



Voter Suppression Returns

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THE 2012 election campaign—for Congress as well as the presidency—promises to be bitterly fought, even nasty. Leaders of both major parties, and their core constitu-

ents, believe that the stakes are exceptionally high; neither party has much trust in the goodwill or good intentions of the other; and, thanks in part to the Supreme Court, money will be flowing in torrents, some of it from undisclosed sources and much

Voting rights
and partisan practices

by ALEXANDER KEYSSAR

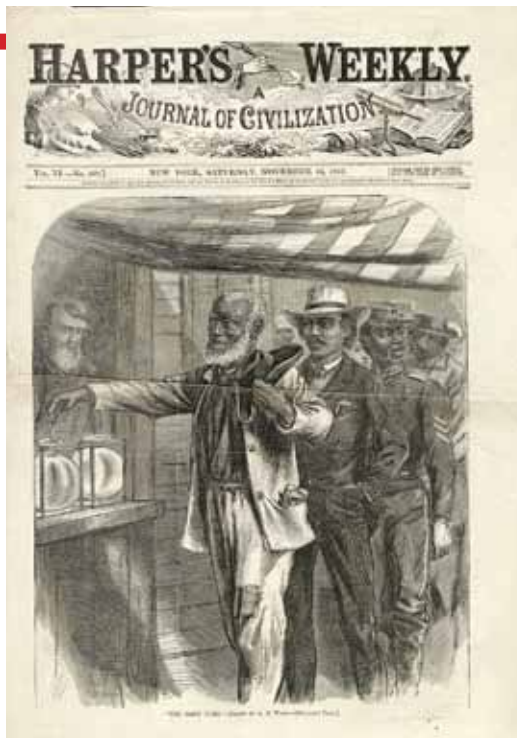
of it available for negative campaigning.

This also promises to be a close election—which is why a great deal of attention is being paid to an array of recently passed, and pending, state laws that could prevent hundreds of thousands, perhaps millions, of eligible voters from casting ballots. Several states, including Florida (once again, a battleground), have effectively closed down registration drives by organizations like the League of Women Voters, which have traditionally helped to register new voters; some states are short-

ening early-voting periods or prohibiting voting on the Sunday before election day; several are insisting that registrants provide documentary proof of their citizenship. Most importantly—and most visibly—roughly two dozen states have significantly tightened their identification rules for voting since 2003, and the pace of change has accelerated rapidly in the last two years. Ten states have now passed laws demanding that voters possess a current government-issued photo ID, and several others have enacted measures slightly less strict. A few more may take similar steps before November—although legal challenges could keep some of the laws from taking effect.

The new ID laws have almost invariably been sponsored—and promoted—by Republicans, who claim that they are needed to prevent fraud. (In five states, Democratic governors vetoed ID laws passed by Republican legislatures.) Often working from a template provided by the conservative American Legislative Exchange Council (ALEC), Republican state legislators have insisted that the threat of election fraud is compelling and widespread; in December 2011, the Republican National Lawyers Association (RNLA) buttressed that claim by publishing a list of reported election crimes during the last 12 years. Republicans have also maintained that a photo ID requirement is not particularly burdensome in an era when such documents are routinely needed to board an airplane or enter an office building. Public opinion polls indicate that these arguments sound reasonable to the American people, a majority of whom support the concept of photo ID requirements. The Supreme Court has taken a similar view, although it left open the possibility of reconsidering that verdict if new evidence were to emerge.

Critics of these laws (myself included) have doubted both their necessity and their ability to keep elections honest. The only type of fraud that a strict photo ID rule would actually prevent is voter impersonation fraud (I go to the polls pretending to be you), and, in fact, voter impersonation fraud is exceedingly rare. In Indiana, where



Expanding the electorate. Opposite: African Americans vote in Alabama in 1966, in the wake of the Voting Rights Act. This page: “The First Vote,” Harper’s Weekly, November 16, 1867; Woman Suffrage Headquarters, Cleveland, September 1912; League of Women Voters registration tote board, Cincinnati, circa 1920s

the Republican-dominated legislature passed one of the first new ID laws in 2005 (on a straight party-line vote), there had been no known instances of voter impersonation in the state’s history. In Texas, a strict ID law was enacted last year, although the 2008 and 2010 elections gave rise to only five formal complaints about voter impersonation (out of 13 million votes cast). “There are more UFO and Big-foot sightings than documented cases of voter impersonation,” quipped one Texas Democrat. Close inspection of the RNLA’s inventory of election fraud, moreover, has found it to be flawed and misleading; most election experts believe that the greatest threat to election integrity comes from absentee ballots—a threat that would not be addressed by the current laws.

