



Sustained Oppression: Suppressing the Vote in America

By: Mercy Gagnon, J.D., Bianca Schumake, M.A. and Marcia Johnson, J.D.

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at Texas Southern University

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Introduction

Despite voter suppression having been described as “American as apple pie”¹, voting is one of America’s most cherished democratic liberties, notwithstanding its undemocratic history.² While the founding fathers saw voting as a fundamental component of the democracy and perfect union they sought to create, the right to vote was denied for many populations for centuries of American history.³ Voting has been described as the cornerstone of our democracy and the fundamental right upon which all our civil liberties rest.⁴

Following the Post Civil War Reconstruction era, many states – specifically southern states used poll taxes, literacy tests, white only primaries, violence, party rules, “grandfather” clauses, black codes and enforced segregation, gerrymandering, restrictive eligibility requirements, and the rewriting of State constitutions to prevent blacks from exercising their newly gained voting rights⁵.

For many Americans, racial and ethnic minorities and women, it has been a long struggle for the right; a struggle that continues. Politicians across the country continue to support voter

¹ National Voter Registration Act—Statutory Interpretation—Election Law—Husted v. A. Philip Randolph Institute, 132 Harv. L. Rev. 437, November, 2018.

² Panetta, Grace. “The Evolution of American Voting Rights in 242 Years Shows How Far We’ve Come - and How Far We Still Have to Go.” Business Insider. February 15, 2019. Accessed February 20, 2019. <https://www.businessinsider.com/when-women-got-the-right-to-vote-american-voting-rights-timeline-2018-10>.

³ Id. and see James Madison speech in the Constitutional Convention on the Right of Suffrage: “The right of suffrage is a fundamental article in republican constitutions. The regulation of it is, at the same time, a task of peculiar delicacy. Allow the right exclusively to property, and the rights of persons may be oppressed. The feudal polity alone sufficiently proves it. Extend it equally to all, and the rights of property or the claims of justice may be overruled by a majority without property, or interested in measures of injustice. Of this abundant proof is afforded by other popular governments and is not without examples in our own, particularly in the laws impairing the obligation of contracts.” The Founders’ Constitution, Volume 1, Chapter 16, Document 26 <http://press-pubs.uchicago.edu/founders/documents/v1ch16s26.html>; The University of Chicago Press but it should be recognized that the founding fathers did not seek a perfect democracy, but instead a more perfect union. Preamble to the United States Constitution states: “We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

⁴ See Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964) citing its opinion in Yick Wo v. Hopkins, 118 U.S. 356, 370, 6 S.Ct. 1064, 1071, 30 L.Ed. 220 (1886) referring to ...voting as a fundamental political right, because preservative of all rights and see “The Sorry State of Voting Rights in Texas.” ACLU of Texas. March 20, 2018. Accessed January 24, 2019. <https://www.aclutx.org/en/news/sorry-state-voting-rights-texas>.

⁵ The WallBuilder Report “A History of Black Voting Rights”, available at <https://wallbuilders.com/resources/Newsletters/BlackHistory03.pdf> and see Angelica Rolong, Access Denied: Why the Supreme Court’s Decision in Shelby v. Holder may disenfranchise Texas Minority Voters, 46 TXTLR 519, 522-528 (2014)

suppression, efforts that include obstacles to registration, cutting back early voting periods, and strict voter identification requirements.⁶ People of color continue to fight against discriminatory voting practices decades after technically receiving the right to vote under the 15th and 19th amendments.⁷ Rights that continue to be denied even after measures resulting from the historic civil rights movement of the 1950s and 1960s, which led to landmark legislation that transformed American voting rights.⁸ This paper examines and identifies policies and strategies that target/result in voter restrictions and suppression efforts generally. After reading this article, the reader will recognize tactics that are still being used to sustain oppression by suppressing Americans' right to vote, especially those of color and in low income/poverty stricken neighborhoods. Continued efforts to suppress voting rights assault the health of our democracy, and allows voting to revive a "separate and unequal" proposition.⁹

