The ID Divide: Addressing the Challenges of Identification and Authentication in American Society

By Peter P. Swire and Cassandra Q. Butts

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I.   Introduction and Summary

How individuals identify themselves in our country grows more complex by the year. In this year's Indiana presidential primary, 12 nuns were turned away from voting booths because they lacked state identification (none of them drives), a stark reminder that the recent Supreme Court ruling that upheld Indiana's voter ID law poses lasting consequences to our democracy. And two years ago the personal identification data of 26.5 million veterans were lost from a government laptop, one in a series of data breaches that threaten the integrity of everyone's identification.

Those 12 nuns are among 20 million other voting age citizens without driver's licenses, and they join those 26.5 million veterans and many millions of other Americans who suddenly find themselves on the wrong side of what we call the ID Divide—Americans who lack official identification, suffer from identity theft, are improperly placed on watch lists, or otherwise face burdens when asked for identification. The problems of these uncredentialed people are largely invisible to credentialed Americans, many of whom have a wallet full of proofs of identity. Yet those on the wrong side of the ID Divide are finding themselves squeezed out of many parts of daily life, including finding a job, opening a bank account, flying on an airplane, and even exercising the right to vote.

For many reasons, the number of ID checks in American life has climbed sharply in recent years, especially in the wake of the 9/11 terrorist attacks on our country in 2001. In fact, the growing ID Divide is similar in many ways to the "Digital Divide" that exists for those who lack access to computers and the Internet, which in turn leaves them without access to numerous opportunities for education, commerce, and participation in civic and community affairs. The ID Divide leaves those without proper means of identification or with compromised ID unable to participate in the most basic functions of everyday life in our economy and democracy.

What's worse, Americans and their representatives in government at the federal, state, and local levels are divided about what to do about these problems. Some want stricter identification systems, most prominently to fight terrorism and to limit immigration. Their voices

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[*] This Issue Brief is an edited version of a longer Report, with the same title, that was published in June 2008 by the Center for American Progress. PETER P. SWIRE & CASSANDRA Q. BUTTS, THE ID DIVIDE: ADDRESSING THE CHALLENGES OF IDENTIFICATION AND AUTHENTICATION IN AMERICAN SOCIETY, (2008) [hereinafter ID REPORT], *available at* http://www.americanprogress.org/issues/2008/06/pdf/id_divide.pdf. The ideas in this paper were generated from a larger "Progressive Identity Project" chaired by the Center for American Progress. An appendix to this paper describes the Progressive Identity Project.

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are joined by those who see massive profits to be had if the United States embraces ever more intrusive forms of personal identification—beyond fingerprints to iris scans, embedded ID chips, DNA profiles, and other forms of ID that, combined with personal and public financial records, would in fact throw more and more Americans onto the wrong side of the ID Divide. Others have a starkly different view. They are skeptical in general of new programs that require proof of ID, for cost, computer security, privacy, and civil liberties reasons.

Amid this debate, we recognize that there are circumstances where strong identification is required in the service of certain goals, such as national and homeland security. But in light of the many problems that can arise from use of identification, we support a process of careful vetting, or "due diligence" (to borrow a phrase from the financial world) for any new ID proposals. There should be scrutiny on cost and technical feasibility. There should be a detailed examination of whether an authentication procedure is reasonable given the goals rather than simply feasible because a new way to identify an individual is now possible.

In particular, we believe such due diligence would illustrate that many of the claims of ID vendors and other identity system proponents do not stand up well to such scrutiny. Fingerprint-based systems, for example, have much greater long-term flaws than most proponents and observers understand—and this form of ID has been around for decades. Due diligence must also include careful consideration of other important values, including: unequal effects on the poor and other disadvantaged groups; avoidance of excessive and uncompensated burdens on individuals (such as those wrongly put on watch lists); and burdens on important rights including privacy and the right to vote.

This paper focuses on the facts and implications of the ID Divide, identifying at least four important types of problems:

- A large population affected by identity theft and data breaches
- The growing effects of watch lists
- Specific groups that disproportionately lack IDs today
- The effects of new and stricter ID and matching requirements

These problems raise clear reasons for caution about implementing identification systems, which often have large, negative effects on those on the wrong side of the ID Divide. When systems need to be implemented, these problems show the great importance of designing systems with policies to address them. We argue that a strong set of progressive principles for identification systems (the "Progressive Principles") must first determine whether to create the system at all; and if so, how to do it. Those decisions should be based on:

- Real security or other goals
- Accuracy
- Inclusion
- Fairness and equality
- Effective redress mechanisms
- Equitable financing for systems

How can these principles be honored in practice? That's where the "due diligence" process comes into play when considering and implementing identification systems. Due diligence in the financial world of mergers and acquisitions and other important corporate transactions is conducted before a company makes a major investment. Proponents of, say, a merger (or in our case, a new identification program) can err on the side of optimism, concluding too readily that the merger (or new ID program) is clearly the way to go. Thorough due diligence protects against such over-optimism. [1]

This paper then applies our Progressive Principles and due diligence insights to a crucial current debate about identification. We detail why it would be bad policy to require government-issued photo identification for in-person voting, showing the usefulness of the Progressive Principles.

We believe the approach developed in this Issue Brief favors well-designed identification systems where they are carefully implemented and in the common interest. Design of identification systems should take full account of the Progressive Principles. If that occurs, then the problems of the ID Divide will become far more manageable.

II.   Progressive Principles for Identification Systems

As a policy matter, there are two distinct steps in assessing possible identification systems: whether to create the system at all, and if so, how to do it. In practice, these two steps often merge, because the overall desirability of a system depends in large part on how it is implemented. The principles here thus can be usefully applied to both steps of the policy process. In response to the ID Divide, the project has thus identified six principles for identification systems.

