



ALAN WILSON  
ATTORNEY GENERAL

March 8, 2016

The Honorable Thomas Pope  
Speaker Pro Tempore  
SC House of Representatives  
P.O. Box 11867  
Columbia, SC 29211

Dear Representative Pope:

You seek an opinion regarding South Carolina's Voter ID law. By way of background, you provide the following information:

I am aware of conflicting information being given to South Carolina voters at polling places on primary and election days. Specifically, I am aware that one voter was not allowed to use a SLED-issued Concealed Weapons Permit as a photo ID in order to be able to vote. Another voter, in another part of our state, used a CWP permit as a photo ID, with no issue, at all, to vote.

The official SC Elections Commission web site, *SC Votes*, has the following information under its FAQ's:

**Q. What do I need to take with me to the polls to vote?**

A. At your polling place, you will be asked to show one of the following Photo IDs:

- S.C. Driver's license
- ID card issued by the S.C. Department of Motor Vehicles
- S.C. Voter Registration Card with Photo
- Federal Military ID
- US Passport

I have independently confirmed with the SC Elections Commission offices in Columbia, via a telephone call, that they advise callers that SLED-issued CWP photo ID cards will not be accepted by poll workers as a valid photo ID, in order for that voter to vote.

Based on the second bullet point above, the SC elections Commission does not appear to be following South Carolina law. SC Code Section 7-13-710 (A) (2) specifically provides:

- (A) When a person presents himself to vote, he shall produce a valid and current:  
... (2) other form of identification *containing a photograph issued by the Department of Motor Vehicles*;....

I have also confirmed with our SLED CWP Section, that they, in fact, use photographs issued by the Department of Motor Vehicles as the photo for the Concealed Weapons Permits they issue. In fact under SC Code Section 23-31-215 (A)(2), SLED requires CWP applicants to provide a photocopy of a driver's license or photographic identification card. Their CWP application form for CWP applicants also requires this SCDMV driver's license photo or officially issued ID card to be included with any CWP application. Furthermore, I have examined the SCDL photo and CWP photo of a voter and can readily see that these two photos are the same.

Based on the foregoing, and the documentation that I have included with this letter, is it your opinion that under existing state law, specifically SC Code Section 7-13-710, that a SLED-issued CWP photo ID card, containing a SCDMV-issued photograph, is, in fact, a valid photo ID that voters can use at polling places as a valid form of photo ID for voters to use to be able to vote?

#### Law/Analysis

South Carolina's Photo ID law is codified at Section 7-13-710. Such provision was enacted into law in 2011 as Act No. 27 of 2011 (R 54). The Act was precleared by the decision in State of South Carolina v. United States, 898 F.Supp.2d 30, 2012 WL 4814094 (D.D.C. 2012). Such Act provides in pertinent part at § 7-13-710(A) as follows:

- (A) When a person presents himself to vote, he shall produce a valid and current:
- (1) South Carolina's driver's license; or
  - (2) other form of identification containing a photograph issued by the Department of Motor Vehicles; or
  - (3) passport; or
  - (4) military identification containing a photograph issued by the federal government; or
  - (5) South Carolina voter registration card containing a photograph of the voter pursuant to Section 7-5-765.

In Op. S.C. Att’y Gen., 2013 WL 565005 (January 31, 2013), we construed § 7-13-710(A). There we advised that a Voter Identification Card (VIC) issued by the Department of Veterans Affairs would comply with the Photo ID law as a “military identification containing a photograph issued by the federal government” pursuant to § 7-13-710(A)(4).

The opinion first reviewed the history and purpose of the statute as follows:

[i]n State of South Carolina v. U.S. et al., \_\_\_\_ F.Supp.2d \_\_\_\_, 2012 WL 4814094 (D.D.C. 2012), a three judge court precleared South Carolina’s new Voter ID law (R 54 of 2011) pursuant to Section 5 of the Voting Rights Act (42 U.S.C. § 1973(c)(a)). Such Voter ID Act seeks to “protect against in-person voter fraud. . . .” See Democratic Party of Ga. v. Perdue, 288 Ga. 720, 707 S.E.2d 67, 69 (2011). As we stated in Op. S.C. Att’y Gen., August 16, 2011 (2011 WL 3918168), Section 5 of the Act provides for the authorized forms of identification for purposes of being able to vote. We noted that

[l]ike similar provisions enacted in other states, the South Carolina legislation requires voters to produce a valid and current photo ID in order to be able to vote. The object of the requirement is to [ensure] that the person presenting himself is the elector on the poll list. Such ID required to be able to vote may be in the form either of a South Carolina driver’s license; other forms of identification containing a photograph issued by the Department of Motor Vehicles; a passport; a military identification containing a photograph issued by the federal government; or a South Carolina Voter registration card containing a photograph of the voter pursuant to Section 7-5-675 (emphasis in original).

