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The Forgotten Amendment and Voter Identification: How the New Wave of Voter Identification Laws Violates the Twenty-Fourth Amendment

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NOTE

THE FORGOTTEN AMENDMENT AND VOTER IDENTIFICATION: HOW THE NEW WAVE OF VOTER IDENTIFICATION LAWS VIOLATES THE TWENTY-FOURTH AMENDMENT

I. INTRODUCTION

On January 23, 1964, South Dakota became the thirty-eighth state to ratify the Twenty-Fourth Amendment, officially banning the use of the poll tax in all federal elections.1 At the certification ceremony, President Lyndon B. Johnson “hailed” the Twenty-Fourth Amendment and declared that “there can be no one too poor to vote.”2 With ratification, the five states that had required voters to pay a direct tax to participate in federal elections were no longer permitted to do so.3

Three years later, in Harman v. Forssenius,4 the Supreme Court held that a state is prohibited from imposing a material requirement upon voters who refuse to pay a poll tax because doing so would violate the newly enacted Twenty-Fourth Amendment.5 Since Harman, courts have largely neglected the Twenty-Fourth Amendment, instead relying on the Equal Protection Clause of the Fourteenth Amendment and the Voting Rights Act (“VRA”)6 as their main tools for removing what many thought to be the final barriers to the franchise.7

2. U.S. CONST. amend. XXIV §§ 1–2; Robertson, supra note 1, at 14.
3. Anti-Poll Tax Amendment Ratified by the States, CQ ALMANAC, http://library.cqpress.com/cqalmanac/cqal64-1304646 (last visited Nov. 23, 2013) [hereinafter Amendment Ratified] (noting that Alabama, Arkansas, Mississippi, Texas, and Virginia had poll taxes at the time the Twenty-Fourth Amendment was ratified).
5. Harman v. Forssenius, 380 U.S. 528, 532-34, 544 (1965) (holding that the Virginia requirement that a voter file a certificate of residence in lieu of a poll tax imposed a material requirement, violating the Twenty-Fourth Amendment).
In 2002, Congress passed the Help America Vote Act ("HAVA"). This statute requires voters who have never voted in "an election for Federal office in [a particular] State" to provide proof of identification when registering to vote by mail. Furthermore, many states have enacted voter-identification provisions stricter than the minimum required by HAVA.

Challenges to these voter identification laws on Twenty-Fourth Amendment grounds were largely unsuccessful. Courts have found that certain identification provisions imposed merely incidental costs. Since courts upheld identification laws enacted in Indiana, Georgia, Michigan, Arizona, and Missouri, other states have passed strict voter identification laws. These states include Kansas, Mississippi, Pennsylvania, South Carolina, Tennessee, Texas, and Wisconsin.

Part II of this Note will provide the historical background of the Twenty-Fourth Amendment and voter identification laws, and discuss the wave of recently enacted voter identification laws. Part III will argue that these newly enacted voter identification laws, which are stricter than those previously imposed, violate the Twenty-Fourth Amendment because they go beyond the incidental costs of casting a ballot and place material requirements on voters. This thesis will be proved in a number of ways. First, it will be demonstrated that the requirements for compliance with the new wave of identification laws impose real and, in some cases, substantial financial burdens on voters. Second, a look at the legislative history of the Twenty-Fourth Amendment reveals that its purpose, while partly addressing the
disenfranchisement of black voters in the south, was not so narrowly tailored as to exclude the broader goal of prohibiting state actors from imposing financial barriers to voting.\textsuperscript{18} Third, this Note will analyze how courts have validated the argument that the broader goal of preventing financial barriers to voting is the purpose of the Twenty-Fourth Amendment.\textsuperscript{19} Though often hesitant, courts have signaled a willingness to take a Twenty-Fourth Amendment approach to removing such barriers, especially in cases of strict voter identification laws.\textsuperscript{20} Finally, Part III will show that there is data to support the idea that disenfranchisement has been, and will continue to be, realized by the financial burden imposed by voter identification laws.\textsuperscript{21} Part IV will argue that, beyond applying the Twenty-Fourth Amendment to eliminate burdensome voter identification laws through the courts, states can apply a more practical approach to address the broader goals of the Twenty-Fourth Amendment by removing nearly all costs, direct or incidental, imposed by voter identification laws.\textsuperscript{22}

\section*{II. HISTORY OF THE TWENTY-FOURTH AMENDMENT AND VOTER IDENTIFICATION LAWS IN THE UNITED STATES}

This Part will present the history of the Twenty-Fourth Amendment and voter identification laws. First, it will discuss litigation challenging poll taxes prior to the ratification of the Twenty-Fourth Amendment;\textsuperscript{23} New Deal efforts to eliminate poll taxes;\textsuperscript{24} the ratification debates and eventual passage of the Twenty-Fourth Amendment;\textsuperscript{25} and challenges to poll taxes following ratification.\textsuperscript{26} Second, it will provide a history of voter identification laws, beginning with a discussion of the first wave of

\begin{enumerate}
\item See infra Part III.B.
\item See infra Part III.C.
\item See infra Part III.D.
\item See infra Part IV.
\item See, e.g., Breedlove v. Suttles, 302 U.S. 277, 280, 283 (1937) (holding that the poll tax is not an unconstitutional violation of petitioner's privileges and immunities or equal protection rights under the Fourteenth Amendment); Butler v. Thompson, 97 F. Supp. 17, 19, 25 (E.D. Va. 1951), aff'd per curiam, 341 U.S. 937, 937 (1951) (holding that the poll tax is constitutional under the Fourteenth and Fifteenth Amendments); see also infra Part I.A.1.
\item See Bruce Ackerman & Jennifer Nou, Canonizing the Civil Rights Revolution: The People and the Poll Tax, 103 NW. U. L. REV. 63, 71-75 (2009) (discussing the New Deal origins of the Twenty-Fourth Amendment); infra Part II.A.2.
\item See Ackerman & Nou, supra note 24, at 79-87; see also infra Part II.A.3.
\item See, e.g., Harper v. Va. Bd. of Elections, 383 U.S. 663, 666 (1966) (holding that Virginia's poll tax in state elections violated the Equal Protection Clause); Harman v. Forssenius, 380 U.S. 528, 533-34, 544 (1965) (holding that the Virginia requirement that a voter file a certificate of residence in lieu of a poll tax imposed a material requirement violating the Twenty-Fourth Amendment); see also infra Part II.A.4.
\end{enumerate}
voter identification laws, and the challenges to those laws. Next, this Part will examine the new wave of stricter voter identification laws, enacted between 2009 and 2012, and the challenges that have been raised to those laws.

A. History of the Twenty-Fourth Amendment

By the twentieth century, southern states had enacted barriers to voting specifically designed to block black voters from participating in elections. These barriers included property ownership requirements, literacy tests, and poll taxes. These requirements, while discriminatory in intent, were not explicitly aimed at any one particular group and, as a result, were "considered neutral and fair by the courts."

1. Pre-Ratification Court Action

There were numerous unsuccessful challenges to the poll tax prior to the ratification of the Twenty-Fourth Amendment. The two cases during this era were Breedlove v. Suttles, decided in 1937, and Butler v. Thompson, decided in 1951.

In Breedlove, the petitioner challenged a Georgia statute requiring male voters aged twenty-one to sixty to pay a one dollar poll tax. Petitioner argued that requiring some, but not all, voters to pay a poll tax violated both the Equal Protection Clause and the Privileges and Immunities Clause of the Fourteenth Amendment. The Court rejected the equal protection argument, holding that the Equal Protection Clause "does not require absolute equality," and the exceptions for women, minors, elderly, and the blind were reasonable. The Court also rejected

28. See Voter Identification Requirements, supra note 13 (listing Arkansas, Georgia, Kansas, Indiana, Mississippi, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and Wisconsin as states that have enacted, or tightened, voter identification requirements); see infra Part II.B.3.
30. Id.
31. Id.
34. 341 U.S. 937 (1951) (per curiam).
35. Butler, 341 U.S. at 937; Breedlove, 302 U.S. at 277.
37. Id. at 280.
38. Id. at 281. The challenged statute exempted women and blind men from the poll tax. Id. at 280.
the petitioner’s privileges and immunities argument, on the grounds that the privilege of voting was derived from the states. \footnote{39} Since only the privileges and immunities derived from the Constitution and the laws of the United States are protected, petitioner’s claim could not be sustained. \footnote{40} In addressing the poll tax generally, the Court stated that it was a “reasonable regulation long enforced in many States.”\footnote{41}

In \textit{Butler}, the petitioner challenged the Virginia poll tax claiming that it disenfranchised black voters, violating their equal protection rights. \footnote{42} The District Court held that the poll tax did not violate the Fourteenth Amendment because it was applied equally amongst all citizens of Virginia and was administered to raise revenue. \footnote{43} In a per curiam opinion, the Supreme Court affirmed the district court’s decision to reject the claim. \footnote{44}

2. The Effects of the New Deal

In order to enact the progressive policies of the New Deal, President Franklin D. Roosevelt needed the support of southern white voters who, while supportive of economic assistance programs, were disproportionately disenfranchised by poll taxes. \footnote{45} As a result, progressives of the era framed their opposition to the poll tax as a class issue, not a racial one, and sought to remove the more conservative Democrats from the party. \footnote{46} President Roosevelt labeled these southern conservatives as “representatives of ‘Polltaxia.’”\footnote{47}

This strategy was largely unsuccessful as southern conservatives, who supported the poll tax, held their ground in the 1938 primaries against liberal New Deal challengers. \footnote{48} This forced President Roosevelt to retreat from publically voicing support for the abolition of the poll tax on both the state and federal levels. \footnote{49} Nevertheless, the early anti-poll tax position taken by President Roosevelt and the progressives solidified the

\begin{footnotes}
\item[39] \textit{Id.} at 283.
\item[40] \textit{Id}.
\item[41] \textit{Id.} at 283-84.
\item[43] \textit{See id.} at 22-24.
\item[44] \textit{Butler}, 341 U.S. at 937.
\item[45] \textit{Ackerman & Nou}, \textit{supra} note 24, at 71-73.
\item[46] \textit{Id.} at 71-72.
\item[47] \textit{Id.} at 72.
\item[48] \textit{Id}.
\item[49] \textit{Id.} (citing \textit{Steven F. Lawson, Black Ballots: Voting Rights in the South, 1944-1969}, at 57-58 (1976), and Letter from President Franklin Delano Roosevelt, to Aubrey Williams, Dir. of Nat’l Youth Admin. (Mar. 28, 1938) (on file with Franklin D. Roosevelt Presidential Library)).
\end{footnotes}
poll tax as a liberal cause and a class issue, framed the way courts viewed the poll tax, and paved the way for anti-poll tax legislators such as Claude Pepper and Spessard Holland.  