A.   Achieve real security or other goals

New identification systems proposed in the name of security should be subject to a due diligence review to ensure that they actually promote security and do so cost-effectively compared to other available options. Similarly, identification systems proposed for other purposes, such as immigration policy, should only be deployed after they are shown to be effectively related to achieving the specified policy goals. This principle comes first for a simple reason—the financial and other costs of a new system are justified only if they actually achieve security or other goals. If they do not, then the analysis should end at this step.

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[1] For a longer discussion of how this due diligence process would apply to recurring technical problem with current and proposed identification programs, *see* ID REPORT, *supra* note *, at 21-27. We explain that ID programs that rely on "shared secrets," such as Social Security numbers or your mother's maiden name, are becoming more insecure due to the increased use of identification. Similarly, ID programs based on biometrics such as fingerprints or iris scans are not the "silver bullets" that some proponents claim they are, but rather could become compromised rapidly if deployed in haphazard ways. *Id.* at 23-25.

B.   Accuracy

A system will only work in the long run if it has a high level of accuracy. Any system, such as a watch list, has "false positives" (people treated as terrorist suspects mistakenly) and "false negatives" (people who are dangerous who evade detection by the system). A proposed system should be carefully vetted to ensure that the accuracy produced by the system will result in a manageable number of false positives and negatives.

C.   Inclusion

As ID checks spread, it becomes increasingly important to ensure that people have a workable way to reduce the effects of the ID Divide. In many instances, there may be opportunities to rely on authentication approaches other than full identification. Where identification is used, however, then a goal of the policy process should be to foster inclusion of eligible persons.

D.   Fairness and equality

New authentication and identification systems should be designed with consideration of their effects on the less wealthy and others who would suffer disproportionate burdens from any given design. Equality principles are especially important with respect to fundamental rights, such as the right to vote, and for any system where use of the ID is vital to daily tasks, such as opening a bank account or proving eligibility for a job. Where necessary, in order to enable people to live fully in society, fees should be waived based on financial hardship. Procedures for reasonable exceptions should also be developed, in recognition that any one method of identification will not work for the entire eligible population.

E.   Effective redress mechanisms

Stricter and more numerous identification systems mean that burdens increase greatly on individuals who are mistakenly put on watch lists or otherwise disadvantaged by the system. An integral part of system design must be to have effective redress mechanisms. Otherwise, individuals will be turned into second-class citizens, deprived of the ability to conduct daily activities of life in a normal way. An effective security system must have not just on-ramps, but off-ramps as well. A properly designed system will allow government to distinguish between those who actually pose a threat and those who do not, and to proactively remove names from watch lists without a formal petition. If the security system remains the one-way street it is now, then it will inevitably collapse from its own weight.

F.   Equitable financing for systems

A major criticism of the REAL ID Act,[2] for example, has been its unfunded mandates. Congress has only provided the states with a small fraction of the expenses of implementing the federal requirements, now estimated at $4 billion over 10 years, but perhaps more. Along with

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[2] The REAL ID Act sets strict federal standards for states to follow in issuing drivers' licenses. *See* 49 U.S.C. § 30301 (2005).

such unfunded expenses to states and localities, REAL ID and other new identification systems impose off-budget costs on individuals who must spend time and money to meet the system's requirements. These include: tracking down birth certificates and other documentation; the time needed to try to resolve problems; and the costs to eligible individuals who get put on watch lists or otherwise cannot meet the system requirements. New identification systems, built for the common good, should thus be funded in a transparent and equitable way.

III.   The ID Divide and Its Impact

Much has been written about the "digital divide" that separates Americans with good computer access from millions of Americans who lack access to the Internet. The digital divide is a concern because those who lack access to computers and good Internet connections lose numerous opportunities for education, commerce, and participation in civic and community affairs. The rising prevalence of identification today is creating a similar "ID Divide." For millions of Americans, the recent rise in identification in the United States creates new challenges. IDs are requested in an increasing array of situations, such as getting on an airplane, opening a bank account, starting a job, entering an office building, or voting in elections. These insistent requests for identification detrimentally affect the lives of those who lack ID cards, are victims of identity fraud, or get wrongly placed onto terrorist watch lists or other "high-risk" lists.

A.   The Credentialed and the Uncredentialed

The problems of the ID Divide are invisible to many "credentialed" Americans of the middle or upper-middle class. These Americans include most government employees and policy experts who work on issues of identification. Credentialed Americans take ID checks for granted. Their wallets often contain a dozen forms of identification, all linked to the same name and address. The wallet often holds a driver's license, some credit cards, and membership cards ranging from their employer to an airline to the local grocery store. For these credentialed Americans, showing ID has become second nature. When asked, these credentialed Americans may see little objection to requirements for showing ID to perform tasks in society. For instance, some polling shows that a majority of Americans favors showing ID in order to vote.[3]

The interest-group politics surrounding identification reinforce the views of credentialed Americans. Key decisions about most new identification initiatives happen deep within the government procurement process. Government contractors have a built-in interest in advocating for increased use of identification systems—they get lucrative contracts only if the new systems go forward. Government contractors thus have the economic incentive to be deeply involved in identification proposals at every step of the way.