The 2013 opinion then discussed the so-called “reasonable impediment” provision of § 7-13-710. We stated:

Section 5 of R 54 (Act 27), codified at § 7-13-710, also contains what is known as the “reasonable impediment” provision which was key to the three judge court’s preclearance of the Voter ID Act. Such provision as we concluded in our 2011 opinion, insures, “that those who are unable to obtain a Photo ID of any kind may still be able to vote.” As we note “[i]f the voter cannot produce such an ID, Subsection (D)(1)(B) of Section 5 . . . provides as follows:

- (b) if an elector does not produce a valid and current identification because the elector suffers from a reasonable impediment that prevents the elector from obtaining photographic identification, he may complete an affidavit under the penalty of perjury at the

polling place and affirm that the elector (i) is the same individual who personally appeared at the polling place; (ii) cast the provisional ballot on election day; and (iii) the elector suffers from a reasonable impediment that prevents him from obtaining photographic identification. The elector shall list the impediment unless otherwise prohibited by state or federal law. Upon completion of the affidavit, the elector may cast a provisional ballot. The affidavit must be submitted with the provisional ballot envelope and be filed with the county board of registration and elections before certification of the election by the county board of canvassers.

The 2013 opinion also restated several well recognized principles of statutory construction, most importantly, that the primary purpose in interpreting statutes is to ascertain the intent of the Legislature. In this regard, we explained as follows:

[a]s stated above, Subsection (E) of Section 5 of the Voter ID expressly provides that “[t]he purpose of the identification required pursuant to subsection (A) is to confirm the person presenting himself to vote is the elector on the poll list.” Applying these rules of interpretation, we believe a court would rely upon this legislative intent rather than the literal phraseology and would thus conclude that a Veterans Identification Card (VIC), issued by the Department of Veterans Affairs, would qualify as a “military identification containing a photograph issued by the federal government” for purposes of meeting the voting requirements of the Voter ID Act. As you note, this ID is issued by a federal agency and does in fact contain a photograph.

Finally, our 2013 opinion recognized the importance of the right to vote in any interpretation of the Voter ID law. We thus stated the following:

. . . it is well established that the right to vote is a fundamental right. As the United States Supreme Court has repeatedly emphasized, it is beyond dispute that “voting is of the most fundamental significance under our constitutional structure.” Illinois Bd. of Elections v. Specialist Workers Party, 440 U.S. 173, 184 (1979). Any interpretation by a court of the Voter ID Act will certainly be well cognizant of the fundamental nature of the right to vote:

We apply this governing principle as well.

Thus, we concluded as follows:

[t]he Voter ID Act does not define the phrase “military identification containing a photograph issued by the federal government,” which is one form

of identification for voting authorized by the Act. However, based upon the foregoing, it is our opinion that a court would likely conclude that a current and valid Veterans Identification Card (VIC) is included within this phrase. Eligibility for the VIC card is based upon prior active service in the active military, naval or air service and who was discharged and released from service therefrom under conditions other than dishonorable. Moreover, § 7-13-710(A)(4) of the Voter ID Act does not specify that the military service be currently “active” service. Such a construction is consistent with our policy of erring on the side of the right to vote.

Furthermore, as the three judge court in South Carolina recognized, the Indiana Voter ID statute upheld by the Supreme Court in Crawford v. Marion Co. Election Bd., 553 U.S. 181 (2008) accepted a VIC as a sufficient form of identification for purposes of that law.

We likewise believe that acceptance of a VIC for purposes of identification in order to vote is in accordance with the legislative intent of South Carolina’s Voter ID law and meets the requirement thereof.

Moreover, the District Court in State of South Carolina v. United States, *supra*, in preclearing South Carolina’s Voter ID statute, under then existing Section 5 of the Voting Rights Act, recognized the following:

[a]s this litigation unfolded, the responsible South Carolina officials determined, often in real time, how they would apply the broadly worded reasonable impediment provision. Two officials play critical and complementary roles in the interpretation and implementation of Act R 54: the Attorney General of South Carolina and the Executive Director of the South Carolina Election Commission. The Attorney General is the chief legal officer of the State, and the Executive Director of the State Election Commission has principal responsibility for implementing Act R54’s requirements. In 2011, the Attorney General of South Carolina officially interpreted the reasonable impediment provision and listed a variety of situations that, as a matter of law, would qualify as a reasonable impediment. And at the close of trial, the South Carolina Attorney General submitted an additional Memorandum to the Court addressing several issues about the reasonable impediment provision. The Court also heard testimony from the Executive Director of the State Election Commission, Marci Andino. Ms. Andino testified that she follows the interpretation of South Carolina law offered by the Attorney General of South Carolina. Ms. Andino also furnished specific assurances about how the reasonable impediment provision would be implemented. The evidence shows that the county boards and

election officials, who will be implementing the law on the ground, adhere to guidance from the central State Election Commission.

