

Voter ID Laws: Stopping Fraud or Suppressing Votes?

Recent national elections have raised many concerns about the voting system and the standards for administering elections in the United States. Charges of impropriety in voting procedures and vote counting, as well as complaints that certain voting technologies were systematically likely to produce more voter error or not accurately record voter choices, were legion. Massive voter mobilization campaigns on both the political left and right registered millions of new voters. Huge sums were poured into campaign advertising, further stoking the interest of these newly registered voters and the public in general. In such a charged political environment, concerns about the integrity of the voting process have taken on a particular urgency. One issue on which battle lines are frequently drawn is voter identification, especially the requirement that voters show a photo ID. Heading into the 2016 election, 32 states required voters to show some form of identification, with eight of those states requiring photo ID and eight requesting that voters provide a photo ID. During 2016 federal courts struck down in whole or in part voter ID laws in several states, concluding that the laws had a disparate impact that deterred minority and low-income voters.

The readings in this debate explore the issue of voter identification laws from three perspectives. John Fund points to examples where individuals posed undercover to commit voter fraud and were successful in their efforts. The gist of Fund's

argument is that the claim that fraud is rare, often advanced by opponents of voter ID laws, ignores the ease by which fraud can actually occur and the difficulty in detecting it. To Fund, opposition to voter ID is rooted in the willingness of Democratic party officials to tolerate or benefit from individuals voting fraudulently. Peter Beinart does not take a position on the prevalence of voter fraud, but instead argues that voter ID laws are a modern-day equivalent of a poll tax. Before being declared unconstitutional, poll taxes were fees charged in some states for the ability to register to vote. He sees voter ID laws as imposing similar financial burdens on low-income voters and suggests that the main intent of the laws is to suppress minority and low-income voter turnout to the benefit of Republican party candidates. One possible implication of Beinart's argument is that even if fraud were frequent, voter ID might not be a desirable remedy due to its drawbacks. Finally, Lorraine Minnite argues that when there is fraud, it is likely party operatives, election officials, or politicians who commit it, not individual voters. Why, then, do states adopt voter ID laws? Minnite sees these laws as racially motivated and a stark continuation of attempts to thwart racial equality and inclusion by adopting voter regulations that disproportionately deter minority voters.

John Fund

Voter Fraud: We've Got Proof It's Easy

Liberals who oppose efforts to prevent voter fraud claim that there is no fraud—or at least not any that involves voting in person at the polls.

But New York City's watchdog Department of Investigations has just provided the latest evidence of how easy it is to commit voter fraud that is almost undetectable. DOI undercover agents showed up at 63 polling places last fall and pretended to be voters who should have been turned away by election officials; the agents assumed the names of individuals who had died or moved out of town, or who were sitting in jail. In 61 instances, or 97 percent of the time, the testers were allowed to vote. Those who did vote cast only a write-in vote for a "John Test" so as to not affect the outcome of any contest. DOI published its findings two weeks ago in a searing 70-page report accusing the city's Board of Elections of incompetence, waste, nepotism, and lax procedures.

The Board of Elections, which has a \$750-million annual budget and a work force of 350 people, reacted in classic bureaucratic fashion, which prompted one city paper to deride it as "a 21st-century survivor of Boss Tweed-style politics."

The Board approved a resolution referring the DOI's investigators for prosecution. It also asked the state's attorney general to determine whether DOI had violated the civil rights of voters who had moved or are felons, and it sent a letter of complaint to Mayor Bill de Blasio. Normally, I wouldn't think de Blasio would give the BOE the time of day, but New York's new mayor has long been a close ally of former leaders of ACORN, the now-disgraced "community organizing" group that saw its employees convicted of voter-registration fraud all over the country during and after the 2008 election.