These ID system vendors also have the economic incentive to develop studies and statistics that support expensive new identification systems. By contrast, public interest groups

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[3] In April of 2006, 62 percent of respondents to a national poll strongly favored the showing of photo identification before voting, 19 percent somewhat favored, 12 percent were neutral, 3 percent somewhat opposed, and only 4 percent strongly opposed. PETER HART & BILL MCINTURFF, NBC NEWS/WALL STREET JOURNAL SURVEY, STUDY # 6062, at 13 (2006), *available at* http://online.wsj.com/public/resources/documents/poll20060426.pdf.

lack the same staffing and resources to be involved in every state and every federal agency identification initiative. As a result, even a clear public interest victory in one procurement contract can be ignored in other forums. For instance, the U.S. State Department, after intensive public criticism on security grounds, in 2006 agreed to put physical safeguards around the use of radio-frequency identification chips in U.S. passports. Unfortunately, the State Department and Department of Homeland Security subsequently neglected to use the same safeguards for the "passport cards" and "enhanced driver's licenses" that U.S. citizens are supposed to be able to use at the border in place of full passports.[4]

Credentialed Americans often have not realized what life looks like from the other side of the ID Divide. A major goal of this report is to inform the readers about the size and consequences of the ID Divide. There are at least four categories of problems under the ID Divide:

- A large population affected by identity theft and data breaches
- The growing effects of watch lists
- Specific groups that disproportionately lack IDs today
- The effects of new and stricter ID and matching requirements

These problems give reasons for caution about implementing identification systems—the systems often have large, negative effects on those on the other side of the ID Divide. Where systems are indeed implemented, then these problems show the great importance of designing systems with policies to address such problems.

B.   Large population affected by identity theft and data breaches

The ID Divide can strike every American. Identity theft is the fastest-rising crime of the new millennium.[5] The Federal Trade Commission reported that 8.3 million Americans suffered identity theft in 2005,[6] and identity theft is by far the largest category of consumer protection complaints to the government.[7] In a 2003 national telephone survey, 16 percent of adults reported they had been the victim of identity fraud.[8] Identity theft can change any credentialed American into one who faces the insecurities and obstacles facing a person who lacks ID.

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[4] *The Impact of Implementation: A Review of the REAL ID Act and the Western Hemisphere Travel Initiative: Hearing Before the Subcomm. on Oversight of Government Management, the Fed. Workforce, and the District of Columbia of the S. Comm. on Homeland Security and Governmental Affairs*, 110th Cong. (2008) (statement of Sophia Cope, Staff Attorney & Ron Plesser Fellow, Center for Democracy and Technology, *available at* http://www.cdt.org/testimony/20080429scope-written.pdf.

[5] For instance, the Internal Revenue Service reported an increase of 644 percent in identity theft cases from 2004 to 2007. Many of the cases involved misuse of another person's Social Security number to get a refund. BNA PRIVACY LAW WATCH, IRS PLANS TO OPEN SPECIALIZED UNIT FOR HANDLING IDENTITY THEFT CASES, (2008).

[6] FED. TRADE COMM'N, 2006 IDENTITY THEFT SURVEY REPORT (2007), *available at* http://www.ftc.gov/os/2007/11/SynovateFinalReportIDTheft2006.pdf.

[7] In 2007, identity theft complaints totaled 32 percent of all consumer complaints. FED. TRADE COMM'N, CONSUMER FRAUD AND IDENTITY THEFT COMPLAINT DATA, JANUARY - DECEMBER 2007 (2008), *available at* http://www.ftc.gov/opa/2008/02/fraud.pdf.

[8] HARRIS INTERACTIVE, IDENTITY THEFT: NEW SURVEY & TREND REPORT (2003), *available at* http://www.bbbonline.org/IDTheft/IDTheftSrvyAug03.pdf.

Identity theft strikes both wealthy and poor Americans, and has happened even to members of Congress.[9]

The rising tide of data breaches increases Americans' vulnerability to identity theft.[10] Recent years have seen innumerable press reports of loss of personally identifiable data from public and private databases. The Privacy Rights Clearinghouse has documented over 226 million data records of U.S. residents that have been exposed due to security breaches since 2005.[11] The TJMaxx clothing stores and affiliated stores lost over 45 million credit and debit card numbers in 2007. The databases of credit card processor CardSystems were hacked in 2005, resulting in loss of data for 40 million Americans. In the public sector, the Veterans Administration lost a data device containing the Social Security numbers and other personal data of 26.5 million discharged veterans. Along with breaches from many other government agencies, there have been repeated reports of computer security problems in federal, state, and local government computer systems.

Most identity programs create centralized databases that are vulnerable to such data breaches. In addition, almost all identity programs create new forms of information sharing, such as when a new employer or motor vehicle bureau checks a name against a central database. These new databases and new information flows are sources of vulnerability, requiring better computer security than has often occurred to date. Especially for official government databases, the new databases can also become targets for organized crime and other groups that seek to commit ID theft on a large scale or gain false credentials for their members. A related problem is the devastating effect of a breach for fingerprints and other biometric information. When a breach occurs for a credit card, the bank can issue a new card. But once a fingerprint is known, it is very hard indeed to get a new finger.

The more ID checks in society, the more that identity theft matters. In previous decades, with little use of ID checks in America, identity theft was not an important issue. Today and in the future, as ID checks become far more widespread, any imperfections in a person's identity become more serious and likely more difficult to correct. Identity theft today applies to the credit card fraud and bank account takeovers that are perhaps most widely known. Other sorts of identity fraud, moreover, are becoming more common. Medical ID theft has grown, as uninsured people try to get medical care using the name and health insurance of other people.[12] Convicted criminals have a strong incentive to take over an innocent's person identity so that they can present "clean" credentials to be hired, open a financial account, or do other everyday actions in society.

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[9] Theft of Rep. Anna Eshoo's (D-CA) Social Security number contributed to passage of financial privacy protections. *See* CHRIS JAY HOOFNAGLE & EMILY HONIG, VICTORIA'S SECRET AND FINANCIAL PRIVACY (2005), *available at* http://epic.org/privacy/glba/victoriassecret.html.

[10] Michael E. Jones, *Data Breaches: Recent Developments in the Public and Private Sectors*, 3 I/S: A JOURNAL OF LAW AND POLICY FOR THE INFORMATION SOCIETY 555 (2007).

