks & Phillips, 1997, p. 11).

Davidson (1984) writes there are two specific barriers that limit the political participation of Blacks and other minorities and they include: 1) “barriers to actual registration and voting such as limited hours and locations for registration, dual registration requirements and other unnecessary complexities and lack of bilingual information and ballots;” and 2) “vote dilution mechanisms which make the votes of minority groups less effective than those of Whites” (p. vii). Disenfranchisement tactics discourage people from voting and create a distrust of the electoral process as a whole. The past practices of property laws, literacy tests, and poll taxes accomplished disenfranchisement for decades. Such rules and practices were not deemed discriminatory on their face but in fact discouraged potential voters from casting ballots (Davidson, 1984, p. 3).

As political representation is vital to the democratic process, it was imperative to evaluate the disenfranchisement of Blacks over the past two centuries. This chapter illuminated the historical exclusion of Blacks from the American political process. This text explicitly looked at the plight of Blacks and efforts made on their behalf to gain political power and equality in America. It specifically focused on the federal legislation of voting rights for and political representation of Blacks from the passage of the Emancipation Proclamation in 1863 to the enactment of the Voting Rights Act of 1965. More importantly, it solidified that race matters.



Lansberg (2007) claims there are three key factors that have contributed to the persistence of racial disenfranchisement even in the presence of Constitutional laws (p. 6). They are in the areas of voter registration, all-white electorates, and lukewarm efforts of nondiscrimination by the Federal government (Lansberg, 2007, p. 7). In some states like Louisiana, denial to register to vote was so extreme that registrars were being prosecuted for failing to discriminate against Blacks (Lansberg, 2007, pp. 6-7). Grandfather Clauses, poll taxes, and literacy tests contributed to the disenfranchisement of Blacks in Georgia. This has led to a need to better understand the political culture and voting history of Georgia.

## Chapter 3: Georgia

### Political Culture and Voting Rights

Give us the ballot, and we will no longer have to worry the Federal government about our basic rights.  
Give us the ballot and we will by the power of the vote write the law on the...statute books of the Southern states and bring to an end the dastardly acts of the hooded perpetrators of violence.  
Give us the ballot and we will fill our legislative halls with men of goodwill.  
Give us the ballot and we will place judges on the benches of the South who will do justly and have mercy.

—*Dr. Martin Luther King, Jr. (1957)*

The United States Constitution is significantly influenced by political culture. It is woven into the fabric of America. The United States Constitution intertwined with the constantly changing social and political issues of today is a direct reflection of society's history, values, treatment of its citizens' civil liberties, and efforts to preserve voting and property rights.

Using political culture as a basis for better understanding the “disabling constraints” or “structures that prevent individuals from active participation in decision-making processes” is essential to evaluating voting rights in Georgia given “the South's traditionalistic political culture which has viewed dimly political activity by non-elites” (Webster, 2007, p. 107).

### Political Culture

Other than race, political culture is an important factor in how access to the ballot has been determined and carried-out. A state's political culture is identifiable general attitudes and beliefs about the roles and responsibilities of government (Smith, Greenblatt & Mariani, 2008, p. 11). Daniel Elazar defines political culture as “the particular pattern of orientation to political action in which each political system is embedded” (Smith et al., 2008, p. 11). It is also termed as a widely shared set of political beliefs people have about themselves and their political way of

life. It is an aspect of politics that helps define people's preferences as it relates to governmental decisions and actions (Smith et al., 2008, p. 11). Political culture also conditions and determines how the context of public policy affects the political style—how they contemplate, decide and implement policies—of politicians and interest groups, and eventually defines the satisfactions of its population (Smith et al., 2008, p. 11).

Smith, Greenblatt and Mariani (2008) identify three types of political cultures – moralistic, individualistic, and traditionalistic. Moralistic political cultures “view politics and government as the means to achieve the collective good” (p. 12). “Their political culture reflects a desire to use politics to construct the best possible society” (Smith et al., 2008, p. 12). Individualistic cultures “view government as an extension of the marketplace, something in which people participate for individual reasons and to achieve individual goals” (Smith et al., 2008, p. 12). Individualistic states hold government responsible for providing the services that people want without intervening in their private matters.

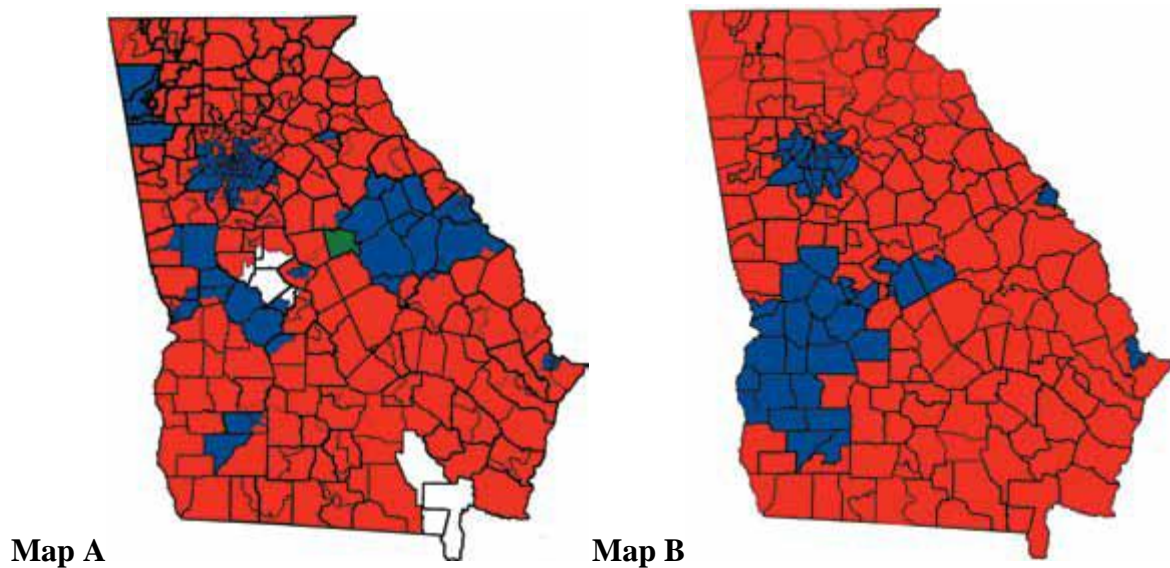
Traditionalistic states leave political affairs to the elite or upper-middle to middle-class persons because they believe the average citizen should not concern themselves with politics (Smith et al., 2008, p. 14). These states are fundamentally conservative and only seek to preserve society as it has been for generations. Traditionalistic states “believe that the larger purpose of government is to maintain existing social orders” to keep those atop the social order in dominant roles in politics to ensure power is only in the hands of the elites (Smith et al., 2008, p. 14). This political culture is very visible in rural, Deep South states such as Georgia, Mississippi, and South Carolina. Politics are significantly shaped by tradition and history in these states as depicted by **Figure 1** (Gray & Hanson, 2004, p. 24).



demonstrate Georgia's lack of interest in providing equal access to the franchise. Thus, it is not unrealistic to parallel other modern-day methods of voter disenfranchisement and intimidation to these historic occurrences. The voter photo identification requirement in the State of Georgia could be viewed as another means by which to disenfranchise this demographic as done prior to the VRA of 1965.

**Figure 2** below represent the Georgia State House (Map A) and Georgia State Senate (Map B) as of the year 2010-2011 (Georgia Republican Party [GA GOP], 2010).

**Figure 2: Georgia State House and Senate**



In the Georgia State House (**Map A**), Republicans held 114 of the 180 seats (GA GOP, 2010). Three seats were gained by the Republican Party in 2010 (GA GOP, 2010). Seats shown in White represent districts won by Republicans but vacated after the November 2010 elections (GA GOP, 2010). A Special Election was set for February 15, 2011 (GA GOP, 2010). Green represents an independent seat (GA GOP, 2010).

In the Georgia State Senate (**Map B**), Republicans held 36 of the 56 seats and gained one seat in November 2010 (GA GOP, 2010). With only 20 Democrats holding Senate seats, these maps clearly illustrate that political power is held by Georgia's Republican Party (GA GOP, 2010). Additionally, the two current U.S. Senators for Georgia are Republican White men, Saxby Chambliss and Johnny Isakson (Georgia State Senate [GSS], 2010). This trend has been consistent as there were 34 Republicans and 22 Democrats in the Georgia State Senate in 2009-2010 (GA GSS, 2010).

### **Voting Demographics of Georgia**

In 2010, the U.S. Census Bureau reported the total population of Georgia as 9,687,653. Of this number, the number of Whites was 5,787,440 while the number of Blacks was 2,950,435. It also reported that Georgia had a voting age population of 74.28% or 7,196,101 where 4,481,721 are White and 2,097,470 are Black. As a May 1, 2011, the Georgia Secretary of State Voter Registration System (GSSVRS) reported that out of 5,164,921 active voters, 1,514,305 were Black and 3,162,156 were White.

In 2010, Georgia's voting age population was 7,196,101. Only 5,164,921 voters were active meaning 2,031,180 were inactive or not participating in the voting process. For the July 20, 2010 election, the GSSVRS reported that 4,883,899 residents were registered to vote while only 1,078,054 voted. Therefore, 3,805,845 or 77.9% of registered Georgia voters did not vote.

In the November 2, 2010 election, the GSSVRS reported 5,032,354 residents were registered to vote while only 2,622,527 voted. This is a difference of 2,409,827 or 47.9% of

registered voters not voting. Between the two elections of 2010, an average of 62.9% of registered Georgia voters did not participate in the voting process.

### **Voting Trends by Race and Gender**

It was not until the November 2003 election that race identification on elections data was expanded beyond Black, White and unknown categories to include Asians and Hispanics. For the February 2008 Primary Election, Native Americans were added.

In 2010, the U.S. Census Bureau reported the total population of Georgia at 9,687,653 with 5,787,440 Whites and 2,950,435 Blacks. It also reported that 7,196,101 of these persons were 18 years old or older. There were two elections held in 2010. Within those elections (July and November), an average of 849,728 Black females; 599,174 Black males; 1,630,136 White females; and 1,440,558 White males were registered to vote.

For the July 2010 election, 0% of Black females and 20% of White females voted for Republican Party candidates. Black males represented 1% of the Republican vote while White males voted at 23% for the party. The Democratic Party candidates received 18% of the vote from Black females and 5% from White females. Only 5% of White males represented the Democratic Party compared to 15% of Black males. Given these percentages, Black females and males are more likely to support the Democratic Party while White females and males are more likely to support the Republican Party in Georgia. It also illustrates the traditionalistic political culture of Georgia that relies on race as a predictor of who will be in power. Traditionally, that has been White Republican men.

Georgia has been consistent within its traditionalistic political culture that enables the Republican Party to retain its constituency and power. Such attributes bring about a query and desire to better understand its intentions for passing HB 244. Georgia is also a state that has not wavered in its reputation for discriminating against and disenfranchising non-Whites. The next chapter will outline and explain the policy process method applied to examine Georgia's Photo Voter Identification Requirements and its contribution to sustaining power within the Republican Party and Georgia's traditionalistic political culture.



## **Chapter 4: Methodology**

### **Introduction**

This chapter aims to provide a description of the research methods used in this study to address questions concerning the Georgia Photo Voter Identification Requirement. This study is designed to examine the rationale for the implementation of the Georgia Photo Voter Identification Requirement through qualitative research methods, specifically policy analysis within a case study design. Qualitative research methods are best to analyze political phenomena and events by seeking to understand why they occurred. Additionally, it provides explanations that “constitute a deeper and more sophisticated understanding of politics and government” (Clark, 2012, p. 529).

Policy design theory is the best approach to understand the rationale for the implementation of the Georgia Photo Voter Identification Requirement legislation because it pays attention to social constructions and policy consequences while integrating normative and empirical research and theory. Policy design theory serves to “expand investigation into the social constructions that are ubiquitous in the policy field, especially the social construction of knowledge; further develop, empirically and theoretically, the relationship between policy design components and target populations; empirically investigate and theorize about the impact and policy designs on subsequent political voice, social movements, and other aspects of political processes; integrate empirical research and normative democratic theory; and integrate policy design more fully with other policy theories” (Schneider & Sidney, 2009, pp. 103-104). Most importantly, a qualitative research approach such as a case study is most appropriately used to answer the “why” and “how” questions as well as potentially give a new approach to evaluating voting legislation (Johnson & Reynolds, 2005, p. 85).