Greg Soumas, president of New York's BOE, offered a justification for calling in the prosecutors: "If something was done in an untoward fashion, it was only done by DOI. We [are] unaware of any color of authority on the part of [DOI] to vote in the identity of any person other than themselves—and our reading of the election law is that such an act constitutes a felony." The Board is bipartisan, and all but two of its members voted with Soumas. The sole exceptions were Democrat Jose Araujo, who abstained because the DOI report implicated him in hiring his wife and sister-in-law for Board jobs, and Republican Simon Shamoun.

Good-government groups are gobsmacked at Soumas's refusal to smell the stench of corruption in his patronage-riddled empire. "They should focus not on assigning blame to others, but on taking responsibility for solving the problems themselves," Dick Dadey of the watchdog group Citizens Union told the *Daily News*. "It's a case of the Board of Elections passing the buck." DOI officials respond that the use of undercover agents is routine in anti-corruption probes and that people should carefully read the 70-page report they've filed before criticizing it. They are surprised how little media attention their report has received.

You'd think more media outlets would have been interested, because the sloppiness revealed in the DOI report is mind-boggling. Young undercover agents were able to vote using the names of people three times their age, people who in fact were dead. In one example, a 24-year-old female agent gave the name of someone who had died in 2012 at age 87; the workers at the Manhattan polling site gave her a ballot, no questions asked. Even the two cases where poll workers turned away an investigator raise eyebrows. In the first case, a poll worker on Staten Island walked outside with the undercover investigator who had just been refused a ballot; the "voter" was advised to go to the polling place near where he used to live and "play dumb" in order to vote. In the second case, the investigator was stopped from voting only because the felon whose name he was using was the son of the election official at the polling place.

Shooting the messenger has been a typical reaction in other states when people have demonstrated just how easy it is to commit voter fraud. Guerrilla videographer James O'Keefe had three of his assistants visit precincts during New Hampshire's January 2012 presidential primary. They asked poll workers whether their books listed the names of several voters, all deceased individuals still listed on voter-registration rolls. Poll workers handed out ten ballots, never once asking for a photo ID. O'Keefe's team immediately gave back the ballots, unmarked, to precinct workers. Debbie Lane, a ballot inspector at one of the Manchester polling sites, later said: "I wasn't sure what I was allowed to do. . . . I can't tell someone not to vote, I suppose." The only precinct in which O'Keefe or his crew did *not* obtain a ballot was one in which the local precinct officer had personally known the dead "voter."

New Hampshire's Democratic governor, John Lynch, sputtered when asked about O'Keefe's video, and he condemned the effort to test the election system even though no actual votes were cast. "They should be prosecuted to the fullest extent of the law, if in fact they're found guilty of some criminal act," he roared. But cooler heads eventually prevailed, and the GOP state legislature later approved a voter-ID bill, with enough votes to override the governor's veto. Despite an exhaustive and intrusive investigation, no charges were ever filed against any of O'Keefe's associates.

Later in 2012, in Washington, D.C., one of O'Keefe's assistants was able to obtain Attorney General Eric Holder's ballot even though Holder is 62 years old and bears no resemblance to the 22-year-old white man who obtained it merely by asking if Eric Holder was on the rolls. But the Department of Justice, which is currently suing Texas to block that state's photo-ID law, dismissed the Holder ballot incident as "manufactured." The irony was lost on the DOJ that Holder, a staunch opponent of voter-ID laws, could have himself been disenfranchised by a white man because Washington, D.C., has no voter-ID law. Polls consistently show that more than 70 percent of Americans—including clear majorities of African Americans and Hispanics—support such laws.

Liberals who oppose ballot-security measures claim that there are few prosecutions for voter fraud, which they take to mean that fraud doesn't happen. But as the New York DOI report demonstrates, it is comically easy, given the sloppy-voter registration records often kept in America, to commit voter fraud in person. (A 2012 study by the Pew Research Center found that nationwide, at least 1.8 million deceased voters are still registered to vote.) And unless someone confesses, in-person voter fraud is very difficult to detect—or stop. New York's

Gothamist news service reported last September that four poll workers in Brooklyn reported they believed people were trying to vote in the name of other registered voters. Police officers observed the problems but did nothing because voter fraud isn't under the police department's purview.