[11] PRIVACY RIGHTS CLEARINGHOUSE, A CHRONOLOGY OF DATA BREACHES, http://www.privacyrights.org/ar/ChronDataBreaches.htm (last visited October 3, 2008).

[12] *See* WORLD PRIVACY FORUM, THE MEDICAL IDENTITY THEFT INFORMATION PAGE, http://www.worldprivacyforum.org/medicalidentitytheft.html (last visited October 3, 2008).

As identity fraud spreads, the victims of fraud may find it difficult or impossible to cleanse records of the false data created by the fraudster. This false data, in turn, increases the likelihood of additional problems for the innocent victim, such as failing a background check, flunking matches with another database (as discussed below), or being placed on a watch list. Identity theft thus can place any American on the un-credentialed side of the ID Divide. A crucial problem in badly designed identification systems is that they can lead to greatly increased rates of identity fraud. Design of identification systems, therefore, should carefully consider how to prevent or mitigate the effects of identity theft.

C.   Growing Effects of Watch Lists

Another way that any American can fall on the wrong side of the ID Divide is to get on a watch list. The No-Fly list operated by the Transportation Safety Administration is expected to expand to over 1 million names in 2008. Problems with this list have become famous. Sen. Ted Kennedy (D-MA) and Rep. John Lewis (D-GA) got on the list. So did Catherine Stevens, the wife of Sen. Ted Stevens (R-AK). Her nickname, "Cat" (as in Cat Stevens, the 1960s folk rock star turned Muslim poet), triggered the scrutiny.[13]

Even these politically prominent individuals have found it very difficult to get removed from the watch list. Even after individuals think they have the problem fixed, they often get placed back onto watch lists, such as when the "evidence" that mistakenly put them on the list in the first instance gets sent into the database again. As with identity theft, a major problem for badly designed identification systems is that larger numbers of people get flagged as "suspicious," triggering a cascade of problems for individuals as they are asked for ID in daily situations. The problems of identity theft and watch lists already affect many Americans directly. If and as identification systems continue to multiply, they are more likely to affect all Americans at least indirectly because authentication systems create a risk for each individual of losing control over one's identity, with the associated burdens of falling onto the wrong side of the ID Divide.

D.   Specific Groups that Disproportionately Lack IDs Today

Many Americans mistakenly believe that almost all U.S. adults have a driver's license. Over 20 million Americans of voting age currently lack a valid driver's license, however.[14] The Carter-Baker Commission estimated that 12 percent of voting-age Americans lack a driver's license.[15] Lack of a driver's license increasingly affects non-driving aspects of daily life, such as

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[13] Thomas Claburn, *Congressional Report Slams TSA for Security Breach*, INFORMATION WEEK, January 11, 2008, *available at* http://www.informationweek.com/news/security/showArticle.jhtml?articleID=205602931.

[14] One report estimates that 22 million voting-age citizens lack a driver's license. *See* BRENNAN CTR. FOR JUSTICE AT NYU SCHOOL OF LAW & SPENCER OVERTON, RESPONSE TO THE REPORT OF THE 2005 COMMISSION ON FEDERAL ELECTION REFORM 23 n.9 (2005), *available at* http://brennan.3cdn.net/7aad4859cd1bf5f49e_4zm6i2f1i.pdf; TASK FORCE ON THE FED. ELECTION SYS., TO ASSURE PRIDE AND CONFIDENCE IN THE ELECTORAL PROCESS 74-80 (2001), *available at* http://webstorage3.mcpa.virginia.edu/commissions/comm_2001_taskforce.pdf.

[15] According to the Federal Highway Administration, 13.2 percent of U.S. residents 16 years and older lacked a driver's license. COMM'N ON FED. ELECTION REFORM, BUILDING CONFIDENCE IN U.S. ELECTIONS 73 n. 22 (2005), *available at* http://www.american.edu/ia/cfer/report/full_report.pdf;

under the new state laws that require a government-issued photo ID in order to vote. Under the REAL ID Act, once implemented, lack of such an ID would prevent access to federal buildings and require additional screening before a person could fly in an airplane. Yet there are, of course, *driving-related reasons* why many Americans do not have a driver's license.

- **Blind and other disabled persons.** Roughly 1 million Americans are legally blind.[16] Many Americans have other disabilities that make it difficult or impossible to drive. Persons who cannot drive clearly have less reason to go through the hassle and expense of getting a government-issued photo ID from the motor vehicle bureau. In addition, many blind and disabled people live in poverty.[17]
- **The elderly.** Millions of older Americans no longer drive. According to a study by the AARP Georgia chapter, 36 percent of citizens in Georgia over the age of 75 do not have a current driver's license.[18] A Wisconsin study estimated that 23 percent of persons 65 years or older do not have a driver's license.[19]
- **The young.** Teenagers do not automatically get a driver's license when they turn 16. A license may be a costly luxury for cash-strapped families. Many states now require costly drivers' education before issuing a license. Auto insurance rates skyrocket when a teenager is added to the family policy. Some families, especially in urban areas, do not own a car. In addition, college students and other young people move often and so may lack proof of residence.
- **Suspended licenses.** Many states have expanded the range of reasons why driver's licenses are suspended or not renewed. In Wisconsin, "you can lose your driver's license if you forget to pay your library fines, don't shovel the snow off your sidewalk, or don't trim a tree that overhangs a neighbor's property."[20]
- **"Driving while poor."** Poor families clearly have a harder time than wealthy families in paying for driver's education, a license, and a car. An additional problem is that poverty can lead to inability to pay traffic tickets or other payments needed to renew a driver's license.
- **Urban users of mass transit.** Millions of Americans rely daily on buses, subways, and other forms of mass transit. In an era of dependence on foreign oil and concerns about global warming, this use of mass transit should be encouraged. Yet urban users of mass transit have less reason to get a driver's license, and thus are disproportionately excluded from systems that require one.
- **Lost, stolen, or mutilated driver's license.** Based on available statistics, approximately 20-to-25 percent of operating licenses issued each year are duplicates, issued because the

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FED. HIGHWAY ADMIN., U.S. DEPT. OF TRANSP., LICENSED DRIVERS BY SEX AND RATIO TO POPULATION—2003 (2004), *available at* http://www.fhwa.dot.gov/policy/ohim/hs03/pdf/dl1c.pdf.