### **Research Questions:**

Voter fraud prevention has been the core argument of those who support the Georgia Photo Voter Identification Requirement. As a result, my research questions the rationale of the photo voter identification requirement in the state of Georgia. The following two research questions along with sub-questions are the focus of my study:

**Q1:** What were the intentions of implementing the photo voter identification requirement in Georgia?

#### **Sub-Questions:**

- A: What language was used to justify this photo voter identification policy to the public?
- B: What language and/or methods were used in the photo voter identification policy discourse among proponents?
- C: What language and/or methods were used in the photo voter identification policy discourse among opponents?

**Q2:** Is this the best method to prevent and/or eliminate voter fraud?

#### **Sub-Questions:**

- A: What types of voter fraud have been successfully prosecuted in Georgia?
- B: Who does it target?
- C: Who does it deny access in trying to reduce voter fraud?
- D: What other alternatives exist?

### **Qualitative Research:**

There are three purposes for research. They are to describe, explain and evaluate. Clark (2012) notes the essence of political research is asking and answering questions about our social and political world (p. 1). As a result, the research process rests both on asking interesting questions and on finding convincing answers to those questions posed (Clark, 2012, p.1).

Neuman (1994) credits qualitative research for its ability to illuminate social context to better understand the political world (p. 319). It is critical to depict the meaning of social and political actions or statements in the context that it appears (Neuman, 1994, p. 319). This is accomplished best when the qualitative researcher notes the order of events of the study while acknowledging the same events or behaviors can bear different burdens and benefits to particular social groups, ethnicities, cultures and historical eras (Neuman, 1994, pp. 319-20).

Neuman (1994) further asserts “Qualitative reports often contain rich descriptions, colorful detail, and unusual characters, they give the reader a feel of social settings” to better paint a picture of the social and political phenomena being analyzed (p. 317). This allows the researcher to interpret, critically analyze and critique the data to give another perspective to the political science field.

Another area central to qualitative research is hermeneutics. In hermeneutics, text is used for interpretation and such “interpretation can never be judged as true or false” (Neuman, 1994, p. 326). Interpretive social science or hermeneutics is a detailed examination of text that is considered the most important feature of qualitative analysis (Neuman, 1994, p. 61). For Schutt (2006) the focus is on the analysis of text that allows one to comprehend what politicians and policy makers, and the franchise “really thought, felt, or did” towards the enactment of Georgia HB 244 and SB 84 (p. 326). Essentially, the interpretation of the text is one research avenue of many that embraces a researcher’s ability to construct a reality through her or his analysis. It also acknowledges that researchers from different backgrounds and cultures will have different perspectives and conclusions (Schutt, 2006, p. 326).

There exist three modes for reading text. They are literally, reflexively and interpretively. According to Schutt (2006), to read text literally, the focus is on its literal content and form while

text read reflexively concentrates on how the researcher's orientation shapes their interpretations and focus (p. 328). When the researcher reads the text interpretively, he or she tries to construct their own interpretation of what the text means (Schutt, 2006, p. 328).

Overall, qualitative research allows for the interpretation of the political and social context of events, rationales, and legislation that are very effective in creating an understanding of the political phenomena as a whole, grasping subtle acts of discrimination, examining divergent information provided to the public and constituencies, and identifying tactics used to alter the perspectives of those historically negatively impacted by the implementation of this nature of voting legislation.

### **Case Study:**

This study employs a case study approach nested within the frame of policy analysis. A case study is defined as a "setting or group that the analyst treats as an integrated social unit that must be studied holistically and in its particularity" (Schutt, 2006, p. 293). Johnson and Reynolds (2005) also define a case study design as examining "one or a few cases of a phenomenon in considerable detail, typically using several data collection methods, such as personal interviews, document analysis, and observation" (p. 84). This research approach is "recognized as a 'distinctive form of empirical inquiry' and an important design to use for the development and evaluation of public policies as well as for developing explanations for and testing theories of political phenomena" (Johnson & Reynolds, 2005, p. 84).

Another logical function of the case study approach is that it examines "the particularity and complexity of a single case, coming to understand its activity within important circumstances" (Schutt, 2006, p. 293). Case studies allow the qualitative researcher to illuminate

episodes of nuance, note the sequence of event in the appropriate context, and depict a full picture of the case for the individual (Schutt, 2006, p. 293).

Most case studies are used to explore, describe or explain political and social phenomena. They create a space for the researcher to focus “on a single unit of analysis, such as a single group, neighborhood, bureaucracy, organization, community, family, or individual” (Schutt, 2006, p. 292). The state of Georgia is my case study. This qualitative research design of a case study housed in policy analysis allows me as the researcher to better understand the rationale, support and opposition surrounding the Georgia Photo Voter Identification Requirement. It also promotes flexibility and takes into consideration the elements of change and political culture.

Robert K. Yin supports the use of case study design because of its ability to “investigate a contemporary phenomenon within its real-life context when the boundaries between phenomenon and context are not clearly evident and in which multiple sources of evidence are used” (Schutt, 2006, p. 85). Most importantly, the design permits for a deeper understanding of why things happen. Chapter two presented a historical account of voting legislation that addressed the overt voter discrimination endured by Blacks especially in the American Deep South.

### **Policy Analysis:**

This study takes a policy analysis approach to the interpret the rationale of the decision to adopt and implement the Georgia Photo Voter Identification Requirement which required that a limited number of government-issued forms of photo identification be presented as the mandatory means to participate in the franchise. This form of analysis allots for the examination of the policy’s formulation and adoption while exploring the role of policy advocates and protesters. There are four specific skills needed to conduct policy analysis:

“Analytic skills are used to identify policy alternatives, to compare their relative merits, and to develop recommendations. Political skills are used to assess the feasibility of enacting specific policies, to identify power resources, and to develop and implement political strategy. Interactional skills are used to develop contacts with influential persons, to develop supportive networks, to build personal relationships, to identify old-boy networks, and use group process to facilitate one’s policy objectives. Value-clarification skills are used to identify moral considerations that are relevant not only to the shaping of policy proposals but also to political and interactional strategies that are used to obtain support for specific policies.” (Poppo & Leighninger, 1998, p. 29)

Public policy analysis design observes text and sets of practices to “be evaluated according to a variety of dimensions” (Schneider & Sidney, 2009, p. 104). Policy design theory is “used to guide important inquiry about public policy’s politics and social impacts” (Schneider & Sidney, 2009, p. 103). It highlights the characteristics of political and social process to understand the full range of consequences that stem from political and social phenomena (Schneider & Sidney, 2009, p. 105).

Policy design analysis is important because it forces scholars to examine who creates public policy and question how and why policy makers are able to make policy actors and the public accept their particular reasoning and arguments for the policy they chose to address the social or political problem. Policy design theory is both innovative and applicable because it “characterizes the elements of policy designs and then traces their effects (both material and interpretive) on target populations, arenas of participation, subsequent framing of the issue, mobilization, and on broader or longer term aspects of democracy such as equality, access, and political voice” (Schneider & Sidney, 2009, p. 109). Moreover, the policy design framework places the “so what” question “front and center” of the policy issue to provide a public good of social justice and democracy (Schneider & Sidney, 2009, p. 112). These aspects are critical to producing authenticated knowledge that can be replicated and used for future scholarly political and election administration research.

Policy design theory is embedded with “fundamental empirical elements of public policy” and is applied according to the following nine key facets:

1. Problem definition and goals to be pursued;
2. Benefits and burdens to be distributed;
3. Target populations (the “players” in the policy arena who receive, or may receive, benefits or burdens);
4. Rules (policy directives stating who is to do what, when, with what resources, who is eligible, etc);
5. Tools (incentives or disincentives for agencies and target groups to act in accord with policy directives);
6. Implementation structure (the entire implementation plan, including the incentives for agency compliance and resources);
7. Social constructions (the “world making,” the images of reality, the stereotypes people use to make sense of the reality as they see it);
8. Rationales (the explicit or implicit justifications and legitimations for the policy including those used in debates about the policy); and
9. Underlying assumptions (explicit or implicit assumptions about causal logics or about the capacity of people or of organizations). (Schneider & Sidney, 2009, p. 104)

In applying policy theory design approach, data analysis was employed to examine the rationale of the Georgia Voter Photo Identification Requirement. To execute this approach, this study uses multiple sources of documented evidence such as:

1. public government documents
2. legislative records and proceedings

3. inter-office memoranda
4. party-affiliated media resources (i.e., websites, articles and columns)
5. periodicals

Finally, primary sources in the form of scholarly literature from journal articles and books are used to analyze the rationale for the implementation of the Georgia photo voter identification requirement and to address the research questions posed earlier in this chapter.



## Chapter 5: Findings

As mentioned before, this dissertation is concerned with the rationale for the implementation of the 2005 Georgia Photo Voter Identification Requirement and its impact on Georgia voters. Policy analysis as outlined in Chapter four, Methodology, is applied to address each section here in Chapter five to show opposing and supportive arguments. This study analyzes whether the mandates of Georgia Law O.C.G.A. § 21-2-417 form the best means to address voter fraud without compromising equal access of all eligible Georgia voters to both the ballot and valid photo identification. It is concerned with whether or not any segments of the population are facing voting barriers that limit or cause them not to participate in the franchise. In addition, it examines the availability of Department of Driver Services (DDS) offices to 20 of Georgia's rural counties and considers the race, age, education and per capita income of residents living there. Moreover, the findings suggest that photo identification requirements like those of Georgia disenfranchise many eligible citizens because they create barriers to obtaining acceptable photo identification and access to DDS offices that provide free voter identification to those who meet the eligibility requirements of being indigent. More importantly, this research aims to answer the questions outlined in Chapter four.

As this chapter examines barriers, costs, benefits, and access to voting, it is important to note that "voting is of the most fundamental significance under our constitutional structure" (Sobel, 2009, p. 81). "The right to vote is a fundamental right" (Brewer, 2007, p. 195). The franchise is the most powerful entity by which the electorate impacts the legislative process but when it is manipulated, abused, denied or limited access to for political gain, democracy is no longer representative of the citizens nor does it preserve basic political and civil rights (Brewer, 2007, p. 195). Therefore, the exclusion of any population, large or small, from one of the most

fundamental rights is significant in nature and contradictory to a representative democracy (Sobel, 2009, p. 82).

Brewer (2007) argues that “The right to vote is not absolute as states have the authority to control voter qualifications and to regulate elections” (Brewer, 2007, p. 195). Such control can create practices that “prevent people from voting or having their votes counted” (Tokaji, 2006, p. 691). Historically, specifically in Georgia, literacy tests, all-white primaries, Grandfather clauses, poll taxes, lynching, loss of homes and jobs, and other discriminatory and life-threatening measures have been taken by Whites to eliminate the Black vote. These practices to remove the political influence of non-Whites contribute greatly to the maintenance of a political system that dismisses the value and needs of those persons who are not the majority. Georgia’s historic and consistent record of discrimination and disenfranchisement is undeniable. Some recent evidence lies in its system for identifying voters by race. Until 2003, if one was not White or Black, he or she was classified as “other.” This is a clear depiction to those who are not White or Black that their race is irrelevant or minimal. Moreover, Blacks were only identified to assist in acquiring data concerned with the pre-clearance requirements of Section 5 of the VRA of 1965. This is beneficial to Georgia. Also, by only classifying persons as White or Black, Georgia’s focus on minimizing the value of minority individuals is illuminated. In other words, Georgia is limited in racial tolerance and its attitude towards race; and it has made minimal efforts for enfranchising minorities and respecting political diversity.

Identifying the Blacks from the Whites is also beneficial to a state with similar political history as Georgia because it identifies political parties. “It is uncontested that a substantial majority of Georgia's Black voters vote Democratic, and that all elected Black representatives in the General Assembly are Democrats” (*Georgia v. Ashcroft*, 539 U.S. 461 (2003)). “Republican

legislators passed stringent ballot security legislation in Georgia requiring voters to show photo identification in order to have their votes counted” by using voter fraud prevention as a compelling-state interest (Tokaji, 2006, p. 690). The passage of this particular legislation challenges issues of racism, classism and ageism in voter registration and eligibility, absentee and provisional voting, and ballot security and access. With some elections being decided by “less than 3% of the vote,” it has created “an electoral battleground amongst political parties, advocacy groups, civic and civil rights organizations, and White and non-White voters” (Sobel, 2009, p. 82; Tokaji, 2006, p. 690).