What the DOI investigators were able to do was eerily similar to actual fraud that has occurred in New York before. In 1984, Brooklyn's Democratic district attorney, Elizabeth Holtzman, released a state grand-jury report on a successful 14-year conspiracy that cast thousands of fraudulent votes in local, state, and congressional elections. Just like the DOI undercover operatives, the conspirators cast votes at precincts in the names of dead, moved, and bogus voters. The grand jury recommended voter ID, a basic election-integrity measure that New York has steadfastly refused to implement.

In states where non-photo ID is required, it's also all too easy to manufacture records that allow people to vote. In 2012, the son of Congressman Jim Moran, the Democrat who represents Virginia's Washington suburbs, had to resign as field director for his father's campaign after it became clear that he had encouraged voter fraud. Patrick Moran was caught advising an O'Keefe videographer on how to commit in-person voter fraud. The scheme involved using a personal computer to forge utility bills that would satisfy Virginia's voter-ID law and then relying on the assistance of Democratic lawyers stationed at the polls to make sure the fraudulent votes were counted. Last year, Virginia tightened its voter-ID law and ruled that showing a utility bill was no longer sufficient to obtain a ballot.

Given that someone who is dead, is in jail, or has moved isn't likely to complain if someone votes in his name, how do we know that voter fraud at the polls isn't a problem? An ounce of prevention—in the form of voter ID and better training of poll workers—should be among the minimum precautions taken to prevent an electoral miscarriage or meltdown in a close race.

After all, even a small number of votes can have sweeping consequences. Al Franken's 312-vote victory in 2008 over Minnesota senator Norm Coleman gave Democrats a filibuster-proof Senate majority of 60 votes, which allowed them to pass Obamacare. Months after the Obamacare vote, a conservative group called Minnesota Majority finished comparing criminal records with voting rolls and identified 1,099 felons—all ineligible to vote—who had voted in the Franken-Coleman race. Fox News's random interviews with ten of those felons found that nine had voted for Franken, backing up national academic studies that show felons tend to vote strongly for Democrats.

Minnesota Majority took its findings to prosecutors across the state, but very few showed any interest in pursuing the issue. Some did, though, and 177 people have been convicted as of mid-2012—not just “accused” but actually *convicted*—of voting fraudulently in the Senate race. Probably the only reason the number of convictions isn't higher is that the standard for convicting someone of voter fraud in Minnesota is that the person must have been both ineligible and must have “knowingly” voted unlawfully. Anyone accused of fraud is apt to get off by claiming he didn't know he'd done anything wrong.

Given that we now know for certain how easy it is to commit undetectable voter fraud and how serious the consequences can be, it's truly bizarre to have officials at the New York City Board of Elections and elsewhere savage those who shine a light on the fact that their modus operandi invites fraud. One might even think that they're covering up their incompetence or that they don't want to pay attention to what crimes could be occurring behind the curtains at their polling places. Or both.

Peter Beinart

Should the Poor Be Allowed to Vote?

If Hong Kong's pro-democracy protesters succeed in booting C.Y. Leung from power, the city's unelected chief executive should consider coming to the United States. He might fit in well in the Republican Party.

In an interview Monday with *The New York Times* and other foreign newspapers, Leung explained that Beijing cannot permit the direct election of Hong Kong's leaders because doing so would empower “the people in Hong Kong who earn less than \$1,800 a month.” Leung instead defended the current plan to have a committee of roughly 1,200 eminent citizens vet potential contenders because doing so, in the *Times*' words, “would insulate candidates from popular pressure to create a welfare state, and would allow the city government to follow more business-friendly policies.”

If that sounds vaguely familiar, it should. Leung's views about the proper relationship between democracy and economic policy represent a more extreme version of the views supported by many in today's GOP.