[16] DIANA M. ZUCKERMAN, BLIND ADULTS IN AMERICA: THEIR LIVES AND CHALLENGES, (2004), *available at* http://www.center4research.org/blind0204.html.

[17] According to a recent study, 19 percent of legally blind persons live in poverty. *Id.*

[18] Spencer Overton, *Voter ID Supporters Lack Hard Evidence*, ATLANTA JOURNAL-CONSTITUTION, Apr. 8, 2005, *available at* http://docs.law.gwu.edu/facweb/soverton/ajc_april8_2005.pdf.

[19] One study reports that 91 percent of the state's elderly without a driver's license are white.
JOHN PAWASARAT, EMPLOYMENT AND TRAINING INSTITUTE, UNIVERSITY OF WISCONSIN-MILWAUKEE, THE DRIVER LICENSE STATUS OF THE VOTING AGE POPULATION IN WISCONSIN (2005), *available at* http://www.brennancenter.org/page/-/d/download_file_50902.pdf.

[20] *Id.*

original license was lost, stolen, or mutilated.[21] The time and expense to get a replacement license is manageable for a well-to-do person, or one who needs to show a driver's license for ID checks regularly (such as a frequent airline traveler). In contrast, the expense and hassle of getting a replacement license will be more of an obstacle to low-income people and those who do not need an ID except to vote.

In addition, communities of color and some faith communities are significantly less likely to have government-issued photo IDs, among them:

- **African Americans.** According to a 2006 survey by the Brennan Center, 25 percent of African-American voting-age citizens nationwide have no current government-issued photo ID, compared to 8 percent of white voting-age citizens.[22] In the detailed Wisconsin study, only 47 percent of Milwaukee County African-American adults had a valid driver's license, compared to 85 percent of white adults in the rest of the state. The situation for young adults ages 18-to-24 was even more striking, with 26 percent of African Americans in Milwaukee having a license compared with 71 percent of young white adults in the rest of the state.[23]
- **Hispanics.** Similar statistics apply to Hispanics. In a Georgia study, Hispanics were twice as likely as whites not to have a government-issued photo ID. In Milwaukee County, Wisconsin, only 43 percent of Hispanic adults had such IDs, and only 34 percent of Hispanics ages 18-to-24 did. In addition, Hispanic citizens born outside of the United States often face significant barriers to obtaining ID, as discussed further below for foreign-born citizens generally.
- **Native Americans.** Although less data exists for Native Americans, the Brennan Center reports that in the five counties in South Dakota with the highest Native-American populations, voters in the 2004 primary were 2-to-8 times more likely not to bring ID to the polls than other voters in the state.
- **Faith communities.** Some Americans have religious objections to being photographed for government-issued photo IDs. Strict requirements to provide IDs thus can have a serious effect on the Amish and other faith-based communities. Approximately a dozen states have laws on the books with a religious exception to the photograph requirement on driver's licenses, but it appears that these laws may be overruled by the proposed rules for implementing the REAL ID Act.[24]

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[21] For instance, the rate of duplicate individual licenses in 2007 was 24.2 percent for Alaska (36,784 out of 151, 502). Interview by Stacy Oates with Alaska Department of Motor Vehicles, in Wash., D.C. (May 19, 2008). For Florida, duplicates for the 2005-06 fiscal year were 19.4 percent (1,045,296 out of 5,380,905). DIV. OF DRIVER LICENSE, FLORIDA DEP'T OF HIGHWAY SAFETY AND MOTOR VEHICLES, PERFORMANCE STATISTICS (2006), *available at* http://www.flhsmv.gov/html/FactsFiguresFY2006/PerStaDDL.htm. For Idaho, duplicates in 2006 were 19.8 percent (46,319 out of 187,345). IDAHO TRANSP. DEP'T, DRIVERS LICENSE ISSUED CY 2006 (2006), *available at* http://www.itd.idaho.gov/econ/DriversLicense/DLAGE_SEX_06.pdf. For Wisconsin, duplicates for 2006 were 25.6 percent (322,201 out of 1,258,278). WISCONSIN DEP'T OF TRANSP., DRIVERS LICENSE/ID CARDS ISSUED (2006), *available at* http://www.dot.state.wi.us/drivers/docs/drlicissue.pdf.

[22] BRENNAN CTR. FOR JUSTICE AT NYU SCHOOL OF LAW, CITIZENS WITHOUT PROOF: A SURVEY OF AMERICANS' POSSESSION OF DOCUMENTARY PROOF OF CITIZENSHIP AND PHOTO IDENTIFICATION (2006), *available a*t http://www.brennancenter.org/page/-/d/download_file_39242.pdf.

[23] Pawasarat, *supra* note 19, at 2.

[24] Anne Broache, *Religious Minorities Face REAL ID Crackdown,* CNET NEWS, Feb. 6, 2008, *available at* http://www.news.com/Religious-minorities-face-Real-ID-crackdown/2009-1028_3-6229258.html.