3. Congress’s Passage of the Twenty-Fourth Amendment and Ratification

While President John F. Kennedy was a supporter of civil rights, he remained uncommitted to ending the poll tax during his election campaign in order to gain the support of southern white voters. Once elected, the President quietly encouraged Congress to take up the cause of ending the use of the poll tax. Senator Spessard Holland led the fight, utilizing procedural maneuvers to get the measure passed in the Senate. It passed by a vote of seventy-seven to sixteen.

The debate on the floor of the Senate "concerned both the substance and the proposed method of eliminating poll taxes." Holland, making the case in support of the Twenty-Fourth Amendment, stated that the Amendment would "appl[y] to majorities, to minorities, and to every person of every color." Opponents maintained the position, shared by the Supreme Court in Butler, that the poll tax did not discriminate on the basis of race, and was a reasonable, effective voting regulation. Many staunch supporters of the civil rights movement also opposed the Twenty-Fourth Amendment because they believed that change should occur through the courts and Congress, not by passage of a constitutional amendment.

The debate in the House of Representatives was very similar to that in the Senate. Supporters argued that the Twenty-Fourth Amendment would encourage voter participation in the five states that still required voters to pay a poll tax. Opponents either supported the poll tax as a

50. Id. at 72-73.
51. See id. at 79-80.
52. See id. at 80.
53. Id. at 80-81.
55. Id.
56. Ackerman & Nou, supra note 24, at 81-82 (quoting 108 CONG. REC. 4154 (1962) (statement of Sen. Spessard Holland)).
57. Congress Recommends Poll Tax Ban, supra note 54.
58. See id.
59. See id.
60. Id.
generally effective and fair regulation, or believed that the Twenty-Fourth Amendment was an improper manner by which to eliminate the poll tax. 61

Ratification of the Twenty-Fourth Amendment by the states took less than two years. 62 Illinois was the first state to ratify and, by the end of 1963, thirty-six of the thirty-eight states required to ratify the Amendment had done so. 63 By late January of 1964, Maine and South Dakota ratified it, marking ratification by three-fourths of the states. 64 At the Twenty-Fourth Amendment certification signing, President Johnson defined the Amendment as a class-based victory, rather than framing it as a racial issue, stating that, “there can be no one too poor to vote.” 65

4. Post-Ratification Court Action

Following its ratification, the Twenty-Fourth Amendment was seldom argued by plaintiffs or invoked by courts to oppose barriers to voting. 66 However, there are some post-ratification cases that have discussed the abolition of the poll tax in a meaningful way. 67 These cases, Harman v. Forssenius and Harper v. Virginia State Board of Elections, 68 were responsible for reinforcing the Twenty-Fourth Amendment on the federal level and extending the abolition of the poll tax to state elections, respectively. 69

In Harman, the first poll tax challenge heard by the Supreme Court after the ratification, petitioners alleged that the Virginia poll tax statute violated the Twenty-Fourth Amendment. 70 The statute required residents voting in federal elections to file a certificate of residence in order to avoid the poll tax. 71 The Court held that the statute violated the Twenty-Fourth Amendment because Virginia was indirectly denying the right to vote by imposing a “material requirement” on voters in lieu of paying the poll tax. 72 The filing of a certificate of residence was a “material

61. See id.
62. Amendment Ratified, supra note 3.
63. Id.
64. Id.
65. See Robertson, supra note 1, at 14.
66. Schultz & Clark, supra note 7, at 414 (explaining how plaintiffs and courts have failed to rely on Twenty-Fourth Amendment jurisprudence in dealing with voting restrictions).
70. Harman, 380 U.S. at 532; see Schulz & Clark, supra note 7, at 395.
71. VA. CODE ANN. § 24-17 (Supp. 1964); Harman, 380 U.S. at 531 (citing 1964 Va. Acts 4-6 (Extra Sess. 1963)).
72. Harman, 380 U.S. at 538, 541.
requirement” because it obligated the voter to maneuver through a confusing and burdensome bureaucracy in order to become eligible to vote in the next election.73 According to Chief Justice Earl Warren’s majority opinion, the Twenty-Fourth Amendment “nullifies sophisticated as well as simple-minded modes” of denying the franchise.74 Furthermore, he specifically noted the language of the Twenty-Fourth Amendment, which “expressly guarantees that the right to vote shall not be ‘denied or abridged.’”75

In Harper, petitioners challenged a Virginia poll tax in state elections.76 Since the Twenty-Fourth Amendment only banned the use of the poll tax in federal elections, the Supreme Court found the Virginia state poll tax to be in violation of the Fourteenth Amendment’s Equal Protection Clause, declaring that, “[t]o introduce wealth or payment of a fee as a measure of a voter’s qualifications is to introduce a capricious or irrelevant factor.”77 At this point, states could no longer deny the franchise on the basis of wealth in either federal or state elections.78

B. History of Voter Identification Laws

HAVA was enacted to improve the overall administration of elections following the 2000 presidential election.79 The voter identification provision in HAVA, requiring states to enact a voter-identification system, applied only to registration by mail and did not include a photo identification requirement.80 After the passage of HAVA, many states enacted voter identification requirements stricter than those required by the statute.81 Some states went so far as to

73. Id. at 541-42. The statute required that a certificate of residence be filed after October 1 of the year preceding the election, and at least six months prior to the election. Va. Code Ann. § 24-17. The certificate had to state the voter’s address, that she was a resident of Virginia, and had been since she registered, and that she did not intend to move from the city or county in which she lived. Id. Moreover, the certificate had to be either notarized or witnessed. Id.
74. Harman, 380 U.S. at 540-41 (quoting Lane v. Wilson, 307 U.S. 268, 275 (1939)).
75. U.S. Const. amend. XXIV, § 1; Harman, 380 U.S. at 540 (emphasis added).
81. See, e.g., Ind. Code Ann. § 3-5-2-40.5 (West 2006); Langholz, supra note 79, at 748.
require voters to present photo identification at their polling place in order to vote.82

1. The First Wave of Strict Voter Identification Laws

As of 2006, Georgia voters are required to present either a state or federally issued photo identification before being allowed to vote.83 Free voter identification cards are also available.84 If a voter does not produce a proper form of photo identification, she is permitted to fill out a provisional ballot and present photo identification to her county’s registrar’s office.85 Georgia’s prior voter identification law did not provide for free identification cards.86 Instead, voters without an acceptable form of photo identification were required to pay a fee ranging from twenty to thirty-five dollars to obtain a valid voter identification card.87

As is the case in Georgia, Indiana requires voters to present government issued photo identification prior to voting.88 Indiana’s photo identification requirement took effect in late 2005.89 If an Indiana voter does not have the proper identification, the voter may cast a provisional ballot, and, upon appearing before the election board, present identification or sign an affidavit identifying that the voter is indigent or has a religious objection to obtaining photo identification.90

Michigan amended its voter identification law in 2005.91 It now requires voters to present photo identification before being issued a ballot.92 However, Michigan permits its voters to cast a ballot if the voter signs an affidavit attesting that she does not have photo identification.93

In Arizona, voters must present either photo identification or two other forms of identification that include the voter’s name and address.94 Acceptable forms of identification without photograph include utility bills and bank statements.95 If a voter is unable to provide the proper

82. E.g., GA. CODE ANN. § 21-2-417 (2008); IND. CODE ANN. § 3-5-2-40.5 (West 2006).
83. GA. CODE ANN. § 21-2-417.
84. § 21-2-417(a)(2).
85. § 21-2-417(b).
86. § 21-2-417.1; Common Cause/Ga. v. Billups, 554 F.3d 1340, 1346 (11th Cir. 2009).
87. Billups, 554 F.3d at 1346.
88. IND. CODE ANN. §§ 3-5-2-40.5, 3-11-8-25.1 (West 2006); see supra text accompanying notes 83-87.
89. § 3-11-8-25.1.
90. See id.; Voter Identification Requirements, supra note 13.
91. MICH. COMP. LAWS ANN. § 168.523 (West 2007).
92. § 168.523(1).
93. Id.
95. Id.
identification, she may cast a provisional ballot. 96 Arizona enacted the identification requirement in 2004. 97

Missouri passed a far less strict requirement in 2006. 98 Though the legislation required that voters present identification at the polls, identifications without photographs were permitted. 99 It also allowed a voter to cast a ballot without identification if two supervising judges attested that they knew the voter. 100

2. Challenges to the First Wave of Voter Identification Laws

Most challenges to voter identification requirements have been unsuccessful. 101 Only two courts have invalidated such a requirement on poll tax grounds. 102 In Georgia, courts have adjudicated both the earlier and more recent voter identification laws. 103 In Common Cause/Georgia v. Billups, 104 the Northern District of Georgia first granted a preliminary injunction against the Georgia voter identification law that did not provide for free identifications. 105 It held that the voter identification provision violated the Equal Protection Clause of the Fourteenth Amendment and, defined as a poll tax, violated the Twenty-Fourth Amendment. 106 In finding that the photo identification provision was a poll tax, the court relied on the language of Harman and Harper. 107 It analogized the "material requirement" standard in Harman, which required voters to file a certificate of residency, to the fee for obtaining identification required by the state. 108 The court also referred to Harper's prohibition on "voter qualifications which invidiously discriminate," and

96. Id.
97. Id.
98. See Mo. Ann. Stat. § 115-427 (West 2003). This statute was found to have violated the Missouri state constitution's equal protection clause and its guarantee of the right to vote in Weinschenk v. State, 203 S.W.3d 201, 204 (Mo. 2006) (en banc) (per curiam).
99. § 115-427 (permitting "a current utility bill, bank statement, government check, paycheck or other government document that contains the names and addresses of the voter" to serve as identification).
100. Id.
103. Compare Billups, 554 F.3d at 1346 (addressing the more recent voter identification statutory provisions), with Billups, 406 F. Supp. 2d at 1328-29 (addressing the previous voter identification statutory provisions).
105. Id. at 1377-78.
106. Id. at 1366-70.
107. Id. at 1367-68.
108. Id. (citing Harman v. Forssenius, 380 U.S. 528, 533-34 (1965)).
Harper's finding that the voter identification fee makes "the affluence of the voter [and] payment of [a] fee an electoral standard." Lastly, the court held that the fee waiver granted by the Department of Driver Services was not satisfactory because so few voters were aware of the potential waiver, and the cost voters incurred to obtain it was a "material requirement" under *Harman*.