These groups have brought litigation such as *Common Cause/Georgia v. Billups* (2005) and the *Democratic Party of Georgia v. Perdue* (2008). None of these cases have been successful for the plaintiffs. De Alth (2009) states that “For the most part, courts have found that the state’s interest in operating elections and preventing fraud (even as a prophylactic) outweighs any significant burden on the right to vote... and rejected arguments that voter ID laws are akin to a poll tax” (p. 190).

Furthermore, Alvarez, Bailey & Katz (2008) acknowledge that new voter photo identification requirements are seen as barriers to participation while some argue it maintains electoral integrity (p. 2). Such requirements have “created an undue burden on the right to vote” as it waives photo voter identification requirements for absentee ballots (Brewer, 2007, p. 208). This is contradictory and controversial as there is evidence of “cases of voter fraud related to the casting of absentee ballots that have been noted” (Rotenberg, Coney, Suilleabhain, & Capiro, 2005, p. 4).

As power shapes policy, the maps on page 34 clearly depict the Republican Party possessing solid political power in Georgia. Policy in general is the action or inaction of

government. In the case of Georgia Law O.C.G.A. § 21-2-417, policy was created to address an election problem, voter fraud, that was non-existent in the state. Georgia is a traditionalistic state that believes power should be maintained by the elites. This elitism has shaped this particular voting legislation. As a result of implementing such an extreme voter identification statute, Georgia has become a case study to determine the state of democracy in voting procedures.

### **Problem: Georgia Photo Voter Identification Requirement**

A problem is defined as an issue which warrants remedy or correction. In this case, Georgia Law O.C.G.A. § 21-2-417 or HB 244 could possibly disenfranchise historically marginalized populations due to issues of voter access and ballot integrity that have not been proven to have been compromised through in-person voting. As HB 244 has been legitimized on the basis of voter fraud prevention, both voter fraud and suppressed voter participation by registered voters in Georgia remain unproven. The real issue is access to the franchise and the non-existence of documented efforts to increase voter participation of Georgia residents especially those in the minority. Electoral participation in the United States is the lowest in the world and significantly lower in southern states. There is a need to increase voter participation on a bipartisan basis. Unfortunately, this legislation has become a political battle instead of one that aims to seek and maintain democracy.

Each state, including Georgia, which passed stringent voter photo identification laws were under Republican-controlled legislatures where Democratic legislators unanimously stood in opposition (de Alth, 2009, pp. 187-88). During the time these types of bills were passed by Republican-controlled legislatures, Democratic governors in those states vetoed the legislation (de Alth, 2009, pp. 187-88). Fortunately for Georgia's legislators, their governor at the time was also a Republican. This resulted in a debate that became "contentious and politically polarized as

most of the proponents of voter IDs are Republicans, and most of the opponents are Democrats” (Pastor et al., 2008, p. 4).

The main concern with photo voter identification is whether or not it disenfranchises eligible voters who do not have the six forms of government-issued photo identification or if the requirement will create barriers to acquire them. Moreover, if barriers are created to obtain proper identification, the question becomes will eligible voters be deterred from participating in the electoral process?

As aforementioned, in a study conducted by Pastor et al. (2008), 98.8% of registered voters in Indiana, Maryland and Mississippi had valid photo identification to vote (Pastor et al., 2008, p. 3). In Indiana, a state whose voting requirements are identical to Georgia’s, “only 0.3%” of registered voters lacked necessary photo identification (Pastor et al., 2008, p. 3). This study did not include eligible voters who were not registered. The researchers did admit that “there are still serious problems in the way which the ID laws have been drafted or applied that might have the effect of reducing voter participation, particularly of certain groups” (Pastor et al., 2008, p. 3). More importantly, the study suggested that state legislatures identify “new ways to construct an ID system that will assure ballot integrity while attracting new and more voters” (Pastor et al., 2008, p. 3).

Several estimates were made to determine the number of Georgians who would not have valid and/or acceptable forms of photo voter identification before and during the pre-clearance process. Former Republican Governor Sonny Perdue estimated “300,000 state residents lacked ID” in 2005 (Campos, Atlanta Journal Constitution, 2005). Conversely, the U.S. DOJ claimed that an “extremely small” number of voters did not have the required forms of photo voter

identification where “blacks were more likely to have an ID than whites” when it decided to clear “Georgia’s 2005 voter ID law under the Voting Rights Act” (Pastor et al., 2008, p. 4). Thus, one could infer that at least 300,000 Georgia citizens that could be eligible to vote lacked proper identification at the time the law was passed. This poses burdens for the voters who lack identification and benefits for the politicians that these voters would not vote for.

### **Benefits and Burdens**

Benefits and burdens can be received from public policies. When it comes to politics, elected officials can gain political capital by delivering benefits to their constituents or advantaged groups (Schneider & Sidney, 2009, p. 106). They usually justify their political decisions and actions as serving the common good. Burdens, on the other hand, usually punish those who are considered societal deviants and politicians justify their actions towards this group in the same way (Schneider & Sidney, 2009, p. 106). Just as done in the past, the non-elites are ostracized and their voices become silent due to a lack of political power and presence. Again, this is all done with the intentions of serving the greater good of society according to politicians and elites.

Positively constructed or majority groups “receive beneficial policies with high levels of discretion, short implementation chains, and strong provisions, in the sense that actual material benefits are allocated” (Schneider & Sidney, 2009, p. 107). Negatively constructed groups, contenders, and deviants “receive policy designs that distribute burdens often with deceptive, fear-based rationales” (Schneider & Sidney, 2009, p. 107). There are low levels of discretion, long implementation chains such as bureaucracy, red tape and paperwork, and hollowness where the actual material benefits lag behind statements of the goals (Schneider & Sidney, 2009, p. 107). This has resulted in poor or indigent Georgia residents who are qualified to vote having to

complete forms of indigence that admit to lacking dignity and money. In this context, the voters are being punished and humiliated for being poor or unable to afford the mandated forms of photo identification in order to exercise their “free” and fundamental right of voting.

Conversely, others citizens are not made to feel like “criminals” when the only “crime” of the non-elites is that they are “poor.” Many elites believe that minimizing the political voices of the non-elites is the best policy for the majority when it is probably the worst because it creates a greater dependence of the minorities on the government, federally, state-wide and locally. “Some research has shown that providing punishment to deviants will result in greater path dependence than policies that occasionally provide beneficial policy to persons constructed as deviants – criminals” (Schneider & Sidney, 2009, pp. 107-108). Unlike deviants, “criminals” or the poor, there are those who benefit from restrictive voting legislation like Georgia Law O.C.G.A. § 21-2-417. Such barriers to the franchise could deter eligible voters from casting their ballots.

### **Benefits**

Benefits are concerned with who receives advantages resulting from the legislation. There are several advantages to enacting legislation such as HB 244. It provides access to documented constituents through voter registration records. This benefits political candidates and parties because it informs them as to who lives in the community of interest through legal documentation of drivers licenses. It legitimizes citizenship of native-born and naturalized persons. The requirements of the mandate also benefit politicians because it classifies individuals’ status as citizens or non-citizens and identifies who is eligible to vote.

Civic organizations can also benefit from legislation because candidates seek their endorsements and their membership pool can include eligible voters. In addition, civic groups

consist of like-minded people promoting social advocacy that can easily be identified by the political candidates and the constituency.

The most important benefit of this legislation is that it could possibly prevent voter fraud and increase voter participation. Supporters of instituting the voter photo identification requirement, such as the American Center for Voting Rights Legislative Fund, a GOP front-group that worked to bring the issue of voter fraud to the forefront, was concerned with protecting the right to vote by ensuring that “those who vote do so legally” (American Center for Voting Rights Legislative Fund, 2005). The group has questioned the State Board of Elections’ lack of performing follow-ups “on the applications that they receive to verify if that person’s information is correct or whether that person even exists” (American Patriot Journal, 2005). They argue that the board solely depends on the honesty of the person completing the registration forms (American Patriot Journal, 2005).

With the passage of the Help America Vote Act (HAVA) in 2002, the authority to set standards for how ballot security would be addressed and implemented was given to the states. The support for “stricter” voter registration and identification laws has been a powerful in Georgia that has resulted in Republican-control of its State Senate and House. As Republicans maintain political power in the state, they have used the criminal issue of voter fraud for political gain by establishing a “state of emergency” against it causing public fear amongst voters who are already their constituents. Recall in Chapter 3, the majority of Georgia voters are White and vote for the Republican Party.

The standards of HAVA 2002 simply “required some form of ID, such as a photo ID, current utility bill, bank statement, paycheck, or government document” (de Alth, 2009, p. 187). Georgia’s interpretation of these standards extends far beyond those required by HAVA 2002.



Republican elected officials in Georgia have been garnering political control of the state especially following the enactment of Georgia Law O.C.G.A. § 21-2-417 and HB 244. This legislation was passed by legislators based on the notion of a high percentage of voter fraud in Georgia that simply did not exist. Proponents for the Georgia's Photo Voter Identification law contend that it will decrease voter fraud. For opponents of this law, voter fraud is not an issue, but a tool necessary for Georgia State Legislature to disenfranchise Blacks and the poor who mainly vote Democratic.

At this point, the only clear beneficiaries of Georgia House Bill 244 and its legislation are Georgia Republican politicians and their constituencies. By passing HB 244 political candidates and incumbents are better equipped to target those who have mandatory voter photo identification through the DDS database. For platform purposes, he or she can better shape the issues they address during their campaigns to say what their constituents want to hear. Most importantly, Georgia Republican politicians are better set to maintain political power because their non-constituents are less likely to meet the voter photo identification requirements needed to vote in Georgia. Thus, the requirement was beneficial for Georgia Republicans and they did not promote it as such.

### **Burdens**

In the case of Georgia's photo voter identification requirement, the voter bears the burden. The citizens of Georgia are burdened by the inconvenience, time, cost and barriers to access the ballot. The burden of obtaining and maintaining proper identification necessary to vote varies from person to person based on political identification, social status and legality. Communities, counties and the state are also impacted by this legislation as their resources increase in demand, specifically tax dollars to supply free voter photo identification cards for

those who are deemed indigent. Civic organizations are responsible for distributing the correct voting information, providing voter education, and funding advocacy measures to ensure they operate within the legal confines of the franchise. The Secretary of State's Office had the responsibilities of realigning its structure, creating and distributing updated voting materials, and training state and county administrators such as poll-workers and poll-watchers. Most apparent, the Democratic Party is concerned with a decrease of voter participation by its constituents and the opportunity to actually increase voter fraud that did not exist before because only citizens who vote in-person are required to show valid photo identification when absentee voters are not.

Since 2005, the debate about voter photo identification requirements has circulated throughout the political circuits of Georgia and has even received national attention. Opponents against the mandate argue that it violates the 14th Amendment on the basis of unequal treatment of voters who chose to vote in person and not absentee. The 1964 Civil Rights Act is considered violated because the “law disqualifies voters based solely on whether they have government-issued photo identification, even if they are personally known to election officials or their signatures match the one on their official voter registration card” (American Civil Liberties Union [ACLU], 2005). They also claim it violates the 1965 Voting Rights Act because it results in “the denial of voting rights to African American and Latino voters” (National Association for the Advancement of Colored People [NAACP], 2005). Advocates against this measure maintain that it goes against state law because it “creates an entirely new set of voting qualifications beyond those specified in the Georgia Constitution” (NAACP, 2005).

According to a study conducted by the Brennan Center for Justice at The New York School of Law, a non-partisan public policy and law institute, “36% of Georgians over the age of

75 do not have a driver's license" (Wrenn, 2005, p. 6). The same study found that African Americans have driver's licenses at half the rate of Whites, and the disparity increases among younger voters (Pawasarat, 2005, p. 1). The study noted that "only 22% of Black men age 18-24" had a valid driver's license (Pawasarat, 2005, p. 1). This group has historically been marginalized when it comes to accessing and participating in the franchise. Requiring government-issued identification from this group only further perpetuates this fact.

The implementation and existence of such requirements like the mandatory voter photo identification limits the number of acceptable forms of government-issued photo identification and causes certain persons to be treated unequally within the confines of the law established to alleviate voter fraud and mishaps within the elections process. The problem is deeper than photo identification and voter fraud prevention.