E.   ID Requirements Exclude Many Eligible Persons

There is clear, recent evidence that the lack of identity documentation has harmful effects in programs where stricter ID is required. The Deficit Reduction Act of 2005, for example, required states to obtain satisfactory documentary evidence of U.S. citizenship or nationality for approximately 40 million Medicaid beneficiaries. The stated goal of the requirement was to prevent noncitizens, who are ineligible for Medicaid, from receiving the medical benefits. A Government Accountability Office study instead found that the major effects of the program were higher administrative costs for the states and denial of medical benefits to eligible U.S. citizens.[25]

Although most states had not quantified the effect of this provision of the Act, the study reported that one state "that had begun tracking the effect identified 18,000 individuals in the 7 months after implementation whose applications were denied or coverage was terminated for inability to provide the necessary documentation, though the state believed most of them to be eligible citizens."[26] Administrative costs and denials of coverage occurred because the documentation requirements lacked exceptions and mandated use only of originals, so individuals had to be processed in person rather than by mail. These higher costs meant that only one of the 44 reporting states experienced savings from the provision, which was designed to save money by screening out ineligible applicants.

This Medicaid experience illustrates the potentially harmful effects of ID requirements on eligible citizens. The effect is more striking because the affected individuals had an important incentive to participate in the program—to receive medical insurance. Where the tangible benefit to individuals is lower, such as getting an ID card in order to meet state voting laws, the exclusionary effects of an ID requirement quite possibly will be higher.

F.   The Effects of New and Stricter Documentation and Matching Requirements

Proposals and programs are currently underway for stricter ID requirements in areas such as voting, employment, driver's licenses, and eligibility for Medicaid and other government programs. The stricter requirements will be costly for many Americans—in terms of time and money to gather documents, and also due to the effects on eligible people who are not able to prove their identity. Moreover, "even free is not free" when it comes to getting identification documents. That is, even if the state does not charge for a driver's license, there are significant and unevenly-distributed costs for many persons in proving their identity to the state.[27]

Recent experience with "matching" programs also highlights the problems that occur when a large fraction of individuals don't "match" a database due to any of a number of possible causes, including name variation, address variation, typos and other transcription errors, and

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[25] GEN. ACCOUNTABILITY OFFICE, MEDICAID: STATES REPORTED THAT CITIZENSHIP DOCUMENTATION REQUIREMENT RESULTED IN ENROLLMENT DECLINES FOR ELIGIBLE CITIZENS AND POSED ADMINISTRATIVE BURDENS (2007), *available at* http://oversight.house.gov/documents/20070724110408.pdf; *see also*, Robert Pear, *Lacking Papers, Citizens Lose Medicaid*, N.Y. TIMES, March 12, 2007.

[26] GEN. ACCOUNTABILITY OFFICE, *supra* note 25, at 5.

[27]   For a fuller discussion of the costs associated with a "free" ID, *see* ID REPORT, *supra* note *, at 15-16.

other sources of error. Indeed, there is compelling evidence of major problems in current matching programs that can result in the erroneous denial of drivers' licenses, and loss of jobs and even the right to vote.[28] Unless matching programs are conducted with high-quality safeguards, often not in place today, they may well increase the number of mistakes in the system.

G. Summary on the ID Divide

The rapid increase in the use of identification in American society has been accompanied by the growing problem of the ID Divide. Identity theft and watch lists can place any American on the wrong side of the ID Divide. In addition, far more adult American citizens lack a government-issued photo ID than most people realize. And matching programs in voting, employment, and driver's licenses currently fall far short of technical best practices and have shown deeply problematic effects of excluding many eligible citizens and residents.

Although Americans of all backgrounds may find themselves on the wrong side of the ID Divide, there are disproportionate effects on the poor, the young, the disabled, the less-educated, communities of color, and citizens born outside of the United States. For a credentialed, middle-class family that has the same home and jobs for years, it may be relatively easy to provide documentation and to rectify problems if they occur by producing multiple other documents. Such families may also be more skilled at navigating the bureaucracy than the less-educated, those who are less fluent in English, or those who can't afford to take off multiple days from work to satisfy the demands of the motor vehicles office. Because most legislators and policymakers are themselves thoroughly credentialed, it is especially important for them to learn about the daunting challenges facing the uncredentialed.

In recent years, debates in the United States about identification have been dominated by the goals of fighting terrorism or addressing immigration issues. As our country considers expensive identification systems, which are designed to last for many years, it is vital to consider the effects of new programs on all citizens and legal residents. The price of fighting terrorism should not be to exclude millions of law-abiding Americans from participation in society.

IV. Applying Progressive Identification Principles to Voter Photo ID Requirements: A Case Study

An area of intense current debate is whether government-issued photo ID should be required for in-person voting. Although other methods for identifying voters have long been in place, the first such requirements in U.S. history were passed by Indiana, Georgia, and Missouri beginning in 2002.[29] In May 2008, the U.S. Supreme Court held 6-to-3 that the Indiana law was constitutional on its face in *Crawford v. Marion County Election Board*.

A law can be constitutional but a very bad idea. For instance, a 90 percent income tax is constitutional, but many people would oppose such a measure. The same applies to mandatory

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[28] *See id.* at 16-19

[29] GA. CODE ANN. §21-2-417 (2005); IND. CODE ANN. §3-11-8-25.1 (West 2003); MO. ANN. STAT. §115.427 (West 2002).

photo ID. When measured against this report's principles for identification systems, mandatory photo ID is a bad policy choice that should not be adopted by the states. A due diligence review shows that requiring state-issued photo ID to vote badly flunks our six progressive identification principles.