Following the District Court's 2005 *Billups* decision, Georgia amended the statute and began offering free voter identification cards to those without proper identification. The Northern District of Georgia again heard a challenge to the voter identification requirement, and again enjoined its enforcement. However, this 2006 injunction was limited to the upcoming primary election. After an outreach program to inform voters about the requirement, the District Court dismissed the complaint, which sought to obtain a permanent injunction against the amended voter identification statute, for lack of standing and, alternatively, for lacking merit as a claim under the Fourteenth Amendment. The Court, however, did not address the Twenty-Fourth Amendment in the 2007 case. The case was appealed to the Court of Appeals and affirmed on the basis that, "the legitimate interest of Georgia in preventing voter fraud justified the insignificant burden of requiring voters to present photo identification before they vote in person." This decision relied on the Supreme Court's decision in *Crawford v. Marion County Election Board*, which will be discussed below.

Indiana's voter identification requirement was challenged in *Indiana Democratic Party v. Rokita*. In *Rokita*, the Southern District of Indiana held that the voter identification law did not violate the state constitution, the VRA, the Fourteenth Amendment, or the Twenty-Fourth Amendment. In its poll tax analysis, the court rejected the

110. Id. at 1369-70 (citing *Harman*, 380 U.S. at 542).
113. *Billups*, 554 F.3d at 1347.
115. See id. at 1382.
116. *Billups*, 554 F.3d at 1355 (citation omitted).
118. *Billups*, 554 F.3d at 1355 (citing *Crawford*, 553 U.S. at 188); see infra text accompanying notes 120-22.
120. Id. at 828, 830, 839, 842.
challengers' argument that "all manner of incidental costs incurred in the process of obtaining the photo identification required by [the statute] constitute a poll tax." These incidental costs include the time and money spent obtaining driver's licenses and the fees incurred when obtaining the underlying documentation to obtain free identification, such as birth certificates. The court, however, rejected plaintiffs' argument, holding that "the imposition of tangential burdens does not transform a regulation into a poll tax." Furthermore, the court noted that, "the need for individuals to pay a fee for a birth certificate is purely speculative and theoretical."

The Court of Appeals affirmed Rokita under a different name in Crawford, and the Supreme Court granted certiorari. The Supreme Court, in this voter identification decision, neglected to address the Twenty-Fourth Amendment issue, but found that the Equal Protection Clause was not violated by the Indiana voter identification requirements. The Court reasoned that the state's interest in imposing the voter identification requirements was not outweighed by the limitation imposed on voters. This has been the basis for numerous other decisions rejecting challenges to voter identification laws on equal protection grounds.

In Michigan, the state's supreme court granted a request by its House of Representatives to issue an advisory opinion regarding the constitutionality of the state's voter identification law. The court held that the statute did not violate the state constitution, the Equal Protection Clause, or the Twenty-Fourth Amendment. In examining the poll tax issue, the court rejected the arguments provided by the challengers by relying on Harper and Harman. The Michigan Supreme Court held

121. Id. at 826-28.
122. Id.
123. Id. at 827.
124. Id.
126. Id. at 188-89, 204.
127. Id. at 204 ("The application of the statute to the vast majority of Indiana voters is amply justified by the valid interest in protecting ‘the integrity and reliability of the electoral process.’") (quoting Anderson v. Celebrezze, 460 U.S. 780, 788 n.9 (1983)).
130. Id. at 447-48; see MICH. COMP. LAWS ANN. § 168.523 (West 2008).
that the fees imposed to obtain identification are not a poll tax because "the statute does not condition the right to vote on the payment of any fee." 132 A voter without identification can simply sign an affidavit before an election inspector prior to voting if the voter does not have the requisite identification. 133 Further, the court stated that "signing an affidavit...is simply not an onerous procedural requirement" as envisioned by the Supreme Court in Harman. 134 Also, since the fee for a state identification card can be waived, the court considered the requirement to be optional. 135 Lastly, in rejecting the poll tax argument, the court followed the reasoning in Rokita that the incidental costs associated with obtaining the identification—time and transportation—cannot constitute a poll tax because those same costs are also required for voter registration and in-person voting. 136

Arizona’s voter identification law was challenged on the grounds that it violated the Fourteenth Amendment, § 2 of the VRA, and the Twenty-Fourth Amendment. 137 The district court denied the challengers’ preliminary injunction, and the challengers appealed. 138 The Ninth Circuit, in Gonzalez v. Arizona, 139 affirmed the decision of the district court, holding that the voter identification law was constitutional. 140 On appeal, the appellants argued that the Twenty-Fourth Amendment had been violated since Arizona citizens were required to spend money to obtain the underlying documents necessary to register to vote, making the voter identification law a poll tax. 141 The court, in rejecting this argument, compared the instant circumstances with those in Harman and found that, “[h]ere, voters do not have to choose between paying a poll tax and providing proof of citizenship when they register to vote,” as was the case in Harman. 142 Therefore, the rights of Arizona voters could

132. Id. at 464; see Mich. Comp. Laws Ann. § 168.523.
136. Id. at 465-66 (citing Ind. Democratic Party v. Rokita, 458 F. Supp. 2d 775, 827 (S.D. Ind. 2006)).
138. Gonzalez, 485 F.3d at 1046.
139. 485 F.3d 1041 (9th Cir. 2007).
140. See id. at 1052.
141. Id. at 1048-49.
142. Id. at 1049 (citing Harman v. Forssenius, 380 U.S. 528, 542 (1965)).
not be “abridged” by the failure to pay a tax, since all voters must offer proof of citizenship.\textsuperscript{143}

In 2012, the Ninth Circuit reheard Gonzalez v. Arizona.\textsuperscript{144} The court reaffirmed its 2007 holding that the voter identification requirement was not a poll tax, and did not violate the VRA or the Equal Protection Clause.\textsuperscript{145} The court aggressively rejected the poll tax argument, holding that the cost to obtain documents does not constitute a poll tax because it is not a “fee imposed on voters as a prerequisite for voting.”\textsuperscript{146} Furthermore, the cost is not a “material requirement” or a “burden imposed on voters who refuse to pay a poll tax,” as was the case in Harman.\textsuperscript{147}

Missouri voters challenged the state statute requiring presentation of photo identification in order to vote in Weinschenk v. State.\textsuperscript{148} The trial court found the statute unconstitutional and the state supreme court affirmed.\textsuperscript{149} The Supreme Court of Missouri addressed the costs of obtaining identification, noting that, while “free” voter identification cards were available, voters who did not already have the requisite identification would incur costs in obtaining the underlying documents—in this case, fifteen dollars for a birth certificate.\textsuperscript{150} The court also contrasted the decisions in Billups and Rokita, expressing its belief that the poll tax claims failed in those instances because “the parties . . . had failed to offer specific evidence of voters who were required to bear these costs in order to exercise their right to vote.”\textsuperscript{151} In this case, various plaintiffs specifically testified to the costs of obtaining the underlying documents.\textsuperscript{152} The court reasoned that these costs were “directly connected to Plaintiffs’ exercise of the right to vote,” and that those “who currently lack the requisite photo ID are generally ‘the least equipped to bear the costs.’”\textsuperscript{153} Lastly, the court analyzed the required time and ability necessary to navigate state bureaucratic procedures in order to vote.\textsuperscript{154} The court, quoting Harman, referred to the

\textsuperscript{143} Id. (quoting Harman, 380 U.S. at 542).
\textsuperscript{144} 677 F.3d 383, 389-90 (9th Cir. 2012).
\textsuperscript{145} Id. at 388.
\textsuperscript{147} Gonzalez, 677 F.3d at 407-08 (citing Harman, 380 U.S. at 541-42).
\textsuperscript{148} 203 S.W.3d 201, 204 (Mo. 2006) (en banc) (per curiam).
\textsuperscript{149} Mo. Const. art. I §§ 2, 25; id. art. VIII, § 2; Weinschenk, 203 S.W.3d at 204, 219.
\textsuperscript{150} Weinschenk, 203 S.W.3d at 213.
\textsuperscript{151} Id. at 214 (citing Ind. Democratic Party v. Rokita, 458 F. Supp. 2d 775, 827 (S.D. Ind. 2006), and Common Cause/Ga. v. Billups, 439 F. Supp. 2d 1294, 1355, 1370 (N.D. Ga. 2005)).
\textsuperscript{152} Id.
\textsuperscript{153} Id. (quoting Weinschenk v. State, Nos. 06AC-CC00656, 06AC-CC00587, slip op. at 9 (Mo. Cir. Ct. Sept. 14, 2006)).
\textsuperscript{154} Id. at 214-15. (citing Weinschenk, Nos. 06AC-CC00656, 06AC-CC00587, slip op. at 9).
advanced planning needed to obtain identification as "plainly a cumbersome procedure."\textsuperscript{155}

3. Challenges Raised to the New Wave of Voter Identification Laws

Between 2009 and 2012, fifteen states enacted or tightened voter identification requirements.\textsuperscript{156} Of those states, Kansas, Mississippi, Pennsylvania, South Carolina, Tennessee, Texas, and Wisconsin have enacted strict photo identification laws.\textsuperscript{157} The overall results of challenges to these laws have been unclear, but no decisions have been reached on Twenty-Fourth Amendment poll tax grounds.\textsuperscript{158}

In Kansas, a strict voter identification requirement was enacted in 2011.\textsuperscript{159} Voters are required to present identification at the polls with the exception of physically disabled persons, active military personnel, and those with religious exemptions.\textsuperscript{160} Only government issued identifications are permitted, including student identification issued by an accredited Kansas university.\textsuperscript{161} Voters without proper identification on election day may cast a provisional ballot and have it counted by appearing before the county election officer with the necessary identification after the election.\textsuperscript{162} Many have considered this statute to be a success as of the 2012 statewide primary election.\textsuperscript{163}

Mississippi passed a voter identification requirement through a ballot initiative in 2011, but the language of the actual provision is not yet in place.\textsuperscript{164} When in place, the identification requirement will require voters to present government issued identification before casting their votes.\textsuperscript{165} As is the case in most states with identification requirements, voters are permitted to cast a provisional ballot if they do not have the proper identification.\textsuperscript{166}

\textsuperscript{155} Id. (quoting Harman v. Forssenius, 380 U.S. 528, 541 (1965)).