The Secretary of the State at the time of the requirement's enactment, Democrat Cathy Cox, strongly disapproved of it and the Republican Party's "unfounded justification" of voter identification fraud at Georgia voting polls (Cox, 2005, p. 1). Concerning the picture identification requirement, Cox said, "I cannot recall one documented case of voter fraud during my tenure as Secretary of State or Assistant Secretary of State that specifically related to the impersonation of a registered voter at voting polls" (Cox, 2005, p. 1). Cox further diminished the notion of voter fraud by writing, "Our state currently has several practices and procedures in existence to ensure that such cases of voter fraud would have been detected if they occurred, and at the very least, we would have complaints of voters who were unable to vote because someone had previously represented himself or herself as such person on that respective Election Day" (Cox, 2005, p. 1).

Cox further dispels the voter fraud argument and deepens the premise that the photo identification requirement is a measure of voter intimidation and disenfranchisement by noting:

House Bill 244 is (1) unnecessary, (2) creates a very significant obstacle to voting on the part of hundreds of thousands of Georgians, including the poor, the infirm and the elderly who do not have drivers licenses because they are either too poor to own a car, are unable to drive a car, or have no need to drive a car, (3) very unlikely to receive pre-clearance under the Voting Rights Act by the Department of Justice, (4) violates Art. II, section I paragraph I of the Georgia Constitution by adding a condition on the right to vote that is not contained in the constitution and (5) imposes an undue burden on a fundamental right of all citizens, the right to vote, in violation of both the state and the federal constitutions. (Cox, 2005, p. 1)

There remained concerns that the new law would suppress the votes of racial minorities, the poor, disabled, and those living in retirement communities, assisted living facilities, and in rural areas. In 2007, it was reported that there was “150,000 Georgians over the age of 70 who do not have government-issued photo identification, and one in eight Americans do not have a driver's license” (LaBolt, 2007). Although Georgia authorizes free photo IDs for those who cannot afford them, it only has 56 locations in 159 counties where people can get this photo identification, and Atlanta, one of America's largest cities, is not one of them (Fox News Atlanta, 2005). This strategic planning directly disenfranchises poor, elderly, rural and disabled voters who are unable to travel such distances. Georgia does not have a public transportation system that serves rural areas.

In addition, the National Association for the Advancement of Colored People (NAACP) is more than concerned “that the burden of Georgia's photo identification requirement will fall most harshly upon minority, elderly and poor voters, and prevent many from exercising their right to vote and to participate in our democracy” (NAACP, 2005). Laughlin McDonald, Director of the ACLU Voting Rights Project in Atlanta at the time of the legislation's passage, insisted “that efforts of discrimination through the use of so-called ballot security programs have become

frequent since the passage of the Voting Rights Act of 1965” (ACLU, 2005). These programs are invariably presented as good government measures necessary to prevent voter fraud, but far too often they are actually designed to suppress minority voting—and for nakedly partisan purposes” (ACLU, 2005).

Furthermore, McDonald (2007) claimed that the identification requirement is problematic for three reasons. Minorities are less likely than non-minorities to have photo IDs, there is no evidence that the new identification requirement is needed to reduce fraud and the identification requirement provides another opportunity for aggressive poll officials to single out minority voters and interrogate them, asking humiliating questions (McDonald, 2007).

Voter identification laws are considered as modern-day rebirths of historic voter discrimination by attempting to validate deterring and barring persons from the polls for a lack of mandated identification or the inability to obtain such. More to the point, it only favors those of the Republican Party in Georgia. In 2008 General Election, over 3,000,000 Georgia voters cast ballots and of that number, Democratic candidate at the time, Barack Obama, still did not receive enough votes to turn Georgia into a blue state (GA SOS, 2008). The Georgia Secretary of State, Republican Brian Kemp, reported that 52.2% of Georgia voters cast ballots for Republican John McCain (GA SOS, 2008). Only 47.0% of voters supported now President Barack Obama (GA SOS, 2008).

In studies conducted by Barreto, Nuño, and Sanchez (2009) and Vercellotti and Anderson (2009), voter identification requirements burdens voting and have a disparate impact on minority voters (Sobel, 2009, p. 82). Barreto et al. (2009) found that “minority voters are significantly less likely to have driver’s licenses, and are less able to bear the costs of getting them or state IDs, and hence are burdened in voting” (Sobel, 2009, p. 82). The study also reported that about 80%

of Black voters had valid photo identification with their full legal name on it when they voted in the 2002, 2004, and 2006 elections compared to 85% of White likely voters in Indiana (Sobel, 2009, p. 82). As a result, about 20% of Black and 15% of White voters lacked the proper identification needed to cast a vote in person under the Indiana law (Sobel, 2009, p. 82). Vercellotti and Anderson (2009) provide similar evidence and highlight that voter photo identification laws have a negative impact on Hispanic and lower-income voter turnout (Sobel, 2009, p. 82). The “evidence of a negative impact of ID requirements on lower-income persons suggests that, while race per se may not be a factor, the high concentration of African Americans among lower socioeconomic groups may have similar results” (Sobel, 2009, p. 83).

Many have termed legislation that requires a government-issued photo ID to vote as the “second great disenfranchisement” (de Alth, 2009, p. 189). Others have compared it to a poll tax or fee to vote, but political science research has shown that the more barriers placed on potential voters that the less likely they are to vote (de Alth, 2009, p. 189). Overall, voter photo identification laws are more likely to deter Democratic segments of the electorate such as the poor, minorities, elderly and urban voters (de Alth, 2009, p. 189). These voters are less likely to drive and more likely to lack proper identification and the money or resources to obtain it (de Alth, 2009, p. 189).

The Elections’ Day process lacks clear and concise procedures that give too much discretion to states and as a result, leads to biases, prejudices and the inaccessibility to the constitutional right to vote owed to each citizen. Political partisanship impacts the fundamental right to vote; and the enactment of this legislation creates an entirely new set of voting qualifications.

### **Target Populations: John Tanner & Hans von Spakovsky in Cahoots**

Target populations are those “players” impacted by the policy. These persons or groups, including the citizenry, politicians, constituents and civic organizations may receive benefits or burdens from the legislation. "As the general public, decision makers, and members of the target groups themselves feel the effects of policy or observe them," public policies can reinforce social images or stereotypes (Schneider & Sidney, 2009, p. 108). The way in which benefits are distributed among target groups influences the degree of political voice they exercise (Schneider & Sidney, 2009, p. 108).

Target populations have various levels of social and political power that positively and/or negatively impact them (Schneider & Sidney, 2009, p. 106). There are four types of social constructs that characterize target populations, advantaged, contenders, dependents, and deviants (Schneider & Sidney, 2009, pp. 106-107). Powerful groups with positive images are the advantaged population while powerful groups with negative images are contenders. Powerless groups with positive images are dependents and deviants are powerless groups with negative images. This section is most concerned with the power of the advantaged or elites.

Currently, the most prominent concern for minority voters is voter identification requirements. Southern states, specifically Georgia, made great strides and contributions to excluding African Americans and White Democrats from equally participating in the franchise. In order to better understand the rationales for this specific law on voting, its legitimacy must be addressed in the context of target populations such as the indigent, elderly, disabled, and minority voters.

This section investigates whether or not the political partnerships, corruption and manipulation structures steered the incorporation of voter fraud prevention-centered policies into

Georgia's electoral system. It is concerned with the magnitude of political power held by John Tanner, Chief Voting Rights Section of the Civil Rights Division of the U.S. Department of Justice, and Hans von Spakovsky, a Commissioner on the Federal Election Commission in a recess appointment by President George W. Bush, at the time Georgia's Voter Photo Identification Requirement was passed. These two men monopolized the outcome of Georgia's elections returning them to the same state they were in before and during the 1960s, especially "given its historical plight of racism, racial discrimination, and voter disenfranchisement" (Percival, 2009, p. 176). They power-balled Georgia's pre-clearance process to institute the strictest voter identification requirements in the nation.

Results show that White Georgia Republican elected officials' attitudes are strongly in favor of this new policy. It also alludes to the fact that most African Americans in Georgia classify themselves as Democrats. This makes them a prime target to be disenfranchised by Republicans who want to maintain their political power in the state as they have done for decades.

### **John Tanner**

On October 30, 2007, Dr. Toby Moore, a political geographer for the Voting Section of the U. S. Department of Justice from 2000 to 2006, gave testimony at the Oversight Hearing on the Voting Section of the Civil Rights Division of the U. S. Department of Justice, before the Subcommittee on the Constitution, Civil Rights and Civil Liberties Committee on the Judiciary governed by the House of Representatives (Moore, 2007, p. 1). He served as the geographer for this division specializing in the demographic, geographic and statistical analyses during Indiana's enactment of its photo identification requirement legislation in 2005. This was also during the time Georgia sought to obtain pre-clearance through the DOJ from 2005 until 2006



for its current voter photo identification requirement (Moore, 2007, p. 1). He also categorized ‘the South’s sad racial history’ as a catalyst to John Tanner’s “spontaneous and off-the-cuff remarks” such as Blacks are more likely to have photo identification than Whites that were “unfortunately for minority voters, unfortunately for the DOJ...actually a fair example of his approach to truth, facts, and the law” (Moore, 2007, p. 1). Moore (2007) attributes the successful pre-clearance of voter identification legislation to John Tanner’s allegiance to the Republican Party by testifying, “Broad generalizations, deliberate misuse of statistics, and casual supposition were used to disguise this legislation adequately enough to pass pre-clearance” (p. 1).

Moore’s (2007) testimony focused on the process the Voting Rights Section of Civil Rights Division of the U.S. Department of Justice used to analyze or failed to analyze the impact of that law on minority voters (p. 2). He characterized the Georgia legislation’s passage as a direct result of “Tanner’s mismanagement of the Voting Sections” in his efforts to appease the “political appointees who promoted him and those who would now protect him” (Moore, 2007, pp. 1-2). Moore (2007) felt the enactment of the 2005 Georgia law was a bad idea by stating,

“At the same time, I would point out that even by the standards of subsequent voter ID laws, the 2005 Georgia law was a nasty piece of legislation. No state endeavoring to pass a photo ID law now is considering the kind of draconian restrictions the Department of Justice endorsed in Georgia in August of 2005. Voter ID laws tend to get lumped together in the public discussion, but they in fact vary widely, in the array of IDs allowed, the availability of fail-safes such as affidavits, and in efforts to make the IDs available to all voters. As the federal judge in Georgia rightly pointed out in enjoining the law, Georgia did not make free IDs available to all voters, lacked facilities for distributing the IDs, and had done little to make the voting public aware of the requirements. The decision to loosen the rules on absentee ballots – almost universally seen as more susceptible to fraud than voter impersonation – and inflammatory statements by the bill’s sponsor regarding black voting called into question the motives behind the requirements.

Personally, I think that the impact of the laws, both on alleged voter impersonation and on disenfranchisement, is frequently overstated. However, the preclearance in 2005 was not a judgment on voter ID laws in general, but a judgment on a specific piece of ID legislation, and history records that law was a bad one.

Those of us who were assigned to the case and who came to the conclusion that the state had not met its burden of proof were harassed, during and after the investigation. (p. 4)

Moore (2007) gave examples of the subpar analytical work the DOJ used and still uses to support its decision to clear Georgia Law O.C.G.A. § 21-2-417 (p. 4). First, the Brennan Center provided an analysis that found that rates of mandated identification ownership and race appeared to be weakly and negatively correlated (Moore, 2007, p. 4). Tanner fabricated a new version of what they submitted and took the unprecedented step of inserting language dismissing the analysis as “bizarre and offensive” while it was neither (Moore, 2007, p. 4).

When Sonny Perdue estimated that 300,000 Georgians lacked the required IDs, Tanner inserted into the staff memo language that suggested, without evidence, the governor was alluding to the state’s illegal immigrant population (Moore, 2007, p. 4). It was determined by University of Georgia Professors M.V. Hood, III and Charles S. Bullock, III that 305,074 or 6.04% of registered voters did not possess a valid driver’s license or state identification card (Hood & Bullock, 2007, p. 11). The professors also found that 106,522 of registered voters never received either forms of identification and 198,552 of the registered voters’ identification were expired, revoked or suspended (Hood & Bullock, 2007, p. 11).

Tanner deliberately misused racial data from Georgia Department of Driver Services (DDS) records by claiming that Blacks in Georgia were more likely than Whites to have valid photo identification (Moore, 2007, p. 4). The proper comparison, according to Moore, was to use citizen voting age population or CVAP that revealed only 28% of Blacks had proper identification (Moore, 2007, p. 4). This was less than Whites and dismissed by Tanner (Moore, 2007, p. 4).