A.   Achieve real security or other goals

Proponents of required photo identification say that it will reduce in-person voter fraud, because only those carrying an unexpired state-issued photo ID will be allowed to vote. There have been comprehensive refutations, however, of the claim that photo ID will reduce voter fraud.[30] A seminal article by George Washington University law professor Spencer Overton[31] examines the leading anecdotes that purportedly show voter fraud, and concludes: "While anecdotes about fraud are rhetorically persuasive, the narratives often contain false information, omit critical facts, or focus on wrongdoing that a photo-identification requirement would not prevent."[32]

Despite an intensive effort by a conservative group to highlight incidents of in-person voting fraud, there were zero confirmed incidents of voter fraud at the polling place in the 2006 elections.[33] Under President George W. Bush, there was a major effort to identity and prosecute cases of in-person voter fraud. A significant reason for the controversial firings of several U.S. attorneys was that they did not prosecute as many such cases as the Justice Department leaders wished.[34] The Brennan Center examined each allegation of voter fraud mentioned in any of the briefs in the Indiana case, and concluded that "the briefs cite one attempt at impersonation that was thwarted without a photo ID requirement, and nine unresolved cases where impersonation fraud at the polls was suspected but not proven."[35]

Due diligence for proposed identification systems would ask whether the program achieves the security goal and whether it does so cost-effectively. The academic studies show serious reasons to doubt that a photo ID requirement will reduce voter fraud because of the lack of evidence of the type of voter fraud that would be prevented by the ID. In addition, the cost-effectiveness calculus tilts strongly against having the photo ID requirement. An intensive study of 2.8 million Washington state votes in 2004 found that 0.0009 percent of the ballots involved double voting or voting in the name of deceased individuals.[36] Professor Overton calculates that

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[30] *See generally*, TOVA ANDREA WANG, THE CENTURY FOUNDATION, ELECTION REFORM: VOTER ID LAWS, *available at* http://www.tcf.org/list.asp?type=IN&pubid=%7B647BD6E5-371F-434E-B9D5-5B09E3FFC363%7D.
[31] Spencer Overton, *Voter Identification*, 105 MICH. L. REV. 631 (2006).
[32] *Id.* at 635.
[33] TOVA ANDREA WANG, THE CENTURY FOUNDATION , WHERE'S THE VOTER FRAUD? (2006), *available at* http://www.tcf.org/list.asp?type=NC&pubid=1452.
[34] *See* Mark Follman, Alex Koppelman, & Jonathan Vanian, *How U.S. Attorneys Were Used to Spread Voter-Fraud Fears,* SALON, March 21, 2007, *available at* http://www.salon.com/news/feature/2007/03/21/us_attorneys/; *see also* Josh Marshall, TalkingPointsMemo, April 12, 2007, http://www.talkingpointsmemo.com/archives/013581.php; LORRAINE C. MINNITE, THE POLITICS OF VOTER FRAUD, (2007), *available at* http://projectvote.org/fileadmin/ProjectVote/Publications/Politics_of_Voter_Fraud_Final.pdf.
[35] JUSTIN LEVITT, BRENNAN CTR. FOR JUSTICE AT NYU SCHOOL OF LAW, ANALYSIS OF ALLEGED FRAUD IN BRIEFS SUPPORTING *CRAWFORD* RESPONDENTS (2007), *available at* http://truthaboutfraud.org/pdf/CrawfordAllegations.pdf.
[36] Borders v. King County, No. 05-2-00027-3 (Wash. Super. Ct. Chelan County June 24, 2005). Similarly, a survey of each of Ohio's 88 county Boards of Elections found only four instances of ineligible persons attempting to vote

this rate of fraud, when compared with the over 20 million Americans who lack a driver's license, would mean that "photo-identification requirements would deter over 6,700 legitimate votes for every single fraudulent vote prevented."[37]

From a system security perspective, photo ID requirements target an especially unlikely method of voter fraud. The photo ID requirement targets one-at-a-time votes by people who are willing to commit fraud in the full light of day, examined by poll watchers of the various parties, in the community where they claim to reside. That kind of in-person fraud is riskier and less likely to swing an election than two other categories of fraud—absentee ballots and voting machine fraud.

Absentee ballot fraud, done literally out of sight of voting officials, is less risky for a fraudster than going to the polls, yet states such as Indiana and Georgia allow such voting without any photo ID. Machine-based fraud, such as old-fashioned ballot box stuffing or state-of-the-art hacking of software, has a much higher payoff for fraud because many votes can be stolen at once. In short, moving forward with a photo ID requirement while not addressing other more substantial sources of fraud is not a rational strategy if the goal is truly to reduce voter fraud. This lack of a rational basis for the photo ID requirement is one reason that many observers believe that support for the photo ID is based on partisan political calculations rather than an actual effort to reduce voter fraud.

B.   Accuracy

Accuracy is not a major issue in the debate over whether a photo ID should be required for in-person voting. Accuracy is a major issue, however, when matching programs are used to purge data rolls. As discussed in the full report, experiments have found error rates of 20 percent to 30 percent in programs designed to purge rolls, so great care is required before people are removed from eligibility to vote.

C.   Inclusion

Inclusion is a major reason to be skeptical of proposals for mandatory photo ID for voting. The facts of the ID Divide demonstrate the many millions of citizens who could be excluded from the right to vote—the fundamental basis for democracy—by overly strict ID requirements. As Professor Overton writes: "While a small amount of voter fraud hypothetically could determine a close election, the exclusion of twenty million Americans who lack photo identification could erroneously skew a larger number of elections."