The Attorney General of South Carolina and Ms. Andino have emphasized that a driving principle both at the polling place and in South Carolina State law more generally is erring in favor of the voter. See S.C. Responses to the Court's Questions, Aug. 31, 2012 at 8 (“Ms. Andino is also correct to resolve conflicting legal requirements in favor of the voter.”); Op. S.C. Att’y Gen., Aug. 16, 2011, 2011 WL 39118168 at \*4 (reasonable impediment provision must be interpreted in light of “fundamental nature of the right to vote”); Op. S.C. Att’y Gen., Oct. 11, 1996, 1996 WL 679459 at \*2 (“[W]hen there is any doubt as to how a statute is to be interpreted and how that interpretation is to be applied in a given instance, it is the policy of this Office to construe such doubt in favor of the people’s right to vote.”).

898 F. Supp.2d at 36.

You indicate in your request letter that the SLED CWP Section uses “photographs issued by the Department of Motor Vehicles as the photo for the Concealed Weapons Permits they issue.” You note that, pursuant to § 23-21-215(A)(2), “SLED requires CWP applicants to provide a photocopy of a driver’s license or photographic identification card.” You advise that “SLED’s CWP application form for CWP applicants also requires this SCDMV driver’s license photo or officially issued card to be included with any CWP application.” You further indicate that a comparison of the SCDL photo and CWP photo of a voter leads to the conclusion that “these two photos are the same.” You attach a copy of a CWP application prepared by SLED which requires “a good quality photocopy of their state issued driver’s license or officially issued identification card.”

We turn now to the specific language of § 7-13-710(A)(2). Subsection (A)(2) states that the voter must present “. . . other form of identification containing a photograph issued by the Department of Motor Vehicles. . . .” The word “containing” means “to hold or include within its volume or area” or “to have as contents or constituent parts; comprise; include.” Dictionary.com (word “containing”). In other words, by use of the word “containing,” the General Assembly most probably intended that only the photograph should be one “issued by the Department of Motor Vehicles.” This can be seen most clearly by comparing subsection (A)(2) with (A)(1) which is a “South Carolina’s driver’s license” (which is, of course, issued by the Department of Motor Vehicles). Otherwise, the Legislature could have simply stated in subsection (A)(2) that the ID be issued by DMV, without even referencing the photograph (DMV would obviously use its own photograph). See Hinton v. S.C. Dept. of Probation, Parole and Pardon Services, 357 S.C. 327, 582 S.E.2d 335 (Ct. App. 2004) [all parts of statute must be given effect]. Given the fact that we must construe subsection (A)(2) broadly, consistent with the fundamental right to vote, we believe that so long as the “form of identification contain[s]” a

photograph “issued by the Department of Motor Vehicles,” it is sufficient to satisfy § 7-13-710(A)(2).

Clearly, based upon the information which you have provided, the CWP permit application and permit issued pursuant thereto requires a “form of identification containing a photograph issued by the Department of Motor Vehicles.” The CWP application form requires “a good quality photograph of their state issued driver’s license or officially issued identification card.”

Further, our opinions document such use by SLED. In Op. S.C. Att’y Gen., 2003 WL 22050879, (August 20, 2003), we stated:

[W]e understand that South Carolina requires applicants to submit a full facial photo for verification or identification. It is our understanding that during the issuance process, SLED compares the applicant’s submitted photograph with the electronically stored photo maintained by the DMV. The DMV photo is then placed on the Concealed Weapons Permit.

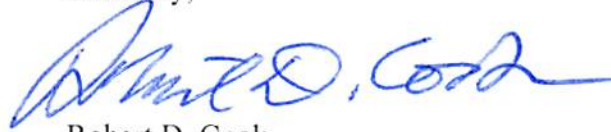
(emphasis added). See also Op. S.C. Att’y Gen., 2011 WL 1740736 (April 6, 2011) [DMV photograph placed upon arrest warrants].

### Conclusion

It is our opinion that a court would likely conclude that a licensed CWP holder may use his or her CWP permit as identification to vote pursuant to South Carolina’s Voter ID law. Section 7-13-710(A)(2) requires simply that the identification be “other form of identification containing a photograph issued by the Department of Motor Vehicles. . . .” (emphasis added). The provision does not require that the identification be one issued by DMV, but simply that it “contain” a photograph issued by DMV. It is our understanding, and we have so recognized in prior opinions, that SLED uses the South Carolina DMV photograph as identification on CWP permits. This being the case, and given the liberal construction required to support the fundamental right to vote, we believe the CWP permit may be used as identification for voting pursuant to § 7-13-710(A)(2). While it might be argued technically that the word “issued” modifies the word “identification” rather than the word “photograph” such an interpretation elevates form over substance and renders a portion of subsection (A)(2) a redundancy. Essentially, the SLED CWP permit adapts as its own the DMV method of identification. We believe that, consistent with upholding the right to vote, SLED CWP permits, which employ the DMV photograph, are no different from a DMV form of identification and may be used to vote.

The Honorable Thomas Pope  
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Sincerely,

A handwritten signature in blue ink, appearing to read "Robert D. Cook". The signature is fluid and cursive, with a large initial "R" and a long, sweeping tail.

Robert D. Cook  
Solicitor General