Historical limitations on African American voting

Poll Tax

Taxation in the United States is certainly not an unusual concept, so the idea of poll taxes may not seem farfetched. In fact, the poll tax used to be an acceptable government action in many countries around the world throughout history.¹⁰ The poll tax was a fee paid by a voter before she could cast a vote. In America, discussion of poll taxes are commonly linked to voting rights after poll taxes were enacted in former slave states during the 1870s in response to the passage of the 15th Amendment which declared citizens would be allowed to vote without regard to race, color or prior history of

⁶ "The Sorry State of Voting Rights in Texas, *supra* n. 3 and see Juan F. Perea, Echoes of Slavery II: How Slavery's Legacy Distorts Democracy, 51 UCCLR 1081, 1093 (Feb 2018)

⁷ U.S. Constitution, Amendments XV and XIX

⁸ Panetta, Grace, *supra* n.1

⁹ Ifill, Sherrilyn. "Before 2020: Upgrade Voting Systems, Restore Voting Rights Act, End Voter Suppression." USA Today. November 12, 2018. Accessed January 31, 2019. <https://www.usatoday.com/story/opinion/2018/11/12/end-voter-suppression-restore-voting-rights-act-update-machines-column/1965522002/>.

¹⁰ The poll tax was used in European countries such as Britain, Prussia, and Russia since the Middle Ages. See *David Schultz and Sarah Clark Wealth v. Democracy: The Unfilled Promise of the Twenty-fourth Amendment*, 29, *Quin L Rev* 375, 378-397 (2011)

slavery.¹¹ Intent on keeping freedmen powerless, southern states reacted by suppressing their votes through various means. One of those tools of disenfranchisement was the poll tax that was adopted in 11 southern states including Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia.¹²

Eligible voters were required to pay their poll tax in cash before they could cast a ballot.¹³ The amount of the tax was generally nominal and applied to blacks and whites alike but it was disproportionately hard on blacks who were just emerging from slavery, many of whom had not yet established an independent means of living.”¹⁴ The immediate and lasting impacts of the tax disenfranchised African Americans at a time when many black southerners had extremely low cash incomes: “[B]ecause sharecroppers, small farmers, factory workers, miners, and others bought most of their necessities on credit, they might not see more than a few dollars in cash during a year. To such men, who composed majorities or near-majorities of the adult male populations of every southern state at the turn of the century, a levy of a dollar or two might seem enormous and a cumulated poll tax, impossibly high.”¹⁵ In 1964 Poll taxes were outlawed with the adoption of the 24th Amendment which declared poll taxes as a prerequisite for federal elections illegal.¹⁶ Yet, five states, Alabama, Arkansas, Mississippi, Texas and Virginia, enforced payment of poll taxes for state

¹¹ U.S. Const. amend. XV. It is worth noting that the rights afforded to “citizens” did not apply to women.

¹² Kelly Phillips Erb “For Election Day, A History Of The Poll Tax In America” available at <https://www.forbes.com/sites/kellyphillipserb/2018/11/05/just-before-the-elections-a-history-of-the-poll-tax-in-america/#743e809c4e44>

¹³ Id at 388-389 and see “Poll Taxes.” National Museum of American History. May 03, 2018. Accessed March 20, 2019. <http://americanhistory.si.edu/democracy-exhibition/vote-voice/keeping-vote/state-rules-federal-rules/poll-taxes>.

¹⁴ The WallBuilder Report “A History of Black Voting Rights”, available at <https://wallbuilders.com/resources/Newsletters/BlackHistory03.pdf>

¹⁵ Drew Desilver, Anti-poll tax amendment is 50 years old today, Pew Research Center, January 23, 2014 available at <https://www.pewresearch.org/fact-tank/2014/01/23/anti-poll-tax-amendment-is-50-years-old-today/>

¹⁶ U.S. Const. amend. XXIV §1 which states: “The right of citizens of the United States to vote in any primary or other election for President or Vice-President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.” Was ratified on January 23, 1964

elections until 1966¹⁷ when the U.S. Supreme Court extended the prohibition to state and local elections as well.¹⁸