Finally, Moore (2007) admitted that Federal Election Commissioner at the time, Hans von Spakovsky, was responsible for including this inaccurate and misleading data (p. 6). In an effort to please von Spakovsky, Tanner removed the proper analysis of these data and caused

potential damage to minority voters in Georgia (Moore, 2007, p. 6). This establishes evidence of a political relationship between Tanner and von Spakovsky.

### **Hans von Spakovsky**

Out of concern for “the nominations of four candidates for the Federal Election Commission (FEC),” Executive Director Michael Waldman of the Brennan Center for Justice contacted Dianne Feinstein, Chair of the Senate Rules and Administration Committee and Robert Bennett, Ranking Member of the Senate Rules and Administration Committee to voice his concerns about the nomination of Mr. Hans von Spakovsky (Waldman, 2007, p. 1). The core concern presented was “with Mr. von Spakovsky’s record of using federal government office to promote an agenda adverse to American voters” (Waldman, 2007, p. 1).

Von Spakovsky’s motives were questioned once he received the nomination to remain as an official FEC Commissioner in the DOJ’s Civil Rights Division and Election Assistance Commission for a full term. Many held that his motive was to advance partisan election goals and disenfranchise voters because of his inability to collect and dispassionately analyze data relevant to government action affecting elections (Waldman, 2007, p. 2). Two months after the passage of the photo identification law in his home state Georgia, which was subject to preclearance by his office, von Spakovsky published a law review article under the anonymous name “Publius” in the *Texas Review of Law & Politics* titled “Securing the Integrity of American Elections: The Need for Change” where he extolled the virtues of photo identification requirements and condemned voter fraud. In this article he states, “putting security measures in place—such as requiring identification when voting—does not disenfranchise voters and there is no evidence to suggest otherwise” (Publius, 2005, p. 278).

During the preclearance process, a detailed 51-page factual analysis of the voter photo identification law was submitted that highlighted the “retrogressive effect on racial minorities” (Waldman, 2007, p. 2). As von Spakovsky provided no confidence that the law would disenfranchise voters despite the data available at the time, “the decision regarding the photo identification law was predetermined to fit the prevailing ideology” (Waldman, 2007, p. 2).

Before receiving a recess appointment with the FEC in January 2006 by then President George W. Bush, von Spakovsky had been a longtime activist for voting integrity and a Republican appointee to the Fulton County Registration and Election Board that ran elections in Atlanta (Toobin, 2004). He was also a member of the Federalist Society that consisted of conservative lawyers and served on the advisory board for the Voting Integrity Project (VIP) in the 1990s (Toobin, 2004). VIP was founded by a member of the Virginia Republican Party and was “devoted principally to fighting voting fraud and promoting voter education” (Toobin, 2004).

Von Spakovsky was very influential when it came to politics, especially Georgia politics as he urged section heads to “overrule the career prosecutors and approve Georgia’s law” (Levitt, Weiser & Bradley, 2007, p. 1). He is also credited for causing “mass resignations of career prosecutors serving under him at the agency – including Joseph Rich, the head of the Department’s voting rights section,” pressuring “Paul DeGregorio, Republican Vice Chairman of the federal Election Assistance Commission, to drop objections to Arizona’s law blocking eligible voters from the polls without proof of identification and citizenship and . . . to cancel a research contract that sought to document whether or not voter ID laws disenfranchise eligible voters” (Levitt, Weiser & Bradley, 2007, p. 1). Moreover, von Spakovsky urged President Bush to not reappoint DeGregorio to the Commission and he was succeeded by Caroline Hunter,

former Deputy Counsel to the Republican National Committee (Levitt, Weiser & Bradley, 2007, p. 1).

As a consequence, von Spakovsky's confirmation faced intense scrutiny for supporting photo identification laws and "his efforts to further new policies, based on the unjustified fear of widespread voter fraud, that would disenfranchise low-income and minority citizens as well as students and seniors" (Levitt, Weiser & Bradley, 2007, p. 1). He wrote President Bush on May 16, 2008 to withdraw his nomination to be a Commissioner for the Federal Election Commission (von Spakovsky, Letter to President George W. Bush, 2008, p. 1).

Von Spakovsky was at the root of the problem. The reason the DOJ passed pre-clearance for photo identification requirements outlined in HB 244 in Georgia was because of von Spakovsky and Tanner being in cahoots and their loyalty to the Republican Party. These were significant figures who took on Georgia Republican Party's venture to maintain political power not only in Georgia, but nationally.

Voter fraud is difficult to detect and measure and Tanner and von Spakovsky were fully aware of this. The issue is the use of political power and partisan relationships to control the outcome of elections. By doing so, those who have traditionally and historically been denied or hindered access to the franchise have suffered and lacked a say in "who" leads counties, states, and this country. HB 244 was successful because of the political ploys and cahoots of John Tanner and Hans von Spakovsky that resulted in the Republican Party receiving the benefits locally and nationally.

In Georgia, it is important to consider the rules of the Georgia Photo Voter Identification Requirement, Georgia Law O.C.G.A § 21-2-417. It is necessary to examine allegations that this

policy may result in the disparate denial of minorities, the poor, elderly, and college students to the ballot.

## **Rules**

Rules are policy directives that answer who, what, when and how it will be carried out. This policy analysis evaluates the Georgia Photo Voter Identification Requirement and its effort to prevent voter fraud. Judicially, voter fraud is viewed as a compelling-state interest but politically, it has been the cause of continuous debate as Georgia has no documentation of in-person voter fraud.

Georgia House Bill 244 or Law O.C.G.A. § 21-2-417 was passed by a Republican-controlled Georgia legislature on March 31, 2005 and signed by former Republican Governor Sonny Perdue on April 22, 2005. Georgia's State Senate recorded 31 Republicans voting for the measure and 18 Democrats and two Republicans voting against it (Spencer, 2007, p. 641). In the Georgia State House, 90 Republicans and one Democrat voted for the law and 72 Democrats and three Republicans opposed it (Spencer, 2007, p. 641). The legislation amended Georgia's voting code mandating that government-issued photo identification be presented as a prerequisite for voting. This requirement was "absolute that one must show a government-issued photo ID, exclusive of all other forms of identification" in order to vote in Georgia (Brewer, 2007, pp. 193-94). Initially, there were 17 forms of valid voter identification. Karen C. Handel was Secretary of State during this time. She resigned in 2010 to run for the Governor of Georgia position on the Republican ticket. She was replaced by Republican Brian P. Kemp in 2010.

Some provisions were outlined as measures for a voter who arrived without one of these valid forms of identification. First, if one shows up to vote and does not have one of the acceptable forms of photo identification, he or she will be allowed to vote using a provisional

ballot. In most cases, the provisional ballot “will only be counted if the voter presents valid identification to the local board of elections within” 24 hours or two days (Pastor et al., 2008, pp. 3-4). Secondly, if one does not have one of the six forms of photo identification, they are recommended to go to the county registrar’s office or to any Department of Driver Services (DDS) office and get a “FREE Georgia Voter ID Card” (GA SOS, 2006). Senate Bill 84 provides for the issuance of voter identification cards at no cost to registered voters who do not have a driver’s license or state-issued ID card (GA SOS, 2006).

The first state to mandate photo voter identification requirements was Indiana in 2004. The Indiana Photo Voter Identification Requirement ordered “all voters who cast a ballot in person to present a photo ID issued by the United States or the State of Indiana” (Logan & Darrah, 2008, p. 2). States like Georgia, Florida, and Indiana require all voters to show photo identification, but they each differ in the types of photo identification that are permissible. For instance, Indiana and Georgia mandate the presentation of a form of valid government-issued, including federal, state and/or local photo identification. Florida, on the other hand, accepts photo debit or credit cards, buyer’s club cards, or any student identification cards (Pastor et al., 2008, p. 3).

HAVA 2002, Section 303, recommends “that all new registrants must show identification or provide proof of identification, either with their by-mail application the first time they show up to vote” (Alvarez et al., 2008, p. 2). Federal law permits a variety of voter identification including current utility bills, bank statements, government checks or pay checks, and other government documents showing the voter’s names and address. Since the passage of HAVA 2002, states like Indiana and Georgia have legalized and implemented additional identification requirements to cast a ballot in an effort to prevent scant evidence of voter fraud (Alvarez et al.,

2008, p. 2). Such measures have brought about concern for voter participation “because it mandated a direct fee to obtain a voter identification card, raising concern among many legislators who saw the law as an effort to suppress voting” (Brewer, 2007, p. 204). Another concern is the fact that Georgia’s photo ID requirement is limited to in-person voting “despite a lack of evidence of in-person voting fraud in the state” (Brewer, 2007, p. 204).

The original 2005 Georgia voter identification statute required voters to pay a fee for photo identification while limiting access to obtain it. After a court-ruling to overturn the requirement, the Republican Georgia legislature passed Senate Bill 84, signed by Sonny Perdue on January 26, 2006, required photo identification cards to be “provided free of charge and that every county have an office to issue IDs” (Pastor et al., 2008, p. 4). Challenges to Georgia voter photo identification laws have brought the courts into the debate with varying results (Pastor et al., 2008, p. 4). In 2007, “the Georgia Supreme Court dismissed a challenge to the state’s revised ID law and allowed it to go into effect in 2007” (Pastor et al., 2008, p. 4).

The Georgia voter photo identification was first analyzed in federal court under Equal Protection using strict scrutiny and the *Burdick* test because it is so strict. Justice Stevens accepted state interests of “election modernization, prevention of voter fraud, and safeguarding voter confidence” (de Alth, 2009, p. 191). He went on to claim that “the law imposed a special burden on a small number of voters but stated that the petitioners did not meet their heavy burden of persuasion required for a facial challenge to succeed” (de Alth, 2009, p. 191). Justice Scalia agreed with Justice Stevens that “the law was justified as a generally applicable, nondiscriminatory voting regulation, and that the court therefore should not attempt to weigh the burden on individual voters” (de Alth, 2009, p. 191). On the other hand, Justice Souter held that “the ID law imposed burdensome costs and fees, which are disproportionately likely to deter the



poor, the old, and the immobile” (de Alth, 2009, p. 191). As a result of these judicial stances, issues of voting barriers and low voter turnout for those traditionally disenfranchised arose. This is further explored in the next section.

### **Tools: The Photo ID Is Not Free**

Tools are incentives or disincentives for agencies and target populations to comply with a policy. Tools are critical to implementation, policy design, execution, and target populations. Some claim voter photo identification laws are simply latter-day resurrections of a historical collection of disenfranchising techniques, such as the poll tax and Grandfather clauses. Before this legislation, one could present 17 forms of qualifying voter identification to vote. Now, those without the mandated six forms of government-issued photo identification are not allowed to cast ballots although they are eligible and registered to vote. Poll workers are required by law to turn them away and offer provisional ballots. Voters must then return in 48 hours or two days with the mandated identification if they desire to have their vote counted.

If one has citizenship, residency, and met the age requirements they are constitutionally allowed to vote. In the case *United States v. Classic* (1941), voter fraud was the issue in a Louisiana federal election primary. In this case, the court ordered that the right to vote is one secured by the U.S. Constitution to those citizens and inhabitants of that state who are entitled to exercise the right (*United States v. Classic*, 1941). It also ordered the states to make all laws that are necessary and proper for carrying into execution the foregoing powers as included in the right to choose, secured by the Constitution, is the right of qualified voters within a state cast their ballots and have them counted (*United States v. Classic*, 1941). Under this pretense, many of the voters disenfranchised by the voter identification requirements are qualified voters. Using the government-issued photo identification as a requirement to remedy voter fraud creates unfair,

unjust and unequal obstacles for qualified voters who are denied access to voting—one secured by the U.S. Constitution—because they lack valid photo identification and/or do not have the means to obtain one even if it is free.

Vercellotti and Anderson (2006) theorize voter participation on the basis of cost-benefit calculus. This calculus assumes “that voters are rational, that they are aware of the costs and benefits of participating in an election, and they behave according to the relative comparison of the costs and benefits (Alvarez et al., 2008, p. 6). If it is too costly for them to participate in the franchise such as meeting registration requirements, enduring long lines at polling places, encountering inaccessible voting locations, and other similar factors, they will not cast a ballot on Election Day (Alvarez et al., 2008, p. 6).