Start with Mitt Romney. In 2012, at a fundraiser with ultra-wealthy donors, the Republican nominee famously denigrated the “47 percent” of Americans who

“believe that government has a responsibility to care for them, who believe that they are entitled to health care, to food, to housing”—to a welfare state. Because these self-appointed “victims” were voting in order to get things from government, Romney argued, their motives were inferior to the potential Romney voters who “take personal responsibility and care for their lives.”

In distinguishing between Americans whose economic independence permits them to make reasoned political choices and those who because of their poverty cannot, Romney was channeling a hoary American tradition. In 1776, John Adams argued that men (let alone women) “who are wholly destitute of Property” were “too dependent upon other Men to have a Will of their own.” In 1800, only three states allowed property-less white men to vote. For most of the twentieth century, southern states imposed “poll taxes” that effectively barred not only African Americans from voting but some poor whites as well.

Romney didn’t suggest that the 47 percent be denied the right to vote, of course. But other Republicans have flirted with the idea. In 2010, Tea Party Nation President Judson Phillips observed that “The Founding Fathers . . . put certain restrictions on who gets the right to vote . . . one of those was you had to be a property owner. And that makes a lot of sense, because if you’re a property owner you actually have a vested stake in the community.” In 2011, Iowa Representative Steve King made a similar observation, noting approvingly, “There was a time in American history when you had to be a male property owner in order to vote. The reason for that was, because [the Founding Fathers] wanted the people who voted—that set the public policy, that decided on the taxes and the spending—to have some skin in the game. Now we have data out there that shows that 47 percent of American households don’t pay taxes . . . But many of them are voting. And when they vote, they vote for more government benefits.” In 2012, Florida House candidate Ted Yoho remarked, “I’ve had some radical ideas about voting and it’s probably not a good time to tell them, but you used to have to be a property owner to vote.” Yoho went on to win the election.

Phillips, King, and Yoho are outliers. Most prominent Republicans would never propose that poor people be denied the franchise. But they support policies that do just that. When GOP legislatures make it harder to vote—either by restricting early voting, limiting the hours that polls remain open, requiring voter identification or disenfranchising ex-felons—the press usually focuses on the disproportionate impact on racial minorities and Democrats. But the most profound impact may be on the poor.

Voter-identification laws, in particular, act as a new form of poll tax. After Texas passed its voter-ID law, a study found that Texans who earned less than \$20,000 per year were more than 10 times more likely to lack the necessary identification than Texans who earned more than \$150,000. On the surface, this discrepancy might seem possible to remedy, since courts have generally demanded that the states that require voter identification provide some form of ID for free. But there’s a catch. Acquiring that free ID requires showing another form of identification—and those cost money. In the states with voter-ID laws, notes a report by the Brennan Center for Justice at NYU Law School, “Birth certificates can cost between \$8 and \$25. Marriage licenses, required for married women whose birth certificates include a maiden name, can cost between \$8 and \$20. By comparison, the notorious poll tax—outlawed during the civil rights era—cost \$10.64 in current dollars.”

To make matters worse, roughly half a million people without access to a car live more than 10 miles from the nearest office that regularly issues IDs. And the states that require IDs, which just happen to be mostly in the south, also just happen to have some of the worst public transportation in the country.

Not surprisingly, a 2007 study by researchers at Washington University and Cal Tech found that, “registered voters with low levels of educational attainment or lower levels of income are less likely to vote the more restrictive the voter identification regime.” Barring former felons from voting has an even more dramatic impact on the poor, since almost half of state prison inmates earned less than \$10,000 in the year before their incarceration.

Obviously, the United States is not Hong Kong. But there’s a reason some of the city’s demonstrators have adopted the label “Occupy.” Like the Americans who assembled in Zuccotti Park in 2011, they are fighting a system in which political exclusion and economic exclusion reinforce each other. Hong Kong’s chief oligarch is named C.Y. Leung. But here in the United States, we have ours too.