\textsuperscript{156} Voter Identification Requirements, supra note 13.

\textsuperscript{157} Id.


\textsuperscript{159} Voter Identification Requirements, supra note 13.

\textsuperscript{160} KAN. STAT. ANN. § 25-2908 (West Supp. 2012); Voter Identification Requirements, supra note 13.

\textsuperscript{161} § 25-2908.

\textsuperscript{162} Id. § 25-3002; Voter Identification Requirements, supra note 13.


\textsuperscript{165} § 23-15-563(1).

\textsuperscript{166} § 23-15-563(3)(a); see, e.g., supra note 154 and accompanying text.
Pennsylvania passed its voter identification law in 2012.167 The provision, if codified, will require presentation of a government issued identification at the polls.168 Pennsylvania will allow for casting of a provisional ballot.169 Indigent voters who cast a provisional ballot are permitted to submit, in person or by mail, an affirmation stating that they are the person who attempted to vote and that they are, in fact, indigent.170

Various individuals and groups challenged the provision claiming that it disenfranchised voters in violation of the state constitution and sought an injunction to prevent it from being enforced.171 In August 2012, the trial court denied the preliminary injunction because the identification provision was not likely to be found facially unconstitutional.172 On appeal, the Supreme Court of Pennsylvania vacated the decision of the lower court, but remanded the case for a "present assessment of the actual availability of the alternate identification cards . . . since the time the cards became available."173 If voters were to be disenfranchised by the voter identification provision, the trial court was ordered to grant the injunction.174 In October 2012, the trial court ordered the preliminary injunction as a result of the low number of identifications that had been issued to voters.175 As a result, voters are not required to show identification at the polls until further review by the courts.176

In 2011, South Carolina passed a law tightening its existing voter identification requirement.177 Voters in South Carolina are now required to show government issued photo identification.178 However, voters are permitted to show a voter registration card without a photograph if they can demonstrate a reasonable impediment to obtaining a photo identification.179 The list of reasonable impediments is fairly open-ended

172. See id. at 68.
174. Id.
175. See id. at 5; see also Applewhite, No. 330 M.D. 2012, slip op. at 5, 15.
176. See Applewhite, 54 A.3d at 5; Voter Identification Requirements, supra note 13.
178. § 7-13-710(A).
179. Id.
and includes exemptions for religion and disability.\textsuperscript{180} South Carolina also permits provisional voting if a voter does not have photo identification, or a voter registration card that does not bear a photograph.\textsuperscript{181}

In Tennessee, voters are required to present a government issued identification.\textsuperscript{182} If a voter does not have a permitted identification, the voter may cast a provisional ballot and provide the proper proof of identification at a specified later date.\textsuperscript{183} Tennessee had an identification provision in place prior to 2011 but tightened its requirements with passage of this law.\textsuperscript{184} Voters challenged the earlier provision in state court, claiming that it violated both the state and U.S. Constitution, but were denied.\textsuperscript{185} On appeal, the court upheld the lower court’s decision, but required the state to accept library cards issued by the City of Memphis that include a photo.\textsuperscript{186}

Texas also sought to tighten its existing identification requirement.\textsuperscript{187} The provision, if granted preclearance, would have required voters to present a government issued photo identification before voting.\textsuperscript{188} Alternatively, voters would have been permitted to submit a provisional ballot if they did not have the requisite photo identification.\textsuperscript{189} However, the provision was denied preclearance by the Department of Justice (“DOJ”) in March 2012 for having “the effect of denying or abridging the right to vote on the account of race.”\textsuperscript{190} In August, the Court of Appeals for the District of Columbia affirmed the DOJ’s decision, plainly stating that Texas’s voter identification requirement “imposes strict, unforgiving burdens on the poor.”\textsuperscript{191}
Wisconsin passed a voter identification law in 2011 requiring voters to present a government issued or school photo identification. The provision also permitted voters to cast a provisional ballot. Voters challenged the law as a violation of the state constitution and sought an injunction against the further enforcement of the provision. The Circuit Court agreed, declaring that the voter identification provision “impermissibly eliminate[d] the right of suffrage altogether for certain constitutionally qualified electors.” The Wisconsin Supreme Court declined to address the issue. As a result, the voter identification provision is currently inoperative.

III. THE NEW WAVE OF VOTER IDENTIFICATION LAWS SHOULD BE INVALIDATED UNDER THE TWENTY-FOURTH AMENDMENT

Courts have historically relied heavily on the Equal Protection Clause, the VRA, and state constitutional law to invalidate barriers to voting. On the other hand, the Twenty-Fourth Amendment was narrowly tailored to address only one customary form of the poll tax and, as a result, has been seldom used. As Fourteenth Amendment and VRA claims become more difficult to sustain, the Twenty-Fourth Amendment was rendered unenforceable when the Supreme Court struck down the preclearance provision in Shelby County v. Holder. See No. 12-96, slip op. at 24 (U.S. June 25, 2013).

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193. § 6.79.
195. Id. at 5.
197. Id.
199. E.g., Texas v. Holder, 888 F. Supp. 2d 113, 143-44 (D.D.C. 2012). Section 4 of the VRA was struck down following the Supreme Court’s decision in Shelby County. Shelby Cnty. v. Holder, No. 12-96, slip op. at 24 (U.S. June 25, 2013). This decision rendered Section 5 useless because the preclearance formula was thrown out. See id.
200. E.g., Weinschenk v. State, 203 S.W.3d 201, 204 (Mo. 2006) (en banc) (per curiam).
201. Harper v. Va. Bd. of Elections, 383 U.S. 663, 666 (1966) (holding that the poll tax in state elections violates the Equal Protection Clause); Holder, 888 F. Supp. 2d at 143-14 (invalidating a Texas voter identification law under Section 5 of the VRA); Weinschenk, 203 S.W.3d at 211-12 (concluding that the state’s identification law violates the Missouri constitution).
202. See Harper, 383 U.S. at 664 & n.1 (addressing the customary tax-for-vote scheme); Schultz & Clark, supra note 7, at 414 (explaining how courts have failed to rely on Twenty-Fourth Amendment jurisprudence in dealing with voting restrictions).
Amendment provides an avenue for voters to challenge economic barriers to voting.\textsuperscript{203}

Part III will be divided into four sections. First, it will examine how the new wave of voter identification requirements is more burdensome than previous requirements, specifically in regards to the cost to voters and the lack of exceptions.\textsuperscript{204} Second, it will discuss how legislative and executive histories indicate that the Twenty-Fourth Amendment was intended to be interpreted broadly.\textsuperscript{205} Third, it will demonstrate how the courts’ approach to poll taxes and voter identification requirements is relevant to future Twenty-Fourth Amendment analyses.\textsuperscript{206} Finally, it will present empirical evidence supporting the proposition that voters are being disenfranchised by the new wave of voter identification requirements.\textsuperscript{207}

A. New Voter Identification Laws Are More Burdensome than the Previous Ones

Courts have generally not been persuaded by arguments that incidental costs associated with obtaining sufficient identification to participate in an election constitute a poll tax.\textsuperscript{208} Newer voter identification laws impose greater costs than the older ones.\textsuperscript{209} It is worth revisiting the distinction between the incidental costs of voting and burdens reaching the level of a poll tax.\textsuperscript{210}

1. Costs Are No Longer Incidental

While courts in past challenges to voter identification laws have considered the cost of obtaining photo identification purely incidental, the new voter identification statutes present obstacles to voters that exceed those of previous laws.\textsuperscript{211} In Crawford, the Supreme Court
differentiated between incidental costs and burdens. Because Indiana provides free identification cards to indigent voters, the Court considered "the inconvenience of making a trip to the [Bureau of Motor Vehicles], gathering the required documents, and posing for a photograph" to be incidental to the act of voting. The Court’s logic was that these are the types of costs—time, transportation, and minimal expense—which all voters face when they go to the polls. Indiana also permits indigent voters to file an affidavit with the county clerk demonstrating their inability to obtain identification. Transportation to the county clerk’s office, like obtaining the free identification card from the Bureau of Motor Vehicles, is a cost that all voters face. It can be inferred from Crawford, and subsequent voter identification cases, that courts will not treat the costs of obtaining the documents necessary to obtain free identification as burdens.

The documents necessary to attain identification, however, may be very costly. States will not simply hand a voter free photo identification without sufficient proof of identity. A voter may be required to purchase a new copy of her birth certificate from her state or country of birth, if that state or country maintains copies or issued them at all. The process of obtaining these underlying documents is cumbersome and involves economic costs as well as costs associated with transportation and time. Moreover, many of those without identification are “elderly, disabled, or have certain physical or mental problems,” and will face exceptional difficulties maneuvering through complicated government bureaucracies.

While all states to recently impose identification requirements offer free voter identification to comply with constitutional requirements, documents needed for identification are incidental), with Act of Mar. 14, 2012 §§ 1–3 (imposing a voter identification requirement that does not permit voting by affidavit).