As importantly, the burdens placed on prospective voters by these ID requirements are not trivial. Men and women who already possess driver’s licenses or passports, of course, will be unaffected. (So too will those in Texas who have permits to carry concealed weapons—since those permits meet the ID requirement.) But citizens who lack such documents will now be obliged to assemble various other pieces of paper (birth certificates, naturalization forms, proof of residence, etc.) and make their way (presumably without a car) to a government office that can issue an official photo ID. Who are these men and women? Studies indicate that they are disproportionately young or elderly, poor, black, and Hispanic; demographically, they are more likely than not to vote Democratic. (In states covered by the Voting Rights Act, such as Texas and South Carolina, the photo ID laws are being challenged by the Department of Justice on the grounds that they disproportionately affect minorities.) The number of people potentially affected is



considerable: the Texas secretary of state, for example, estimates that at least 600,000 already registered voters do not possess the documents to cast ballots in November. New York University's respected Brennan Center for Justice has estimated that a total of more than five million people may lack the requisite identification documents in states that have passed new ID laws.

How many people will actually be prevented from casting ballots by these laws in November? What impact will these laws have on participation? The straightforward answer is that none of us (scholars, commentators, politicians) really know—because the laws are recent and measuring their impact is difficult. (We should know more after November, since several studies will be conducted during this election.) The number is unlikely to be huge, particularly since various pro-voting-rights groups (as well as the Democratic party) will work hard to help people get their ID documents. But it could certainly be large enough to affect the outcome of close races for Congress and even for the presidency.

WHETHER THEY HAVE a decisive impact on the election or not, the ID laws—as well as other measures designed to inhibit voting—are disturbing, particularly when located against the backdrop of our extended history of conflict over the right to vote and its exercise. Although the United States has long prided itself on being a paragon of democracy, we did not possess anything even approximating universal adult suffrage until the late 1960s—even though universal suffrage is commonly regarded as an essential ingredient of democracy. It took many decades of mobilization and struggle for voting rights in all states to be extended to African Americans, women, Native Americans, and those who lacked property; at different historical moments, some states (suffrage requirements were largely a matter of state law) also excluded “paupers,” the illiterate, the non-English speaking, and those whose jobs made them too transient to meet long residency requirements.

Moreover, our history has not been one of steady and inexorable

progress toward a more inclusive polity. In the very long run, to be sure, we have become more democratic, but there have been numerous moments in our past when the pendulum swung in the opposite direction: men and women who were enfranchised

found themselves losing that right. This happened to African Americans in several northern states before the Civil War and in all southern states in the late nineteenth century. It also happened to women in New Jersey in the early 1800s, to men who became “paupers” because of economic downturns, to citizens who could not pay poll taxes (or pass literacy tests), and to prison inmates in Massachusetts in 2000, just 12 years ago. Suffrage rights have con-

tracted as well as expanded.

In addition to this mottled pattern of enfranchisement and disfranchisement, our nation has also witnessed periodic episodes of “voter suppression”—a label frequently invoked by critics to characterize the current wave of photo ID requirements. “Voter suppression” differs conceptually from outright disfranchisement because it does not involve *formally* disqualifying entire groups of people from the polls; instead, policies or acts of “suppression” seek to prevent, or deter, eligible citizens from exercising their right to vote. Historically, voter suppression seems to arise when organized political forces aim to restrain the political participation of particular groups but cannot, politically or constitutionally, disfranchise them outright. This occurred, of course, in the post-Reconstruction South when white Democratic “redeemers” utilized a variety of techniques (ranging from violence to complex ballot arrangements to poll taxes to orally administered “understanding” tests) to circumvent the Fifteenth Amendment and keep blacks from voting. (Eventually, the suppression of the black vote in the South shaded into, and became, disfranchisement through clever legal innovations such as the all-

white Democratic primary.) The phrase “vote suppression” was first widely used in the United States in the 1880s.