Lorraine C. Minnite

The Myth of Voter Fraud

When there has been election fraud in American elections, it has usually been committed by politicians, party operatives, and election officials who have something at stake in electoral outcomes. Voters rarely commit fraud because for

them, it is a motiveless crime, the individual benefits to the fraudulent voter are immaterial, while the costs are prohibitive.

The most important illustration of outright corruption of elections is the century-long success of white supremacists in the American South stripping African Americans of their right to vote. Elites and party bosses in the urban North followed the Southern example, using some of the same tricks to manipulate electoral outcomes and to disfranchise immigrants and the poor.

From this perspective, the impact of election fraud on American elections has been massive. It was only with the rise of the Black Freedom Movement and passage of the Voting Rights Act in 1965 that the tricks and political chicanery were halted. In fact, according to political historian J. Morgan Kousser, the Voting Rights Act is the most important fraud-prevention legislation ever passed.

In response to these victories, a reactionary movement arose to push back against progress in civil rights and to counter the thrust toward a more equal society. Over the last 40 years, that movement has made important gains, especially in the courts, where a conservative Supreme Court, in a 2013 case called *Shelby County v. Holder*, gutted one of the most effective features of the Voting Rights Act—the “preclearance” formula which forced states and localities with the most egregious histories of vote denial to obtain permission from the Justice Department before putting new election rules in place.

Prior to the contested 2000 presidential election, only 14 states either requested or required that voters show some form of identification at the polls. Since then, the number of states requiring ID to vote has doubled and the forms of acceptable identification have narrowed. In what is likely no coincidence, the rate at which states have adopted tougher photo identification requirements accelerated with the election of the nation’s first black president and the demise of legally mandated federal oversight in the *Shelby* case.

In rapid succession, partisan lawmakers in state after state have pushed through the new rules, claiming tougher identity checks are necessary to staunch or prevent voter fraud. And yet, in no state adopting a photo ID requirement has any lawmaker or anyone else, for that matter, presented a credible showing of a problem with voters corrupting the electoral process. In other words, if the claimed reason of preventing voter fraud is taken at face value, there is no rational basis for the policy intervention. So what is actually going on?

I think the phony claims and renewed political chicanery are a reflection of the fact that a century and a half after the Civil War, and 50 years after the signing of the Voting Rights Act, a deeper struggle for democracy, equality, and inclusion

continues. Beneath the skirmish over arcane voting rules is a fraught tension between our ideals and our fears, between what we profess to believe about the “sanctity” of the ballot, and racialized and class-based notions of worthiness embedded in the question of who is to be a citizen in the United States.

The myth of voter fraud persists because it is a racialized weapon in a power struggle over the soul of American democracy. To see this, we must set our current politics in a historical context. Long-standing fears about unworthy citizens polluting and distorting electoral outcomes are the underside of the usual celebratory story we like to tell ourselves of a progressive struggle for voting rights. In fact, the struggle has not unfolded in a linear fashion. Each successive advance has generated counter-movements rooted in alternative and reactionary histories aimed at “taking back” at least a part of what has been lost. In our own time, from the moment blacks began exercising their newly (re-)won right to vote, that right was undermined in ways that constrained its power to deliver social justice. The question of who is to be a citizen in our racially divided and injured society remains unresolved.

DISCUSSION QUESTIONS

1. Would you approve of a proposal that all voters be required to show photo identification at polling places? Do you think it would decrease turnout? If so, is this a reasonable cost to pay to ensure that people cannot vote using another person’s name or cannot vote without proving that they live in the voting district? Or should turnout be prioritized and the risk that some people will vote inappropriately be accepted as a reasonable risk?
2. What are the advantages and drawbacks of using the kinds of evidence pointed to by Fund when crafting voter ID laws or public policy in general? How do you, or can you, distinguish between something that an undercover operation shows could happen and something that in fact happens regularly?
3. As a general matter, do you believe there is a trade-off between maximizing turnout and minimizing voter fraud? Or are these goals compatible? Why?
4. If photo IDs were provided free of charge and mailed to all potential voters, would that adequately address the concerns raised by Beinart and Minnite?