213. Id. at 198.
214. See id.
215. Id. at 199; see IND. CODE ANN. § 3-11-8-22 (West Supp. 2012).
217. See, e.g., id. at 198-99; Gonzalez v. Arizona, 485 F.3d 1041, 1050 (9th Cir. 2007).
220. See Langholz, supra note 79, at 763-64 (citing Ind. Democratic Party v. Rokita, 458 F. Supp. 2d 775, 827 (S.D. Ind. 2006)).
221. See id. (citing Rokita, 458 F. Supp. 2d at 827).
some courts have considered the burden of obtaining the free identification to be substantial.\textsuperscript{223} This marks a clear shift from the courts’ previous treatment of voter identification prerequisites.\textsuperscript{224} A Wisconsin court recently held that the state’s strict identification requirement “abridge[s] the right to vote.”\textsuperscript{225} Likewise, in a recent opinion the United States District Court for the District of Columbia harshly stated that the Texas identification requirement imposed “unforgiving burdens on the poor.”\textsuperscript{226} The language employed in \textit{Holder} marks a clear departure from the Supreme Court’s holding in \textit{Crawford}.\textsuperscript{227} This dramatic shift can likely be attributed to the practical realization that these incidental costs, taken as a whole, impose real burdens.\textsuperscript{228}

2. Lack of Statutory Exceptions

Past voter identification laws often include statutory language creating provisional ballot exceptions for indigent voters, or for those who simply lacked identification.\textsuperscript{229} In Missouri, for example, a voter may cast a provisional ballot if two election supervisors can attest to the voter’s identity.\textsuperscript{230} In Michigan, it is even simpler; before voting, a voter may file an affidavit attesting to her identity at the place of polling.\textsuperscript{231} Another example is Indiana, which only requires a voter to appear before the county clerk and file an affidavit demonstrating her inability to obtain identification.\textsuperscript{232} While the provisional ballot exceptions of the first wave of voter identification laws do impose additional expenses on
voters, the exceptions provided by the new wave of voter identification laws are significantly more burdensome.\textsuperscript{233}

The provisional ballot rules in the new wave of voter identification laws often have fewer exceptions and impose greater burdens on voters than their older counterparts.\textsuperscript{234} New voter identification provisions do not permit voters without requisite identification to file an affidavit as an alternative and, when a voter does cast a provisional ballot, she must bring photo identification to the clerk within a specified period of time—usually six days after the election.\textsuperscript{235} As a result, the voter incurs the incidental cost of going to the polls—which all voters bear—plus the cost of a separate trip to the county clerk’s office and the price of gathering the underlying documents needed to obtain identification.\textsuperscript{236}

B. Legislative and Executive Histories Indicate Intent to Apply the Twenty-Fourth Amendment Broadly

Congress and President Johnson anticipated that the Twenty-Fourth Amendment would be applied more broadly than only ending the historical tax-for-vote scheme.\textsuperscript{237} The Amendment was an effort to provide the franchise to people of all classes, and to eliminate the traditional tax-for-vote scheme as well as constructive poll taxes.\textsuperscript{238}

\begin{itemize}
\item \textsuperscript{233} See id.; WIS. STAT. § 6.79 (Supp. 2012).
\item \textsuperscript{234} See, e.g., TENN. CODE ANN. § 2-7-12 (Supp. 2012); see also Act of Mar. 14, 2012, Pub. L. 195, No. 18, sec. 3, PA. ELEC. CODE (requiring voters who cast provisional ballots to appear before the county board within six calendar days).
\item \textsuperscript{235} Act of Mar. 14, 2012 § 3.
\item \textsuperscript{237} See 108 CONG. REC. 4154 (1962) (Statement of Sen. Spessard Holland); Robertson, supra note 1, at 14 (reporting that President Johnson stated, “there can be no one too poor to vote” (internal quotation marks omitted)); Congress Recommends Poll Tax Ban, supra note 54 (discussing Congress’s intent to have the Twenty-Fourth Amendment applied broadly).
\item \textsuperscript{238} See U.S. Const. amend. XXIV; Schultz & Clark, supra note 7, at 403 (“The debate indicated that poor whites and those in the military were affected by the poll taxes, and that these fees stood as an impediment to democracy good government, and political reform.”); see also President Lyndon B. Johnson, Remarks Upon Witnessing the Certification of the 24th Amendment to the Constitution (Feb. 4, 1964), available at http://www.presidency.ucsb.edu/ws/?pid=26056#axzz2fdPq1EEe. David Schultz and Sarah Clark explain that, “[s]ome might argue . . . the Amendment should be read to prevent only the type of taxes that discriminate against people of color.” Schultz & Clark, supra note 7, at 416. On the other hand, “[o]ne could interpret the history and the congressional debates as suggesting that the Twenty-Fourth Amendment should be read more expansively, seeking to break the linkage between voting and wealth.” Id. In the late 1800s and early 1900s, states, such as Mississippi and Louisiana, enacted poll taxes to prevent blacks from voting through a race neutral statute. LAWSON, supra note 49, at 11-12. Voter identification laws, like Jim Crow era poll taxes, are racially neutral statutes that discriminate against minorities. See e.g., TEX. ELEC. CODE ANN. § 63.0101 (West Supp. 2012) (requiring voters
\end{itemize}
These goals are illustrated by the congressional intent, executive intent, and the text of the Twenty-Fourth Amendment itself. 239

1. Congressional Intent, Executive Intent, and Goals of Enforcement

The potential scope of the Twenty-Fourth Amendment has been narrowed by the notion that its sole purpose was to end the tax-for-vote scheme that had been a customary method of disenfranchising black voters in the South. 240 However, Congress and President Johnson, who both sought passage of the Amendment, intended it more broadly to eliminate wealth as a barrier to voting. 241

When President Roosevelt first sought passage of the Twenty-Fourth Amendment, his goals were largely political. 242 If more white southern Democrats could afford to vote, more pro-New Deal legislators could win primaries and implement his agenda. 243 In this losing effort to field more liberal candidates, the poll tax was framed as class issue, and separate from the broader civil rights movement. 244

The presentation of the Twenty-Fourth Amendment as an economic issue, and not a racial one, persisted throughout its passage in Congress and subsequent ratification. 245 The lead advocates of the Twenty-Fourth Amendment were deliberate in their efforts to treat its passage as benefiting all Americans, and not simply as an imposition of racial equality, which was unpopular among white southerners. 246 The Twenty-Fourth Amendment was perceived as being so far beyond the scope of...
the Civil Rights movement that the National Association for the Advancement of Colored People opposed its passage, fearing that amending the Constitution would hamper civil rights groups' efforts to effect change through more practical tools—acts of Congress and court-made rules. At the signing ceremony following the Amendment's passage, President Johnson, a supporter of the Civil Rights Movement, embraced the Twenty-Fourth Amendment like its supporters had as early as the 1930s—as an issue of class, rather than race.

Despite the political motivations for disguising the controversial, racially divisive Amendment behind broad class-based language, many politicians nonetheless supported it because they believed their poor, white constituents would benefit from the Amendment. The intentions of the Twenty-Fourth Amendment's early supporters are relevant in analyzing the voter identification laws of the present. If the goals of the Twenty-Fourth Amendment were strictly aimed at eliminating the historical pay-for-vote exchange, then it is less appropriate to defeat identification provisions that impose non-traditional costs. However, since the Twenty-Fourth Amendment was presented as a means by which to end wealth-based voting classifications, its potential reach is far greater than the courts have let on, and may encompass costly voter identification requirements.

2. Text of the Twenty-Fourth Amendment

The text of the Twenty-Fourth Amendment indicates that the drafters intended for the Twenty-Fourth Amendment to apply more broadly than it has been thus far. Section 1 of the Twenty-Fourth Amendment states:

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 in Congress, shall

247. See Congress Recommends Poll Tax Ban, supra note 54 ("[T]he amendment 'would provide an immutable precedent for shunting all further civil rights legislation to the amendment procedure.'").
248. See Ackerman & Nou, supra note 24, at 71-72; Robertson, supra note 1, at 14.
249. 108 CONG. REC. 5076 (1962) (statement of Sen. Spessard Holland) ("The increase in voting was almost three times as great as the increase in Florida population. This was an increase in the participation of white citizens in voting.").
250. See supra Part II.A.2-3.
251. See Schultz & Clark, supra note 7, at 414-15 (discussing how courts have narrowly interpreted the Twenty-Fourth Amendment, limiting its potency and making the Amendment "a great constitutional silence").
252. See id. at 414-17.
253. See U.S. CONST. amend. XXIV, §§ 1-2; Schultz & Clark, supra note 7, at 415-20; see also supra note 249 and accompanying text.
not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.\(^{254}\)

There are two separate, textual indications that the Twenty-Fourth Amendment was intended to encompass more than just deliberate, pay-to-vote schemes.\(^{255}\) First, as noted in *Harman*, the terms "denied or abridged" indicate that the Amendment extends to more than just the direct denial of the right to vote.\(^{256}\) According to Chief Justice Warren, the inclusion of the word "abridged" demonstrates that the Twenty-Fourth Amendment "nullifies sophisticated as well as simple-minded modes" of impairing the franchise.\(^{257}\) Voter identification laws, while certainly not a complete "denial" of the franchise, should fall squarely within Chief Justice Warren’s broad definition of an "abridge[ment]" of the right to vote.\(^{258}\)

Second, the language "poll tax or other tax" is important in determining whether the Twenty-Fourth Amendment can invalidate voter identification laws.\(^{259}\) These terms can be read either narrowly or broadly.\(^{260}\) A narrow reading defines "tax" in the most literal and direct sense, for example, the $1.50 poll tax required of Virginia residents to vote at the time of *Harper*.\(^{261}\) However, this is not necessarily the most appropriate interpretation of the language given the additional terms in the Amendment.\(^{262}\) The words "any" and "other" lend support to the idea that the Twenty-Fourth Amendment’s scope is not so limited and may be used to address other forms of monetized payment.\(^{263}\) Such forms of monetized payment reasonably include the costs associated with voter identification laws: for example, payments to obtain underlying documents from the state and the time committed and money spent

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254. U.S. CONST. amend. XXIV, § 1. Section 2 of the Twenty-Fourth Amendment provides Congress with the "power to enforce [section 1] by appropriate legislation." *Id.* § 2.