Legal efforts to place obstacles in the path of legitimate voters also recurred in the North between the Civil War and World



A labor-sponsored voter-registration drive, Cincinnati, 1952; exercising the franchise in the 1960s



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War I, targeted primarily at the immigrant workers who were flooding into the country. California and New Jersey, for example, began to require that immigrants present their original, sealed naturalization papers at the polls; various states limited the hours that polling places or registration offices were open (at a time when the 10-hour work day was common), while simultaneously requiring annual registration in large cities but not in towns. In New York, in 1908, authorities sought to winnow out Jewish voters—many of whom were socialists—by designating Saturdays and Yom Kippur as registration days. Such measures were commonly justified as necessary to prevent fraud.

The recent wave of ID laws (and their cousins) bears a close resemblance to past episodes of voter suppression, particularly those of the late-nineteenth and early-twentieth centuries. The laws seem tailored less to guarantee the integrity of elections than to achieve a partisan purpose; the targeted constituencies—those directly affected by the laws—tend, once again, to be the poor, the less advantaged, or members of minority groups. It may not be a coincidence that the phrase “voter suppression”—like “vote suppression” in the 1880s—has become a prominent part of our political vocabulary during an era of large-scale immigration and in the wake of a dramatic extension of voting rights to African Americans.

This is not to say—the point is important—that there is anything intrinsically wrong with a system of election administration that requires voters to present some type of ID card or photo ID at the polls. Many countries demand that voters present their national identification cards (or special voting cards) when they show up to cast their ballots. Preventing election fraud is a legitimate state function, and, as Rhode Island’s independent governor, Lincoln Chafee, recently observed while signing a new ID measure into law, asking for identification can be “a reasonable request to ensure the accuracy and integrity of our elections.” Requiring voters to present an ID need not be suppressive or discriminatory.

The devil is in the details—as is always true with laws that tap the tension between election integrity and access to the ballot box.

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The franchise in popular culture: encouraging younger citizens to register, in the first episode of the 1972 NBC series *The Midnight Special*, when the voting age was lowered to 18

Like many critics of the recent legislation, I could welcome a photo ID requirement—if it were made clear that it was the responsibility of the state (rather than of private citizens) to insure that every eligible man and woman possessed such documentation. Imagine, for example, a system in which any voter who arrived at the polls without an official ID could apply for one at the polling place (it could be mailed out in subsequent weeks) and then was permitted to cast a provisional ballot (which would be counted

if she proved to be eligible). In time, everyone would become equipped with an appropriate ID, and meanwhile no one would be denied the opportunity to vote. (Rhode Island’s new law contains some of these elements.) Such a system would be costly, particularly at the outset, but the expense would be the price of keeping elections democratic while addressing the concerns of those worried about fraud. The state, in effect, would accept responsibility for solving the access problem that its anti-fraud measure had engendered.

Alas, that does not seem to be what the sponsors of the current measures have in mind. In 2008, for example, Indiana’s state government simply tossed the access problem into the laps of individual citizens, leading to a widely publicized episode in which elderly nuns who had been voting for decades arrived at the polls but were not permitted to vote because they lacked driver’s licenses. Other states have adopted the same posture: it is up to potential voters to

figure out how to navigate around the new obstacle that the state has placed in their path. As a consequence, some of those voters—perhaps thousands, per-

haps hundreds of thousands—will end up being unable to cast ballots in a very important election. Whatever the numbers turn out to be, the laws themselves are unworthy of a modern, sophisticated nation that identifies itself as democratic. They are not effective policy instruments; they chip away at the core democratic value of inclusiveness; and they resonate with the worst, rather than the best, of our political traditions. ▽

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