The principle of inclusion underscores the desirability of anti-fraud procedures that are less exclusionary than a mandatory photo ID. For instance, many states have long permitted an affirmation of identity, on penalty of perjury. States often match signatures to the signature at

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out of a total of 9,078,728 votes cast in the state's 2002 and 2004 general elections. This is a fraud rate of 0.000044%. COALITION ON HOMELESSNESS AND HOUSING IN OHIO & LEAGUE OF WOMEN VOTERS OF OHIO, LET THE PEOPLE VOTE: A JOINT REPORT ON ELECTION REFORM ACTIVITIES IN OHIO (2005), *available at* http://www.cohhio.org/alerts/Election%20Reform%R eport.pdf.
[37] Overton, *supra* note 31, at 635.

time of registration. Utility bills, bank statements, and other proofs of identity are unlikely to be in the hands of fraudsters. In short, identification approaches can be designed to address fraud while avoiding disenfranchising eligible voters.

D. Fairness and equality

A major reason for concern about photo ID proposals is the known disproportionate harm to specific groups, including African Americans, Hispanics, the blind, and other groups such as the disabled, the poor, the young, and the elderly. Especially in light of the long American history of discrimination in voting rights, any proposal that has known negative effects on such groups should be done only based upon compelling evidence of need, which is lacking for photo ID proposals.

E. Effective redress mechanisms

An important and effective redress mechanism is to have back-up forms of identification in addition to government-issued photo ID. The ability of the citizen to sign an affidavit or present more readily available documentation such as a utility bill would greatly mitigate the exclusionary effects of mandatory photo ID approaches. For matching programs, an important principle is to ensure that there is effective notice to any voter before a name is purged from the roles, as well as realistic and effective ways for individuals to vote where the purging is done inaccurately.

F. Equitable funding mechanisms

ID requirements are done at the state level, so there is no problem of unfunded federal mandates. Matching programs, however, can easily raise the twin problem of unfunded mandates and technology or procedures that have a high error rate. In light of the high error rates in voting matching found by the Brennan Center, extreme caution is needed before assuming that the infrastructure and staffing are in place to avoid purging eligible voters from the rolls.

G. Conclusion on Mandatory Photo ID for Voting

Following this report's principles for identification, and based on the actual evidence about voter fraud, requiring photo ID for in-person voting would have significant harmful effects. The recent Supreme Court case may find such a requirement constitutional, but the approach is nonetheless clearly bad policy that should not be enacted. If enacted by states, then necessary safeguards should be put in place to eliminate exclusionary effects.

V. Conclusion

The rising quantity of identification systems, identity theft, and watch lists all are contributing to a newly important ID Divide in the United States. For passports and other purposes it makes sense to have identification systems, run by or on behalf of the government. A major finding of this report, however, is that new and existing identification systems should be subject to due diligence. Systems created in the name of security should only be implemented if

they actually will improve security, and do so cost-effectively.   Indeed, there are major security risks inherent in many current or proposed identification systems.[38] In many instances, it is desirable to seek authentication approaches that do not rely on identification.

A progressive approach to identity and authentication means that the systems should be developed in the common interest, and not primarily for the convenience or ease-of-use of those operating the systems. The actual effects of the ID Divide on ordinary people are a crucial factor in assessing the overall desirability of proposed systems. For that reason, we are recommending that proposed and existing systems be measured against the following principles:

- Achieve real security or other goals
- Accuracy
- Inclusion
- Fairness/equality
- Effective redress mechanisms
- Equitable funding mechanisms

This approach favors well-designed identification systems when they are in the common interest. A due diligence process should prevent proponents from assuming benefits, such as low cost and perfectly working biometrics, that will not pan out in practice. We can move forward as well on authentication approaches that do not rely on identification, and on long-run approaches that rely on secure devices having stronger security and privacy qualities. In short, there are measures to address the ID Divide.

When the next administration takes office in January 2009, it will need to make new policy going forward on numerous identification and authentication issues. The new administration will also have the first opportunity since the terrorist attacks of September 11, 2001 to examine decisions made since then in the light of nearly a decade of experience. We believe this Issue Brief will help the new administration tackle this critical issue early and swiftly, preparing our country for the challenges to civil liberties and national security posed by the complex issues of identification and authentication.

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[38] *See* ID REPORT, *supra* note *, at 10-11, 21-25.

Appendix: The Progressive Identity Project

The Progressive Identity project arose from the recognition that the next administration will face identification and authentication issues in a wide range of contexts. Americans are increasingly being asked to identify themselves, both in person and online. The goal is to try to set forth principles and insights that will provide a coherent approach for diverse issue areas such as:

- *National and homeland security*. The REAL ID Act and numerous other identification programs have been proposed since the attacks of September 11, 2001
- *Immigration*. There have been prominent debates about identity requirements at the time a person starts a job and about government-issued IDs for non-citizens
- *Voting*. The last few years have seen unprecedented state laws requiring ID to vote, and subsequent litigation about those laws' constitutionality
- *Electronic health records*. It remains unclear how to accurately and securely link a patient's health records, held by different providers, as the system shifts to electronic medical records
- *Online authentication*. Many new approaches are underway for authenticating users online, both for e-government and e-commerce
- *Computer security*. Many computer security experts have argued that identification systems proposed to promote security can instead create new security risks
- *Privacy and civil liberties*. New identification systems, especially if they are badly designed, can pose serious problems for individual privacy and civil liberties

To study these issues of identification and authentication, the Center for American Progress convened a group of experts[39] from all of the issue areas listed above for an intensive one-day meeting in November 2007. The emphasis was on learning across issue areas because most previous debates on identification and authentication have occurred in isolation with limited cross-fertilization of ideas among experts. The group convened for a second meeting in March 2008. For the full report on "The ID Divide," visit http://www.americanprogress.org/issues/2008/06/pdf/id_divide.pdf; for the online resource page for the Progressive Identity project, visit http://www.americanprogress.org/issues/2008/06/id_resources.html.

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[39] For a list of participants who wished to be listed, see ID REPORT, *supra* note *, at 36-37. The Center for American Progress warmly thanks all of the participants in this collaborative project