Given Georgia’s history of being one of the nation’s greatest states for potential discrimination, many claim that Georgia’s photo voter identification requirement has “created an unconstitutional poll tax” (Brewer, 2007, p. 205). “A poll tax has been defined as the imposition of any material requirement on the voting process in order to discourage voting or to deflect the administrative costs of an election. The requirement need not be monetary or high value to run afoul of the prohibition, so long as the requirement is a material hurdle that the voter must overcome before exercising” his or her right (Brewer, 2007, p. 197). The costs of obtaining photo identification for those without them constitute an unconstitutional infringement on the right to vote under the 24th Amendment (Sobel, 2009, p. 82). Considering strict voter identification requirements as a poll tax prohibited by the amendment derives from the costs of obtaining the documents needed to procure identification (Sobel, 2009, p. 82). Poll taxes were used systematically to disenfranchise lower-socioeconomic and non-White citizens. The costs of obtaining background documents to attain a government identification card have a greater impact

on a particular set of citizens (Sobel, 2009, p. 82). Thus, strict voter identification requirements function similarly to poll taxes (Sobel, 2009, p. 82).

Many states, including Georgia, bypass allegations of poll taxes by offering voter identification cards for free. Even if the photo identification card is free, there is a cost to obtain it. Simply, it takes identification to get identification. For instance “a certified birth certificate may be required to obtain government-issued photo identification, but government-issued photo identification may be required to get a certified birth certificate” (Levitt, 2008, p. 8). It also costs time and money, with fees up to \$380 for a replacement certificate of naturalization (Levitt, 2008, pp. 8-9). Traveling to obtain and submit the necessary and proper paperwork the agency that issues the photo identification costs further time especially when a particular office only operates during government hours (Levitt, 2008, pp. 8-9). The costs and burdens are even greater for individuals with disabilities, of a lower-income status, elderly citizens, and those who reside in rural areas.

In ten of Georgia’s counties, Calhoun, Clay, Dougherty, Hancock, Macon, Randolph, Stewart, Talbot, Terrell, and Warren, the per capita income averaged \$15,180 (U.S. Census, 2010). The majority of residents in these counties are Black and only two counties have a Department of Driver Services (DDS) office (GA DDS, 2011). Georgia also has ten counties where Whites are the majority by at least 93% and the average per capita income for these counties was \$22,259 (U.S. Census, 2010). Moreover, only three of the ten counties have Department of Driver Services (DDS) offices (GA DDS, 2011). These factors illustrate that Blacks, Whites and the poor are being disenfranchised as a result of “unintended” consequences of the policy.

According to the Georgia Department of Driver Services (2008), “In order to be eligible for a free identification card, the voter must have no acceptable proof of identity to use when voting” (GA DDS, 2008). This means that one is only eligible for a free voter id card if they “qualify.” To qualify, one must sign an “Affidavit for Identification Card for Voting Purposes” form that “swears or affirms” they are eligible for a free card on the basis of having a desire to vote in a primary or election in Georgia, not have any other acceptable form of identification under O.C.G.A. § 21-2-417, being registered or planning to register to vote in the state, and not having a valid driver’s license (GA DDS, 2009). This form also requires a notarization that could bear a cost. Moreover, these persons must submit other forms of identification to prove identity, residency and citizenship to include but not limited to a certified birth certificate, military identification card, unexpired passport, certified naturalization documents, marriage license, divorce decree, utility bills from the past 60 days, bank statements, current valid rental contracts, paychecks, W-2 forms, State of Georgia or federal income tax return and school transcripts (GA DDS, 2009).

For those voters who already possess an “acceptable” form of ID, there was a cost associated with obtaining it. At the time Georgia adopted HB 244, the state legislature doubled the minimum costs to acquire a state-issued photo identification card (Brewer, 2007, p. 204). To obtain a Class A, B, C and M license or Identification Card in Georgia, one must pay \$20 for 5 years instead of \$10 or \$35 for 8 years (GA DDS, 2011). Veterans within 8 years of reaching or 5 years after turning age 65 can obtain honorary identification for free (GA DDS, 2011). In order to replace an identification card, one must pay a \$5 fee (GA DDS, 2011). Therefore, such voting requirements can be viewed as poll taxes because it requires voters to incur secondary documentation costs that are monetary expenses incurred while gathering certified

documentation of identity to obtain government-issued photo identification, a requisite to vote in Georgia (Brewer, 2007, p. 209). Because the costs vary, it impacts individuals differently. It is difficult to measure. It, unlike the 1890 legislation, is not a set fee with specific requirements that property taxes must be paid up-to-date. In this case, one must have specific government issued identification. Legislators did not identify the process or the cost to obtain the forms of identification needed to vote.

To bring a successful poll tax claim against a state voter identification law involves proving that the law imposes primary costs on the right to vote through fee and poverty affidavit requirements and imposes secondary costs on the right to vote by directly or indirectly forcing voters to incur documentation expenses (Brewer, 2007, p. 232). “Secondary costs are not directly imposed by the challenged regulation” but they are usually imposed as a result of overlapping regulations (Brewer, 2007, p. 197). Consequently, most voters do not attempt to obtain identification to vote because of the cost.

“Cumulative burdens” or “road blocks” that can cause difficulty obtaining an identification are a lack of transportation, distantly located licensing offices, inconvenient hours of operation, insufficient time to comply with a law before an approaching election, and/or inappropriate alternatives to the strict law, such as “unrealistic provisional ballots and highly sophisticated absentee ballots” (Brewer, 2007, pp. 235-36). In addition, such policies are aimed at dissuading political participation of historically-disenfranchised and non-traditional voters by instituting voting “road blocks” that negatively impact their socio-demographic constitutionally and financially even after they take advantage of the “free voter photo identification card” distributed at Georgia’s Department of Driver Services (DDS) offices throughout the state.

Several voters do not possess the limited forms of identification required by these voter laws. The majority of those who lack mandated photo identification are among politically vulnerable classes, mainly minority, indigent, and rural voters (Brewer, 2007, p. 205). In 2006, Georgia's Secretary of State Office issued a report indicating that 676,246 registered voters lacked government-issued photo identification (Brewer, 2007, p. 204). Nationally, 11 to 12 percent of voting-age Americans do not have the photo identification required by the strictest voter laws (de Alth, 2009, p. 189). This percentage is higher for senior citizens at 18%, African Americans at 25%, and low-income Americans at 15% (de Alth, 2009, p. 189). In addition, 7% of voting-age citizens do not have ready access to the citizenship documents necessary to acquire proper photo identification (de Alth, 2009, p. 189).

More importantly, De Alth (2009) found that photo and non-photo identification laws decreased voter turnout resulting in the disenfranchisement of 3 to 4.5 million voters in 2006 (p. 186). With scant to no evidence of voter impersonation fraud, this research suggests that states' interest in preventing fraud is outweighed by the burden on millions of voters and as a result, voter identification laws are unconstitutional (de Alth, 2009, p. 186).

Voter photo identification laws can impose unconstitutional poll taxes with a \$20 fee for a voter identification card, characterizing it as a financial and material requirement on the right to vote (Brewer, 2007, p. 208). A poverty affidavit or legal affirmation of indigence can cause embarrassment or create fear of perjury by voters who cannot afford the financial and material costs of voting and thus, they become unwilling to sign such documents or unable to make multiple trips to ensure that their votes are counted (Brewer, 2007, pp. 226-227). Moreover,

many voters who lack government-issued identification do not believe they are indigent but simply do not have the \$20 to \$35 to spend on voter identification (Brewer, 2007, p. 208).

### **Implementation Structure**

Implementation structure refers to how the policy will be carried out. Georgia's voter photo identification law was to be carried out by the Georgia Secretary of State's Office as authorized by the Georgia State Constitution. The policy was effective on September 13, 2007 to prevent future voter fraud. Karen C. Handel (2006-2010) and Brian Kemp (2010-2014), both Republicans, served as Secretary of State during the implementation and maintenance of the policy.

By requiring only six forms of government-issued identification and making unfounded claims of voter fraud, Georgia should be focused on the pursuit of administrative efficiency (Sobel, 2009, p. 81). Voter registration lists are critical to the integrity of the electoral process and returns the burden to the Georgia Secretary of States' Office. The lists are limiting because many states' voting laws prevent eligible voters from casting ballots unless their names and addresses precisely match the existing government registrants' lists.

Unfortunately, large databases usually house a multitude of typographical errors including maiden names for the married, married names for the divorced, transposed fields, improperly hyphenated compound names and nicknames (Sample, Politico, 2007). This problem is severe in nature as the "the Social Security Administration admits that 46.2 percent of submitted voter registration records fail to match its records" (Sample, Politico, 2007). Many state databases face the same problems. In 2004, New York City reported that 20% of 15,000 voter registration records did not match its state motor vehicle database due to typos alone

(Sample, 2007, Politico). This usually results in people who are on the rolls being removed without their knowledge (Sample, Politico, 2007). Florida, in 2004, purged 47,000 names from its registrant's lists that included several thousand people who were actually eligible to vote (Sample, Politico, 2007). This resulted in 22,000 African Americans and 63 Hispanics eligible voters being unknowingly being removed from the lists (Sample, Politico, 2007). Hans von Spakovsky's efforts to maintain ballot integrity contributed to this outcome. Moreover, the "discrepancy was vastly disproportionate to the population" and the state eventually ceased using the flawed lists (Sample, Politico, 2007).

The implementation and existence of such requirements like the mandatory voter photo identification has undemocratic consequences. First, such requirements will greatly reduce the number of registered voters of all races including poor Whites. Just as poll taxes did in the late 1800s and early 1900s, it furthers the gap of equal representation under the law between political parties, races and classes, discourages voter turnout and involvement because of costs to access the ballot, and maintains the nation's ranking of the lowest voter turnout in the world. It also reduces the level of trust members of minority groups have in the government, decreases the value citizens have in voting, increases the possibility of voter fraud even though there are stringent legal consequences for doing so, and perpetuates the South's reputation of disenfranchisement, racism and unequal protection under the law. Given the aspects of voter registration flaws in implementation, everyone will not be treated equally within the confines of the law and this tactic to alleviate voter fraud and mishaps within the elections process is only a "band-aid" measure. The root of the problem is deeper than implementation; it resides in the political power along party lines. As a result of Republican political power in Georgia, the implementation structure of HB 244 prevents voter registration before it begins. Federal and state



lawmakers have become distracted by voter fraud that does not exist and have employed rigorous voting requirements indefinitely.

### **Social Constructions**

One critical aspect of policy design theory is social construction. Social construction processes are essential to the “policymaking process, policy design, and policy impacts” (Schneider & Sidney, 2009, p. 106). It is concerned with the underlying understanding of the social world that places meaning-making at the center of humans’ interpretations of the world that create social reality and shared understandings of rules, norms, identities, concepts and institutions (Schneider & Sidney, 2009, p. 106). The policy design approach examines who constructs policy issues and how policy actors and the public accept particular understandings as “real” (Schneider & Sidney, 2009, p. 106). Moreover, social constructions consider how “groups, problems and knowledge then manifest themselves and become institutionalized into policy designs, which subsequently reinforce and disseminate these constructions” (Schneider & Sidney, 2009, p. 106).

House Bill 244 was sponsored by Republican Georgia House Representative Sue Burmeister of Augusta. Burmeister made the statement “if there are fewer Black voters because of this bill, it will only be because there is less opportunity for fraud” (Levitas & Cox, 2008, p. 14). She added that “when Black voters in her Black precincts are not paid to vote they do not go to the polls” (Levitas & Cox, 2008, p. 14). Such degrading comments reinforces society’s notion that Blacks do not desire to vote. The sacrifices Blacks have made to have equal access to the ballot have been compromised with one piece of legislation, Georgia House Bill 244 and Burmeister led the charge. It gives Blacks the impression that their votes do not count and they are being denied access to the ballot in Georgia. Ochs (2006) holds “the disenfranchisement rate

for Blacks is seven times the national average” (p. 81). More specifically, disenfranchisement in the United States “has given advantage to Republican candidates in every presidential and senatorial election from 1972-2000” whose constituents are primarily White (Ochs, 2006, p. 82).

### **The Black Vote in Georgia**

“The election tomorrow is a question of White supremacy.”  
—*Eugene Talmadge* (1946)

“Our criterion for success is not how many people we register... We feel that we are in a psychological battle for the minds of the enslaved.”  
—*Charles Sherrod* (1960s)

Georgia’s economy, like most Southern states, experienced hastened “urbanization, industrialization, and the decline of the power of the planter elite” during the 1940s (New Georgia Encyclopedia [NGE]: Civil Rights Movement, 2011, p. 1). Also during this time, the state ensured that “Black Georgians were effectively denied the vote, segregated in most areas of daily life, and subject to persistent discrimination and often violence” (NGE: Civil Rights Movement, 2011, p. 1). Southern communities were characterized by White racist voting where Whites shunned Black candidates and Blacks only won office when Black registration and turnout produced a majority Black vote (Foster, 1985, p. 186). As Blacks were not the majority, as today, they were forced to vote for Whites (Foster, 1985, p. 186).