255. *Id.* § 1; see also Schultz & Clark, *supra* note 7, at 415-23.


262. *See* U.S. CONST. amend. XXIV, § 1; Schultz & Clark, *supra* note 7, at 416; *see also supra* text accompanying note 256.

maneuvering through the state bureaucracy.\textsuperscript{264} While these burdens do not fit neatly into the rigid definition of “poll tax,” the Amendment’s language does not foreclose the possibility that burdensome identification requirements are “any poll tax” or some “other tax.”\textsuperscript{265}

\section*{C. The Courts}

Case law will play a major role in the unclear future of voter identification laws.\textsuperscript{266} As of now, few courts have even considered the possibility of voter identification laws violating the Twenty-Fourth Amendment.\textsuperscript{267} Nevertheless, various prior decisions of the Supreme Court and lower courts support the notion that the new wave of voter identification laws may violate the Twenty-Fourth Amendment.\textsuperscript{268}

1. The Importance of \textit{Harman} and \textit{Harper}

Both \textit{Harman} and \textit{Harper} provide support for the broader application of the Twenty-Fourth Amendment.\textsuperscript{269} The “material requirement” standard established in \textit{Harman} is the basis upon which future Twenty-Fourth Amendment challenges should rest, since the costs associated with obtaining identification and the provisional ballot scheme are “material requirements” according to the \textit{Harman} court.\textsuperscript{270} The facts of \textit{Harman} are certainly not perfectly analogous to the circumstances presented to courts dealing with the new wave of voter identification requirements.\textsuperscript{271} In \textit{Harman}, voters had the choice of either paying a direct tax to the state or filing a residency requirement—the “material requirement”—in order to vote.\textsuperscript{272} However, the new, stricter

\begin{itemize}
  \item \textsuperscript{264} See supra Part III.A (discussing the burdens of voter identification requirements).
  \item \textsuperscript{265} See U.S. CONST. amend. XXIV, § 1 (emphases added); Schultz & Clark, \textit{supra} note 7, at 419.
  \item \textsuperscript{266} See, e.g., Applewhite v. Commonwealth, 54 A.3d 1, 5 (Pa. 2012) (per curiam) (holding that the state must ensure that identification cards are readily available before the statute becomes effective).
  \item \textsuperscript{268} See, e.g., Harman v. Forssenius, 380 U.S. 528, 533-34 (1965); Weinschenk, 203 S.W.3d at 213-14.
  \item \textsuperscript{270} See \textit{Harman}, 380 U.S. at 541-42.
  \item \textsuperscript{271} Compare \textit{id.} (requiring that voters prepare a certificate or pay the poll tax), with \textit{Billups}, 406 F. Supp. 2d at 1368-69 (requiring that voters obtain underlying documents before getting a free voter identification).
  \item \textsuperscript{272} \textit{Harman}, 380 U.S. at 541-42. In order to avoid the poll tax, voters were required to file a witnessed or notarized certificate attesting to their residence. \textit{See id.} \end{itemize}
voter identification laws leave little choice for voters. Under the new wave of statutes, a voter is either equipped with the appropriate identification or must go through various steps to obtain such identification—steps that, taken together, amount to a “material requirement.”

Despite this difference, the cumbersome nature of filing a residency requirement is not unlike the nature of obtaining identification required to vote. In *Harman*, Virginia required voters who chose not to pay the poll tax to obtain a certificate of residence from local election officials or to prepare it themselves, then file the notarized or witnessed certificate in person with the city or county treasurer six months prior to the election. Under the new wave of voter identification statutes, voters who need photo identification but do not have it face requirements that are just as cumbersome. The voter, though entitled to a form of free identification, must first obtain the underlying documentation to prove her identity. This often includes considerable expense, time, and travel, depending on the particular circumstances involved. Courts, in considering the new wave of voter identification laws, should apply the standard set out in *Harman*. If the requirements for obtaining identification reach the “material” threshold of *Harman*, courts should consider invalidating the statute under the Twenty-Fourth Amendment.

While *Harper* did not review a challenge to voter identification laws under the Twenty-Fourth Amendment, the *Harper* court indicated its opposition to voter qualifications that have a “relation to wealth” or relate “to paying or not paying... any tax.” *Harper* was decided under the Equal Protection Clause, not the Twenty-Fourth

275. *Compare* *Billups*, 406 F. Supp. 2d at 1368-69 (requiring voters to obtain identification by navigating the absentee voting process, paying for an identification card, and completing an affidavit), with *Harman*, 380 U.S. at 541-42 (requiring voters to file residency certificate).
277. *See supra* Part III.A (discussing the burdens of the new wave of voter identification requirements); *see also Harman*, 380 U.S. at 541-42.
278. *See supra* Part III.A. It is important to note that it is those “very people outside the mainstream of society who are the least equipped to bear the costs or navigate the many bureaucracies necessary to obtain the required documentation.” Weinschenk v. State, Nos. 06AC-CC00656, 06AC-CC00587, slip op. at 9 (Mo. Cir. Ct. Sept. 14, 2006).
279. *See supra* Part III.A.
Amendment. However, the Supreme Court's analysis in Harper is relevant to future Twenty-Fourth Amendment inquiries. Justice William Douglas's majority opinion focused on wealth-classifications interfering with the fundamental right to vote, which required strict scrutiny from the courts. This distinction is important in determining whether the Twenty-Fourth Amendment prohibits strict voter identification provisions. If the focus of courts is on righting historical wrongs—for example, the money-for-vote poll tax—the scope of their analysis may be limited as such. However, if the focus is on protecting the fundamental right to vote regardless of wealth, the analysis may be broadened to include more sophisticated forms of voter suppression, such as strict voter identification provisions, which indirectly impose costs on voters.

2. Previous Challenges to Voter Identification Laws

There have been numerous challenges to voter identification laws on poll tax grounds. While only two challenges have been successful on those grounds, courts have at least been willing to consider these claims in cases such as Gonzalez, Rokita, and Billups. This indicates that there are circumstances in which the poll tax argument is appropriate and may be applied.

One of the two courts to invalidate a voter identification requirement on poll tax grounds was the Supreme Court of Missouri in Weinschenk. It found that, "[i]n this case, Plaintiffs proved that [] costs must be incurred for citizens who lack the [statutorily] mandated photo IDs to exercise their right to vote." The court made it clear that...

283. Id.
284. See id.
285. Id. at 666, 670 ("W[ight or fee paying has, in our view, no relation to voting qualifications; the right to vote is too precious, too fundamental to be so burdened or conditioned.").
286. See id.; supra text accompanying notes 280-81.
288. See Harper, 383 U.S. at 670 (indicating courts’ aversion to voter qualifications that stand upon “wealth or fee paying”); see supra Part III.A.1.
289. E.g., Gonzalez, 677 F.3d at 388; see also supra Part II.B.2.
292. Weinschenk, 203 S.W.3d at 214.
293. Id.
the costs of obtaining underlying documents were real costs, not theoretical ones.\textsuperscript{294} The court distinguished \textit{Weinschenk} from Indiana and Georgia cases which considered similar challenges, finding that "the parties [in Indiana and Georgia] had simply presented theoretical arguments and had failed to offer specific evidence of voters who were required to bear these costs."\textsuperscript{295} In \textit{Weinschenk}, however, the plaintiff was capable of demonstrating "the costs associated with birth certificates and other documentation to acquire a photo ID and vote."\textsuperscript{296} If future courts are to invalidate voter identification provisions on poll tax grounds, specific testimony regarding costs incurred or to be incurred by voters will surely play an important role.\textsuperscript{297}

The other court to invalidate a voter identification statute on poll tax grounds was the Northern District of Georgia.\textsuperscript{298} In \textit{Billups}, the court held that the twenty dollar fee to obtain an identification card violated the Twenty-Fourth Amendment, declaring that "most voters who do not possess other forms of Photo ID must obtain a Photo ID card to exercise their right to vote," and "requiring those voters to purchase a Photo ID card effectively places a cost on the right to vote."\textsuperscript{299} Furthermore, the court, relying on \textit{Harman}, attacked Georgia's fee waiver affidavit option as a material requirement because "the voter must arrange for transportation to a . . . service center or the . . . bus, if that option is available, and must navigate the lengthy waiting process successfully."\textsuperscript{300}

While states have since recognized that charging a fee for identification is not going to withstand Twenty-Fourth and Fourteenth Amendment challenges, the rationales provided by the Northern District of Georgia may be persuasive in invalidating the new wave of voter identification requirements.\textsuperscript{301} For example, many courts have been hesitant to consider incidental costs—such as transportation—in voter identification cases, whereas the Northern District of Georgia embraced them.\textsuperscript{302} Also, the Northern District of Georgia did not draw a distinction

\textsuperscript{294} Id.
\textsuperscript{295} Id. (distinguishing the facts of \textit{Weinschenk} from those of Common Cause/Ga. v. \textit{Billups}, 439 F. Supp. 2d 1294 (N.D. Ga. 2006), and \textit{Rokita}, 458 F. Supp. 2d at 775).
\textsuperscript{296} Id.
\textsuperscript{297} See id. at 213-15.
\textsuperscript{298} Common Cause/Ga. v. \textit{Billups}, 406 F. Supp. 2d 1326, 1370 (N.D. Ga. 2005). In this case, the Northern District of Georgia invalidated the version of the statute requiring that voters pay for identification cards. Id.
\textsuperscript{299} Id. at 1369-70.
\textsuperscript{300} Id. at 1367-70 (citing \textit{Harman} v. \textit{Forssenius}, 380 U.S. 528, 542 (1965)).
\textsuperscript{301} See id.; see also Common Cause/Ga. v. \textit{Billups}, 504 F. Supp. 2d 1333, 1343 (N.D. Ga. 2007), supra note 298 and accompanying text.
\textsuperscript{302} \textit{Billups}, 406 F. Supp. 2d at 1370; see, e.g., \textit{Crawford} v. Marion Cnty. Election Bd., 553
between requiring voters to purchase the offered voter identification and requiring voters to pay for the documents necessary to obtain an identification card.\footnote{Billups, 406 F. Supp. 2d at 1369.} It simply held that Georgia’s process “effectively places a cost on the right to vote.”\footnote{Id.}