The conditions forced Black leaders and organizations into action. In 1944, Dr. Thomas Brewer, a medical doctor in Columbus, Georgia, organized prominent Blacks to vote in the July primary (NGE: Civil Rights Movement, 2011, p. 2). His efforts were unsuccessful because all political parties only allowed Whites to vote in their primaries. Blacks chose to vote in Democratic races to alleviate White supremacy in the South, especially Georgia. White supremacists used a plethora of disenfranchising tactics like violence, fraud, systematically

challenging the qualifications of Black voters, and purged them from electoral rolls to maintain power (NGE: Civil Rights Movement, 2001, p. 2).

By 1946, the Democratic Primary was no longer limited to White men and Black registration throughout the state increased to more than 125,000 within a matter of months (NGE: Civil Rights Movement, 2011, p. 2). This was the highest registration total for Blacks in any southern state during this time (NGE: Civil Rights Movement, 2011, p. 2). As a result, local Black leaders in larger cities like Atlanta, Macon, and Savannah were able to use Black voting power to elect more moderate officials that were forced to appoint Black policemen, “although they were stationed in a segregated unit and could not arrest Whites,” and spend more on Black schools to maintain the Black vote and their office (NGE: Civil Rights Movement, 2011, p. 2; NGE: Atlanta Negro Voters League (ANVL), 2011, p. 1).

Although all-White primaries were legally eliminated and there was a surge in Black voter registration after 1946, it remained critical “to form a united front to maximize the strength of the Black vote” (NGE: ANVL, 2011, p. 1). By 1949, “African Americans represented at least 25 percent of Atlanta’s registered voters” (NGE: ANVL, 2011, p. 1). Organizations like the Atlanta Negro Voters League (ANVL) became active. It was a bipartisan political organization comprised of well-known Black civic, religious, and business leaders with a mission to ensure that “Black Republicans and Democrats worked together in selecting desirable candidates for city and county elections...to keep racist Whites out of city hall” (NGE: ANVL, 2011, p. 1). To ensure that racist Whites were not elected, the organization created a “screening committee, which acted as the brokerage house for the Black vote with individual White candidates” (NGE: ANVL, 2011, p. 1). This allowed “Black leaders put forward their concerns and demands to

White politicians in the hope of finding a candidate who was sympathetic to their needs” (NGE: ANVL, 201, p. 1).

In addition, the grassroots organization continued to register African Americans to vote, educate them on election procedures, and take them to the polls on Election Day to vote for candidates endorsed by the screening committee (NGE: ANVL, 2011, p. 1). Overall, the League “delivered Black votes in exchange for modest benefits from the White moderates” they helped to elect, such as “new and improved lights, streets, garbage collections, sidewalks, and school buildings,” improved treatment of Black citizens by city officials, and minimized discriminatory courtroom treatment (NGE: ANVL, 2011, p. 2). Moreover, it “transformed itself from an endorsing organization to one that recruited Black candidates for elections” (NGE: ANVL, 2011, p. 2).

With a drastic and impactful increase in Black political participation and power, “Segregation was tightened up in the statute book, state officials sought to outlaw” organizations like the ANVL and NAACP, “and vigilantes targeted local Black leaders” (NGE: Civil Rights Movement, pp. 2-3). “Brewer, who had received death threats from a local Klan member, was assassinated on a Columbus street in 1956 by an unknown assailant, and the group... was disbanded” (NGE: Civil Rights Movement, 2011, pp. 2-3). Unfortunately, “the passing of federal civil rights legislation in 1964 and 1965 did not” end the civil rights struggle in Georgia (NGE: Civil Rights Movement, 2011, p. 5). The legislation barely addressed problems of the many poorer Black city precincts, “where issues of squalid housing, unemployment, and police brutality dominated” (NGE: Civil Rights Movement, 2011, p. 5).

The Voting Rights Act of 1965 was narrowly interpreted by the Supreme Court and political inequality for non-Whites continued in Georgia (Shapiro, 1993, p. 550). As “civil rights leaders sought to effectively mobilize Black voters,” Black Georgians represented less than 10% of the total number of elected officials in the state by 1980 (NGE: Civil Rights Movement, 2011, pp. 5-6). A few “notable successes included the elections of Andrew Young to the U.S. Congress in 1972 from a majority-White district, and Maynard Jackson” as the first Black mayor of a major southern city, Atlanta, in 1973 (Foster, 1985, p. 186). As of the 2010 election in Georgia, 13 Black senators were elected to the Georgia State Senate. Of 56 districts, Black State Senators represent districts, 2, 10, 12, 15, 22, 26, 34, 35, 38, 39, 43, 44, and 55. Each Black State Senator represented is a member of the Democratic Party. Blacks represent less than a quarter of the Georgia State Senate at 23%.

It is clear that Georgia continues to maintain its legacy of minimizing the Black vote and political power. From 1941 until the present, Black representation in the state is minimal and inadequate compared to the state’s population. Comments like those made by Burmeister contribute to this imbalance of political power in the state for non-Whites. She and her social constructions of Black people, who have sacrificed their lives and livelihood to participate in the franchise, have played a key role in the continued “barriers and burdens” placed on them to vote and lead in Georgia. Furthermore, Burmeister, like other Georgia Republicans, is not afraid of voter fraud; they are afraid of the Black, Democratic vote.

### **Rationales: Voter Fraud**

“It doesn’t make it harder to commit fraud; it just makes it harder to vote.”  
—*Laughlin McDonald* (2007)

Rationales are explicit and implicit justifications and legitimations for a policy. Georgia Republicans explicitly passed HB 244 to prevent voter fraud. Georgia Democrats implicitly voted against the bill because it is “Based on the unjustified fear of widespread vote fraud, that would disenfranchise low-income and minority citizens as well as students and seniors” (Brennan Center for Justice, 2006). While “preventing voter fraud, Georgia’s legislature simultaneously loosened restrictions on absentee voting, an area of voting where fraud had been proven” (Brewer, 2007, p. 204).

The central claim for the enactment of the Georgia Photo Voter Identification Act was to stop voter fraud and restore public confidence in elections (de Alth, 2009, pp. 185-86). Others argue the Act would “have a disproportionate effect on many African American voters who preferred to vote in-person out of historical distrust of the electoral system” (Brewer, 2007, p. 204). As states are responsible for elections, many have chosen to address voter fraud by enacting photo identification requirements. This is not foreign behavior for Georgia Republicans. They sought political gain to maintain power and reiterate Georgia’s traditionalistic political culture.

On its face the requirement is not discriminatory and voter fraud was the technique used to authenticate the requirement. Ultimately Georgia HB 244, particularly O.C.G.A § 21-2-417, was upheld on the basis of preventing voter fraud and is now commonly referred to as the Georgia Voter Photo Identification Requirement.

Voter fraud has been the core argument of those who support the Georgia Voter Photo Identification Requirement. The Illinois State Board of Elections defines voter fraud as “a clear intent or action aimed at depriving a voter of his [or her] right to vote or falsifying actual votes cast” (Illinois State Board of Elections). It also outlines “some common methods of fraudulent activity” as:

- Vote buying, offering money or gifts to a voter vote for a specific candidate;
- Chain balloting, taking a previously marked ballot from the polls and passing it to a voter entering the polls;
- Ghost voting, voting under the name of a deceased person, a fictitious name, or a nonexistent address;
- Altering the figures on the tally sheet during the counting of ballots. (Illinois State Board of Elections)

Most individuals define voter fraud as fraud committed by a voter. They also conclude that voter fraud is done intentionally “in an attempt to defraud the election system” (Levitt, 2007, p. 4). It is “often conflated, intentionally or unintentionally, with other forms of election misconduct or irregularities” including “improper purges of eligible voters, distributing false information about when and where to vote, stuffing of ballot boxes, and tampering with registration forms” (Levitt, 2007, p. 4). While acknowledging and accepting that preventing voter fraud and properly verifying a voter’s identity are compelling-state interests, voter fraud was not a problem in Georgia elections. There are a lot of claims and allegations of voter fraud, but Secretary of State Cathy Cox reported no cases of voter impersonation throughout her ten year tenure (Brewer, 2007, p. 209). Thus, data do not support the claim of voter fraud in Georgia. With no evidence of voter fraud from the top state election official or cited evidence of the same from the Georgia legislature, the Republican-controlled legislature proceeded in its enactment of the law.

Proponents of Georgia's Photo Voter Requirement argue that "dead" voters have been casting ballots since 2000. More than "5,412 votes were alleged to have been cast by deceased voters" but a follow-up report clarified that only one instance had been substantiated, and this single instance was later found to have been an error...in which Alan J. Mandel was confused with Alan J. Mandell" by the Brennan Center (Levitt, 2007, p. 14). The Center has "collected allegations of fraud cited by state and federal courts, bipartisan federal commissions, political parties, state and local election officials, authors, journalists, and bloggers" (Levitt, 2008, p. 1). During the *Crawford v. Marion County* (2007) case, the Brennan Center (2007) examined 250 citations concerning voter fraud and concluded that "The evidence of in-person impersonation fraud was strikingly sparse" (Levitt, 2008, p. 6).

In the Criminal Division of the Public Integrity Section of the United States Department of Justice's (2005) Election Fraud Prosecutions and Convictions Ballot Access and Voting Integrity Initiative Report for October 2002 to September 2005, Georgia had no cases brought forth for election fraud of any sort (pp. 245-254). Of all 50 American States, 95 persons were charged; 55 were convicted; 8 cases were dismissed by the U.S. Government; and 5 acquitted. Again, Georgia did not have any cases of election fraud during this time period. The states that had cases of voter fraud were Alaska, Colorado, Florida, Illinois, Kansas, Kentucky, Louisiana, Missouri, New Hampshire, North Carolina, Pennsylvania, West Virginia, and Wisconsin (Criminal Division of the Public Integrity Section of the United States Department of Justice, 2005, pp. 245-254).

In Georgia, there is no evidence of voter impersonation at the polls (de Alth, 2009, p. 189). This was a misperceived risk of voter fraud. Most cases of voter fraud "involve absentee ballots or registration drives" (de Alth, 2009, p. 189). Voter photo identification requirements are



inadequate to prevent fraud in absentee ballots or election fraud perpetuated by officials that does exist (Sobel, 2009, p. 83). Claims of voter fraud are pre-textual in nature and the Georgia legislature has shown no evidence that HB 244 prevents it. As a result, this legislation was an unnecessary means to remedy a non-existent problem. Furthermore, “voter fraud involves extraordinary criminal risk, including prison and fines, for almost zero personal gain” (Sample, Politico, 2007). There are severe criminal sanctions for voter fraud. For “each act of voter fraud in connection with a federal election risks five years in prison and a \$10,000 fine, in addition to any state penalties” (Levitt, 2007, p. 7).

Proponents for voter photo identification claim that voter fraud drives honest citizens out of the democratic process, breeds distrust in government, and deposits fear in voters that their legitimate votes will be outweighed by fraudulent ones (Ansolabehere & Persily, 2008, p. 1738). Ensuring integrity of elections serves one or two purposes; to increase or decrease voter turnout rates (Lott, 2006, p. 4). Lott (2006) suggests there are three positions on the use of photo voter IDs on voter participation rates (p. 4). These stances are as follows:

1. Discouraging Voter: With little to no fraud to eliminate, the regulations discourage legitimate voters from voting.
2. Eliminating Fraud: If there indeed substantial fraud and that the regulations eliminate it, the measured voter participation rate will decline.
3. Ensuring Integrity: Greater confidence that the election is fair and that votes will be counted accurately encourages additional voter participation. (Lott, 2006, p. 4)

Voter photo identification requirements are supposed to address a real problem but there is no problem. Impersonation fraud is an extremely unlikely and unsubstantiated occurrence that can be prevented adequately without requiring a photo ID (Ansolabehere & Persily, 2008, p. 1738). While proponents claim fear of voter fraud discourages voting, there is little evidence that

the presence or absence of photo identification requirements affects voters' level of confidence in the electoral process (Ansolabehere & Persily, 2008, p. 1738). Increased allegations of voter fraud and stolen elections may instead mobilize some partisans and discourage others from voting (Sobel, 2009, p. 84). Lott (2006) found that "voter participation rates, with and without photo IDs, indicate that adopting photo IDs produced a drop in voter participation of 1.5 percentage points, a statistically insignificant change" (p. 7). In addition, the study revealed that African Americans and Hispanics' voting rates were lower relative to Whites (Lott, 2006, p. 9). One significant finding revealed that African American women aged 50 to 64 voted drastically less once photo identification became a requirement to vote (Lott, 2006, p. 10).