Following this decision, the Georgia legislature amended the law, providing identification free of charge.\footnote{GA. CODE ANN. § 21-2-417.1 (West 2012); Common Cause/Ga. v. Billups, 554 F.3d 1340, 1346 (11th Cir. 2009).} This time, however, the challenge to the amended law provided no poll tax argument, and the court relied on the Supreme Court’s decision in Crawford to uphold the statute.\footnote{Billups, 554 F.3d at 1352-55 (citing Crawford, 553 U.S. at 196-201).} The Eleventh Circuit’s decision in Billups, like that in Crawford, was driven by a fact-intensive analysis.\footnote{Id. at 1354-55; see Crawford, 553 U.S. at 201-02.} Both the Eleventh Circuit in Billups and the Supreme Court in Crawford found that the challengers were unable to demonstrate that the voter identification statutes would actually burden any voters.\footnote{Crawford, 553 U.S. at 201-02; Billups, 554 F.3d at 1354-55.} However, the fact that the courts even looked to the laws’ effects on actual voters is important for future challenges under the Twenty-Fourth Amendment.\footnote{See infra Part III.D.} If challengers can demonstrate that voters were, or will be, disenfranchised or forced to incur substantial burdens in order to vote, courts will be more willing to invalidate the provisions.\footnote{See, e.g., Billups, 554 F.3d at 1354-55. Part III.D of this Note will address the availability of empirical evidence to prove substantial burdens on voters. See infra Part III.D.}

While the Supreme Court in Crawford did not consider the poll tax argument, the Southern District of Indiana in Rokita did.\footnote{Id.} In denying the poll tax claim, the court reasoned that incidental costs do not impose sufficient burdens on voters to be considered a poll tax.\footnote{Ind. Democratic Party v. Rokita, 458 F. Supp. 2d 775, 826-29 (S.D. Ind. 2006); see generally Crawford, 553 U.S. 181 (holding that the Indiana voter identification law does not violate equal protection).} However, the court did indicate that the cost to obtain a birth certificate could “plausibly” reach the level of a poll tax.\footnote{Rokita, 458 F. Supp. 2d at 827.} The court deflated this argument because the challengers failed to present “evidence to demonstrate that anyone will actually be required to incur this cost in

\begin{quote}
\footnote{Billups, 406 F. Supp. 2d at 1369.}
\footnote{Id.}
\footnote{GA. CODE ANN. § 21-2-417.1 (West 2012); Common Cause/Ga. v. Billups, 554 F.3d 1340, 1346 (11th Cir. 2009).}
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\footnote{Id. at 1354-55; see Crawford, 553 U.S. at 201-02.}
\footnote{Crawford, 553 U.S. at 201-02; Billups, 554 F.3d at 1354-55.}
\footnote{See infra Part III.D.}
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\footnote{Rokita, 458 F. Supp. 2d at 827.}
\footnote{Id. ("The only incidental cost which might plausibly approach being a poll tax is the fee assessed to obtain a birth certificate, which in turn is used to obtain a photo identification from the [Bureau of Motor Vehicles].").}
order to vote." This is similar to the factual analysis conducted by the courts in *Billups* and *Crawford* regarding the need for challengers to demonstrate actual burdens. The *Rokita* court also posited that since the federal government issued certain permissible forms of identification—for example, passport—the costs of obtaining identification were out of Indiana’s control. *Rokita* left open the possibility that demonstrative proof of voters actually needing to obtain a birth certificate could have been sufficient to establish the poll tax claim; future challengers should ensure that they present veritable evidence of burdens on voters.

The new wave of voter identification laws has not yet been challenged on poll tax grounds. However, courts have been scrutinizing these provisions, which is important for future poll tax analyses. The Supreme Court of Pennsylvania stalled implementation of the state’s voter identification provision because of the arduous process of obtaining the necessary identification. The court specifically singled out the underlying documents, a sign that such costs might be considered burdens in future cases. Moreover, the court placed special importance on the vulnerability of specific groups—such as the elderly—that would have been disenfranchised by implementation of the Pennsylvania statute.

In Tennessee, an appellate court upheld the state’s voter identification provision. However, the court required that election officials accept Memphis library cards as appropriate, alternative identification. This is an important step in the evolving view of the courts regarding identification provisions. The court, while permitting

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314. *Id.* at 827-28 (finding that "Plaintiffs' contention about the need of individuals to pay a fee for a birth certificate is purely speculative and theoretical").


320. *Applewhite*, 54 A.3d at 3-5.

321. *Id.* at 3.

322. *Id.* at 4.


324. *Id.* at *12-13.

325. See *id.*; *see also infra* text accompanying notes 322-24.
the provision as a whole, paid close attention to the burdens placed on Memphis residents who used library cards as poll identification. If courts begin to view such burdens as universal, and not so isolated as to only affect library-goers in one city, poll tax challenges are more likely to be successful.

The decision reached in Wisconsin regarding its voter identification law is one of the strongest rebukes of such a statute to date. The court held that the statute’s "photo ID requirements impermissibly eliminate the right of suffrage altogether for certain constitutionally qualified electors." This strong language indicates the court’s willingness to consider voter identification to be an absolute barrier to voting for some residents. In future challenges to voter identification laws, a substantial burden will be necessary to meet Harman’s "material requirement" standard or the precedents set by the Northern District of Georgia and Missouri Supreme Court.

D. Voter Identification Laws and Real Consequences for Voters

A great deal of the analysis done by courts in upholding voter identification laws involves a lack of evidence to support the challenges. Challengers have often been incapable of demonstrating actual burdens on real voters. As voter identification statutes gain more traction in the media and politics, more data will become available. This data will be necessary to demonstrate when real burdens placed on voters have reached the level of a poll tax.

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326. See Ghianni, Tennessee Appeals, supra note 186.
327. See id.
329. Id.
330. See id.
333. See, e.g., id. (explaining that the mere potential for voters to be burdened is insufficient to establish that a statutory provision is a poll tax).
335. See id. at 20.
1. Empirical Data on Lower Voter Turnout

While there is no consensus within the social science community, studies have shown that voter identification laws do impact turnout.\footnote{See, e.g., id.} Courts might be willing to consider the poll tax argument more seriously if these studies can demonstrate real burdens.\footnote{See id.} In a California Institute of Technology study, the researchers concluded that, "the stricter requirements—requirements more than merely presenting a non-photo identification card—are significant negative burdens on voters, relative to a weaker requirement, such as merely signing a poll-book."\footnote{Id. at 17.} Furthermore, the study found that strict voter identification laws lead to lower turnout of "registered voters with lower levels of educational attainment or lower levels of income"—across all racial and ethnic groups.\footnote{Id. at 20.}

From 2011 to 2012, the Brennan Center for Justice prepared a report extensively detailing the substantial costs to voters in states with voter identification requirements.\footnote{Keesha Gaskin & Sundeep Iyer, The Challenge of Obtaining Voter Identification, BRENNAN CENTER FOR JUST., at 2, http://www.brennancenter.org/sites/default/files/legacy/ Democracy/VRE/Challenge_of_Obtaining_Voter_ID.pdf (last updated July 29, 2012).} The study highlights some of the specific constraints to voters in obtaining identification.\footnote{See id. at 3-15.} For example, the study addresses voters’ distance from offices that issue identification, limited transportation to those offices, short hours of operation of those offices, and the high costs of obtaining necessary documents.\footnote{Id.} Overall, the report indicates that millions of Americans living in states with strict voter identification laws will have more difficulty voting.\footnote{Id. at 1-2.}

2. Studies Indicating the Potential for Disenfranchisement

While evidence of lower turnout resulting from voter identification laws is limited, there are studies that have examined the potential for future disenfranchisement, especially among minority voters, that will result from the new wave of voter identification laws. Courts may be moved to consider the poll tax argument if real burdens can be demonstrated through these studies. In *Voter ID Requirements and the Disenfranchisements of Latino, Black and Asian Voters*, researchers determined that their “results clearly suggest that voting laws which require specific or multiple forms of identification will disproportionately impact racial and ethnic minorities, immigrant populations, and those with lower incomes.” This study was not unique in its assessment—as the new wave of voter identification laws becomes further implemented, more researchers and commentators are considering its impact.

In another study, *Uneven Hurdles: The Effect of Voter Identification Requirements on Voter Turnout*, researchers determined that, while photo identification requirements had minimal effect on overall turnout, “[voter identification] laws may decrease the turnout of Latino populations, and [photo identification] laws may affect black populations similarly. The evidence also indicates that [voter identification] laws may also widen the income gap associated with voter turnout.”

IV. SOLUTIONS FOR NEW VOTER IDENTIFICATION LAWS

Part IV will be divided into three Subparts. First, it will explain how the Twenty-Fourth Amendment is the appropriate cause of action

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345. See, e.g., Matt A. Barreto et al., *Voter ID Requirements and the Disenfranchisements of Latino, Black and Asian Voters* 21 (Sept. 1, 2007) (unpublished manuscript) [hereinafter Barreto et al., *Voter ID*], available at http://faculty.washington.edu/mbarreto/research/Voter_ID_APSA.pdf (identifying the possibility “that strict voter identification requirements, designed to promote legitimate election results, could actually undermine that legitimacy instead”).

346. See supra notes 332-35 and accompanying text.


348. See, e.g., *Voter Identification: First, Show Your Face*, ECONOMIST, Sept. 17, 2011, at 30, 30 (“More than 178,000 registered voters in South Carolina lack such formal identification. Opponents of the bill claim it discriminates against black and poor voters.”); see also supra note 340.


350. See infra Part IV.A–B.
for challenging voter identification requirements by detailing how the Equal Protection Clause and the VRA are not likely to provide favorable outcomes. Second, it will discuss possible solutions to ensuring the franchise to those currently without identification.

A. Choosing the Twenty-Fourth Amendment over Equal Protection or the VRA

Courts should utilize the Twenty-Fourth Amendment to dismantle barriers to voting. Courts commonly apply the Equal Protection Clause or the VRA to voter identification laws when challengers seek to have these laws invalidated. However, the Twenty-Fourth Amendment provides the best cause of action against states with strict voter identification requirements.

The Supreme Court decided Crawford in 2008. Crawford, considered a landmark decision on Equal Protection Jurisprudence, will not likely be overruled quickly. The Court held that the voter identification statute did not violate the fundamental right to vote and therefore was upheld. Furthermore, the Court had little regard for the alleged burdens on voters and instead focused heavily on the need to protect against voter fraud. Since the Court was so steadfast in its holding, attacking voter identification laws under the Equal Protection Clause is not likely to be successful in the near future.

Section 5 of the VRA has been applied broadly to prevent disenfranchisement. Courts have successfully defeated strict voter identification requirements with relative ease under the statute. While this was a viable option in the past for invalidating voter identification laws in jurisdictions covered by the VRA, the Supreme Court has

351. See infra Part IV.A.
352. See infra Part IV.B–C.
353. See U.S. Const. amend. XXIV, §§ 1–2.
355. See supra Part III.
358. See Crawford, 553 U.S. at 204.
359. Id. at 194-200.
360. See id. at 204.
362. See, e.g., Frieden, supra note 190.
effectively ended the use of Section 5.\(^{363}\) On November 9, 2012, the Supreme Court granted Shelby County’s writ of certiorari to answer the limited question of “whether . . . Section 5 of the Voting Rights Act . . . exceeded its authority under the Fourteenth and Fifteenth Amendments and thus violated . . . the United States Constitution.”\(^{364}\)

On June 25, 2013, the Supreme Court struck down the preclearance provision, deflating the most powerful tool to combat restrictive voting practices.\(^{365}\)

Ending preclearance requirements under Section 5 will have widespread effects on the franchise, particularly in covered jurisdictions with strict voter identification requirements.\(^{366}\) Texas’s voter identification scheme was denied preclearance in March 2012 for “having the effect of denying or abridging the right to vote on the account of race.”\(^{367}\) The Court of Appeals affirmed the DOJ’s decision, stating in plain words that the requirement “imposes strict, unforgiving burdens on the poor.”\(^{368}\) In South Carolina, preclearance was granted, but implementation was denied by the DOJ until 2013.\(^{369}\) In Mississippi, preclearance is still required.\(^{370}\)

Without Section 5 of the VRA, the voter identification landscape will likely be different, with states like Texas retaining their voter identification requirements.\(^{371}\) In fact, states can now impose even stricter requirements without the fear of repercussions from the DOJ.\(^{372}\) With the VRA unavailable and the Supreme Court likely unwilling to reconsider Crawford, the most common means of attacking voter identification requirements are no longer available to the courts.\(^{373}\) The


\(^{365}\) Shelby Cnty., No. 12-96, slip op. at 24.


\(^{367}\) See Frieden, supra note 190.


\(^{369}\) Voter Identification Requirements, supra note 13.

\(^{370}\) Id.


\(^{373}\) See Shelby Cnty. v. Holder, No. 12-96, slip op. at 24 (U.S. June 25, 2013); Crawford v. Marion Cnty. Election Bd., 553 U.S. 181, 204 (2008); see also Planned Parenthood of S. Eastern Penn. v. Casey, 505 U.S. 833, 854 (“[T]he very concept of the rule of law underlying our own Constitution requires such continuity over time that a respect for precedent is, by definition,
Twenty-Fourth Amendment will stand as the most viable option to defeat identification requirements.\footnote{374}

B. A New Advocate for Reform

In light of the \textit{Shelby County} decision, which removed the DOJ’s authority to unilaterally deny preclearance, there is a need for greater voting rights advocacy.\footnote{375} Currently, there are many organizations actively involved in voting rights litigation and legislation.\footnote{376} Many of these organizations, while engaged in voting rights work, have broad sets of progressive goals, and are not concerned exclusively with voting rights.\footnote{377} Some, like the ACLU, are concerned with civil liberties, while others, such as the NAACP, focus on civil rights for minorities.\footnote{378}

While these efforts to protect voting rights in general are commendable, they will not be adequate to combat new voter identification laws in the face of pro-voter identification politicians and the weakening of the DOJ’s authority.\footnote{379} The groups that currently engage in voting rights advocacy do not center their efforts exclusively on voter identification laws.\footnote{380} In the absence of Section 5 of the VRA,
these existing groups will be unable to advocate vigorously for those disenfranchised specifically by voter identification laws. To compensate for the lack of DOJ authority, those in the voter protection community should form an advocacy group specifically for advocating against voter identification laws.

This organization, like many of the existing advocacy groups, could play a role in litigating voter identification challenges and lobbying state and federal government to reform their laws. However, unlike those other groups, this organization would focus exclusively on voter identification, which would enable it to operate at the cutting edge of the issue. This group’s specific focus and understanding of the issue could develop Twenty-Fourth Amendment jurisprudence, and would become the best means to invalidate voter identification laws in the post-Shelby County environment.

C. Removing Barriers to Voting Without the Courts

There are numerous ways to create a voter identification law without violating the Twenty-Fourth Amendment. These methods include providing all the necessary documentation free of charge, better educating voters, and exempting certain voters. In his article in the Michigan Law Review, Spencer Overton lays out possible supplements and alternatives to photo identification requirements. Overton discusses a number of ways to verify a voter’s identification without imposing harsh burdens on voters. These include permitting identification without photographs, allowing registration at the polls, utilizing signature comparisons, and providing voters with the opportunity to sign an affidavit attesting to their identity. These ideas, however, would require changing existing statutes, an unlikely goal.

381. Shelby Cnty., No. 12-96, slip op. at 24; see also supra Part IIID (outlining empirical evidence of disenfranchisement as a result of voter identification laws).
383. See, e.g., About the ACLU, supra note 378 (explaining the organization’s role in handling cases and lobbying politicians).
384. See supra note 376 and accompanying text.
385. See supra Part III (discussing how the Twenty-Fourth Amendment is a viable option to invalidate voter identification laws).
386. Langholz, supra note 79, at 788.
387. Id.
389. Id. at 675-80.
390. Id. at 678-80.
391. See id. at 678-79.
Within the confines of a strict voter identification requirement, the best way to ensure the franchise is through outreach and education.\(^{392}\) One outreach program implemented by Georgia utilized a mobile bus to reach out to voters without identification.\(^{393}\) That program, while a positive step, provided identification to fewer than five hundred voters.\(^{394}\)

Beyond the unique mobile bus solution, states should better utilize simple education efforts.\(^{395}\) These efforts include "a media campaign by election officials, personal letters to registered voters who appear not to have a driver’s license, and organized outreach with community organizations."\(^{396}\) While these seem to be basic, common sense efforts, courts in a number of states have postponed implementation of voter identification provisions because of unsuccessful educational efforts.\(^{397}\)

Many advocates for voting rights have campaigned for a national identification card.\(^{398}\) This plan would allow the federal government to issue a multi-purpose identification card to all citizens.\(^{399}\) It would avoid the problems faced by voters without identification and has already been implemented in many countries, such as Germany.\(^{400}\) Critics, however, cite privacy as their main concern.\(^{401}\)

The Carter-Baker Commission, selected to present a bipartisan election reform plan, recommended use of "REAL ID" cards as an alternative to a national identification card.\(^{402}\) This proposal would require states to modify the identifications they currently issue to comply with federal standards of uniformity.\(^{403}\) These cards would provide proof of citizenship but voters would not be required to show them for the first two elections following implementation of the system.\(^{404}\) The plan was passed in the House of Representatives but not in the Senate.\(^{405}\)

\(^{392}\) See Langholz, supra note 79, at 789-90.

\(^{393}\) Overton, supra note 388, at 676.

\(^{394}\) Id.

\(^{395}\) See Langholz, supra note 79, at 789-90.

\(^{396}\) Id. at 790.

\(^{397}\) Id. at 789-90; e.g., Applewhite v. Commonwealth, 54 A.3d 1, 5 (Pa. 2012) (per curiam).


\(^{399}\) Id.

\(^{400}\) Id.

\(^{401}\) Id.

\(^{402}\) Langholz, supra note 79, at 751.

\(^{403}\) See id.

\(^{404}\) Id. at 751-52.

\(^{405}\) Id. at 754.
national identification card and the "REAL ID" card are both strong alternatives to state specific voter identification requirements.\textsuperscript{406}

V. CONCLUSION

The Twenty-Fourth Amendment has been applied too narrowly.\textsuperscript{407} Given the present and stagnant nature of equal protection jurisprudence and the looming end of the VRA, the Twenty-Fourth Amendment is more important than ever.\textsuperscript{408} Use of the Twenty-Fourth Amendment is appropriate in light of the escalating burdens imposed by voter identification laws; the intent of the drafters of the Amendment; case precedent considering the poll tax; and the actual consequences that identification laws have on voters.\textsuperscript{409} These justifications provide a thorough basis for reintroducing the forgotten Amendment.

\textit{Brendan F. Friedman}\textsuperscript{*}

\textsuperscript{406} Drum, supra note 398; see Langholz, supra note 79, at 751.

\textsuperscript{407} See Schultz & Clark, supra note 7, at 414-15 (explaining how courts have failed to rely on Twenty-Fourth Amendment jurisprudence in dealing with voting restrictions).


\textsuperscript{409} See supra Part II.

\textsuperscript{*} J.D. candidate, 2014; Maurice A. Deane School of Law, Hofstra University; B.A., 2011, University of Michigan. This Note is dedicated to my grandfather, Hyman Mendelson, who practiced law in New York for over half a century, and encouraged me to be a lawyer from the moment I could speak. I would like to thank my parents and two fantastic attorneys, Cindy and Edward Friedman, for their love and support. They have been as invaluable in my legal education as any professor and I am forever grateful. Thanks to Miriam Sternberg, and all my friends and family, for being supportive and understanding throughout this arduous process; to Professor Grant Hayden for introducing me to voting rights and for being willing to challenge my beliefs and assumptions on the subject; to my Notes & Comments Editor, Anna Getiaishvili, for the thorough feedback and encouragement; and to the entire Board of the \textit{Hofstra Law Review}, with special thanks to Brian Sullivan, Tyler Evans, Sarah Freeman, James O’Connor, and Michal Ovadia for their hard work and dedication.

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