In addition, Alvarez et al. (2008) found that living in the South decreases the odds that an individual votes, while being older, more educated, and wealthier increases the odds an individual turns out to vote (p. 17). It also noted "being a minority increases the probability of turning out to vote, conditional on being registered to vote" (Alvarez et al., 2008, p. 17). Most significantly, the study confirmed "Increasing the strength of voter identification requirements, on average, decreases the probability of turning out to vote" especially for registered voters with lower levels of educational attainment and/or income (Alvarez et al., 2008, p. 17 & 22).

The call for in-person photo identification requirements were based on imprecise and inflated claims of voter fraud (Levitt, 2007, p. 6). Photo identification requirements have a disparate impact on eligible citizens no matter the race. It is a barrier to the right to vote. There are several other forms of state and federal identification documents that are just as appropriate to establish eligibility to vote. The State of Georgia could accept federal and state issued checks,

employment identification documents, state college or university identification, utility bills, sworn affidavits, or public assistance identification.

Instead, Republicans are infatuated with the notion that the lower the voter turnout, the more votes for their party, whereas higher voter turnout increases votes for the Democratic Party. In a 2007 article in the Houston Chronicle, Royal Masset, the former political director for the Republican Party of Texas, expressly linked spurious voter fraud allegations to photo identification laws and their expected partisan impact on legitimate voters (Levitt, 2007, p. 6). Masset also states that “requiring photo IDs could cause enough of a drop-off in legitimate Democratic voting to add 3 percent to the Republican vote” (Levitt, 2007, p. 6). For Republicans, it is an “article of religious faith that voter fraud is causing” them to lose elections according to Masset (Levitt, 2007, p. 6).

### **Underlying Assumptions**

Underlying assumptions are rationales about the capacity of people that are used as a basis for policy creation. For example, Georgia Republicans assumed there was a voter fraud issue in Georgia and enacted a voter photo identification requirement. The reality is that some people will attempt to vote illegally but voter fraud is proven to be non-existent for in-person voting in Georgia. The underlying assumption that voter fraud exists in Georgia is false and faulty causing a decrease in voter turnout by specific groups and this contributes to the maintaining of the power by the Republican Party in Georgia. Consequently, the restrictive voter photo identification requirement in Georgia disenfranchises historically-disadvantaged social groups such as African Americans, Latinos, other minority groups, elderly persons and the poor because

most do not identify with the Republican Party. These requirements bear a financial burden on eligible voters of all races including poor Whites (Levitt, 2009, p. 9).

Ansolahehere and Persily's (2008) national study found "Democrats tend to express greater concerns about voter theft and Republicans express greater concerns about voter fraud" (p. 1747). More than 50% of Republicans considered voter fraud to be very common (Ansolahehere & Persily, 2008, p. 1747). Additionally, 53% of Republicans said they thought Voter Impersonation occurs somewhat often or very often (Ansolahehere & Persily, 2008, p. 1747). The study also determined that 16% of Blacks, 21% of Hispanics, and 27% of Whites felt fraud was very common whereas 24% of Whites and Blacks, and 17% of Hispanics considered vote theft to be very common (Ansolahehere & Persily, 2008, p. 1748). The underlying assumptions for Blacks and Hispanics are based on fraud being committed by elections officials. For Whites, the underlying assumption is that voter fraud will be committed by other voters.

Voter participation is impacted by levels of educational attainment. Individuals with high school diplomas are twice as likely to vote as those without one (Alvarez et al., 2008, pp. 13-14). Other factors like age and socioeconomic status contribute to voter turnout. For instance, "Young people, the less educated, and low-income individuals are less likely to vote than their respective counterparts (de Alth, 2009, pp. 192-93). Individuals with greater household incomes also have a higher rate of voter participation (de Alth, 2009, p. 200). Whites vote at higher rate than racial minorities whereas women vote at slightly higher rates than men (de Alth, 2009, pp. 192-93). More significantly, the "South has consistently lower turnout than other regions of the country" (de Alth, 2009, pp. 192-93). States with more stringent voter photo identification laws have a significantly stronger negative impact on less educated and low-income voters that causes them to have a 2.8 percentage point decrease in voter turnout compared to states with non-photo

identification laws (de Alth, 2009, p. 193 & 200). Additionally, voters who are young, Blacks and/or Hispanic are more likely to be asked for photo identification even if the state does not legally require it (de Alth, 2009, p. 194). This form of discrimination contributes to voter intimidation and lower voter turnout by these populations. Thus, voter identification laws “impose a real burden on voter turnout” (de Alth, 2009, p. 202).

Alvarez, Bailey, & Katz (2008) found “evidence that the stricter voter identification requirements depress turnout to a greater extent for less educated and lower income populations, for both minorities and non-minorities” (p. 1). Studies of this nature suggest that voter photo identification requirements may reduce voter turnout by 2-3 percentage points (Sobel, p. 81, 2009). Given the fact that the voting population closely divided along political and racial lines, the disenfranchisement of even 2% of the population will more than likely distort the electoral process (Ochs, 2006, p. 81).

In conclusion, the requirement to present a valid form of photo identification to vote is not only unconstitutional, but unnecessary. It is not a deterrent of voter fraud but it is another barrier to prevent those who have limited avenues to participate in the democratic process to be continuously and unconstitutionally disenfranchised. The State of Georgia has historically withheld the franchise of the Black electorate and has afforded itself yet another opportunity to continue in this tradition, the voter photo identification requirement. This mode of inequality will only create further racial divide and tension across the state and smother the voice of ‘the People.’ More importantly, “Political majorities maintain political influence by undermining the impact of minorities, securing social control and legitimacy through formal and informal institutions” (Ochs, 2006, p. 82). The United States has “played an integral role in constructing pervasive differences of interest based on race and enduring hierarchies through various public

policies, and racial cleavages have been institutionalized in the U.S. through law and ordered spaces” (Ochs, 2006, p. 82).

## **Chapter 6: Conclusion & Recommendations**

This policy was chosen for research to highlight the tradition of racism, to erase notions of voter fraud that have no evidence of existing in Georgia, and to reduce the burden on eligible Georgia voters. More specifically, the area of research illuminated the rationales of the voter photo identification requirement implemented by the State of Georgia, particularly as it relates to young, elderly, poor and minority groups. It is considered to be a reasonable means of identification and voter verification, especially given the notion of voter fraud in the United States. Moreover, the events of the 2000 and 2004 elections have caused all American voters and non-voters to distrust every aspect of the voting process from ballot casting to verifying ballots cast. These factors directed further analysis of the Emancipation Proclamation, the 13th, 14th, 15th, 19th, 24th Amendments, the Voting Rights Act of 1965, and the concept of voter disenfranchisement.

A voting law of this nature is not out of character for the state of Georgia. It is a state that has maintained its system of elitism and disenfranchisement through the ballot for more than a century. It will continue to do so if pre-clearance measures are not re-evaluated and actually carried out. Administrators have learned the loop-holes of voting and civil rights legislation and are using this knowledge to their advantage for partisan gain to deny access to the franchise of those they feel are not worthy of a political voice. Photo voter identification has no universal forms and is determined by each state. It “does not prevent voter fraud and does not appear to be designed to prevent voter fraud” (Ochs, 2006, p. 89). Even more, the regulations discourage

legitimate voters from voting because they are afraid of fraud that does not exist (Lott, 2006, p. 4).

Equal and fair elections are necessary for the right to vote in the United States to maintain democracy liberty, freedom, and self-expression (Ochs, 2006, p. 89). The franchise is not equally protected or accessible for those in the minority in states like Georgia. Universal suffrage should be the greatest compelling governmental interest instead of preventing voter fraud in Georgia that does not exist. When all citizens are allowed to freely and equally take part in the decision-making process, they acquire a vested interest in their communities and the greater good of society. This results in groups with strong community ties (Ochs, 2006, p. 89). Also, “those who participate in the democratic process have a greater investment in the resulting decisions, and more importantly, an investment in preserving that process” (Ochs, 2006, p. 89). Lastly, voting creates a community of citizens invested in one another and this benefits the majority as well as the minority (Ochs, 2006, p. 89).

Georgia’s recent voting legislation is consistent with its historic mistreatment of non-elites and should be revamped to increase the voter participation of eligible voters who are not yet registered. Racism “has been shown to be a significant factor in the adoption and persistence of disenfranchisement policies” (Ochs, 2006, p. 83). Southern conservatives gathered at state constitutional conventions and codified White backlash against Black suffrage to eliminate every Black vote (Shapiro, 1993, p. 537). These conventions were called to adopt legislative voting barriers such as literacy tests, poll taxes, and Grandfather clauses to disenfranchise as many Blacks as possible without regard for federal amendments and acts that prohibited the denial of equal protection or the right to vote on account of race (Shapiro, 1993, p. 537). The effort was

extremely successful and resulted in weakened to no political strength of Blacks, Black suffrage or political mobilization.

Since 1863, “the public chose to close its eyes to well-documented racial discrimination in every aspect of life, including voting” by Northern and Southern Whites (Landsberg, 2007, p. 21). National attitudes towards Blacks contributed greatly to barriers being created against their advancement. The chair of the Montgomery County, Alabama Board of Registrars exclaimed that Blacks must be denied the vote because voting would lead to social equality and Black domination (Landsberg, 2007, p. 22). He made the statement, “It is necessary to keep the Negro from voting, for voting would lead to social equality. They would take over the power in the state. The White people are never going to give them this power” (Landsberg, 2003, p. 23).

Federal judges have played a key role in voting legislation. Most of Georgia HB 244’s success has been because “judges base their decisions on untested empirical assumptions about political behavior” (Ansolabehere & Persily, 2008, p. 1758). As aforementioned, court cases brought forth against Georgia Law O.C.G.A. § 21-2-417 were unsuccessful for opponents of the legislation, but *Common Cause/Georgia v. Billups* (2005) did note “the lack of in-person fraud in the state as well as the failure of the new law to address proven fraud in absentee voting and voter registration”(Brewer, 2007, p. 205). It also agreed that “hundreds of affidavits of would-be voters affected by the law,” lent support to the plaintiffs’ claim of voter disenfranchisement (Brewer, 2007, p. 206). The court also reasoned that “by making the law exclusively applicable to in-person voting while simultaneously loosening the requirements for absentee voting, the state left the field wide open for voter fraud by absentee voting” (Brewer, 2007, p. 206). Noting again the lack of evidence of in-person voter fraud in the state, “the court held that the state’s



interest in preventing voter fraud was important, but reasoned that the law's photo ID requirement did not rationally serve that interest" (Brewer, 2007, pp. 207-08).

Smith and Sobel (2009) argue that there should be a constitutional standard that must be met before government officials can demand voter identification (p. 82). This standard should require substantial evidence voter fraud to be presented before such legislation can even be considered. Congress can assist in this effort by doing the following:

- Ban inaccurate and partisan pre-election purges of the voter rolls.
- Block discriminatory voter ID laws that could disenfranchise millions of eligible citizens
- Create robust protections for voter registration that ensure that eligible citizens get on the rolls.
- Enact other real protections for voters and the integrity of our elections, like those in the pending Deceptive Practices and Voter Intimidation Act, Count Every Vote Act, and Voter Confidence and Increased Accessibility Act. (Brennan Center for Justice, 2007)

Next, pre-clearance states like Georgia should continue to permit an expansive range of acceptable state and federal identity documents including current utility bills, bank statements, paychecks, and other government documents. Moreover, provisional ballots should be counted unless election officials can determine that the voter was not in fact eligible under state law to vote (Brennan Center for Justice, 2007). Thirdly, Georgia currently offers early voting throughout the state, but it should seriously consider Election Day registration that has been shown to increase voter turnout by four to five percentage points (de Alth, 2009, p. 192). The state can also alleviate the burden of voting for citizens by establishing an up-to-date database for verification of voters that frequently updates the status of registered voters. Finally, HB 244 should have endured a democratic process. This simply means that the citizens should have voted on this policy, the 2005 Georgia Photo Voter Identification Requirement. This would have dispelled the notion of disenfranchisement because of the electorate's capacity to fully

participate in the decision-making process on a decision that directly impacts them and their fundamental right to the franchise.

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