Literacy Tests

Like the poll tax, literacy tests predated the civil war.¹⁹ However, after the civil war they became another device that southern states would use to prevent blacks from exercising their voting rights. Many blacks lacked education because slaves had been legally barred from education.²⁰ Literacy tests were used to keep people of color -- and, sometimes, poor whites -- from voting, and they were administered at the discretion of the officials in charge of voter registration. Discretion allowed the official to ask the easiest question on the test to someone he chose to allow to vote.²¹ The same official might require a black person or someone he did not want to vote to answer every single question correctly, in an unrealistic amount of time, in order to pass.²²

¹⁷ *Harman v. Forssenius*, 380 U.S. 528, 532 (1965)

¹⁸ See *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966); identifying the five states as Alabama, Arkansas, Mississippi, Texas and Virginia

¹⁹ Steve Thornton, Literacy Tests and the Right to Vote, Connecticut History, November 5, 2018 available at <https://connecticuthistory.org/literacy-tests-and-the-right-to-vote/> stating that “Since 1855, Connecticut’s state constitution had required adults to pass a literacy test and a one-year residency rule in order to qualify as a voter. Connecticut was the first state to require a literacy test, to keep Irish immigrants from voting.”

²⁰ See e.g. Excerpt from South Carolina Act of 1740

Whereas, the having slaves taught to write, or suffering them to be employed in writing, may be attended with great inconveniences; Be it enacted, that all and every person and persons whatsoever, who shall hereafter teach or cause any slave or slaves to be taught to write, or shall use or employ any slave as a scribe, in any manner of writing whatsoever, hereafter taught to write, every such person or persons shall, for every such offense, forfeit the sum of one hundred pounds, current money.

Excerpt from Virginia Revised Code of 1819

That all meetings or assemblages of slaves, or free negroes or mulattoes mixing and associating with such slaves at any meeting-house or houses, &c., in the night; or at any SCHOOL OR SCHOOLS for teaching them READING OR WRITING, either in the day or night, under whatsoever pretext, shall be deemed and considered an UNLAWFUL ASSEMBLY; and any justice of a county, &c., wherein such assemblage shall be, either from his own knowledge or the information of others, of such unlawful assemblage, &c., may issue his warrant, directed to any sworn officer or officers, authorizing him or them to enter the house or houses where such unlawful assemblages, &c., may be, for the purpose of apprehending or dispersing such slaves, and to inflict corporal punishment on the offender or offenders, at the discretion of any justice of the peace, not exceeding twenty lashes.

²¹ “The Rise and Fall of Jim Crow. Tools and Activities | PBS.” THIRTEEN. Accessed March 20, 2019. https://www.thirteen.org/wnet/jimcrow/voting_literacy.html.

²² *Id.*

Grandfather Clauses: Fixing the Unintended Consequences of the Poll Taxes and Literacy Tests

The “grandfather clause” was legislation enacted to exempt white men who had enjoyed the right to vote prior to 1867, from educational, property, or tax prerequisites for voting.²³ There were no comparable exemptions for African Americans.²⁴

Seven southern states passed some form of grandfather clause²⁵ during reconstruction in order to ensure that actions to deny suffrage to black Americans did not also burden white men. Some have posited that the grandfather clause was an enfranchisement law for whites as much as they were disenfranchisement laws for blacks. In 1915 the Supreme Court declared the grandfather clause was an unconstitutional violation of the 15th Amendment’s equal voting rights guarantee.²⁶

Terrorism (KKK)

In addition to the various state laws that effectively prevented African Americans from voting, African Americans were often terrorized by whites in order to keep them away from the polls.²⁷

²³ “Grandfather Clause” Enacted.” African American Registry. Accessed March 20, 2019. <https://aaregistry.org/story/grandfather-clause-enacted/>. And see Henry L. Chambers, 51 Emory L.J. 1397 (Fall 2002) stating “In vogue in the late nineteenth and early twentieth centuries, grandfather clauses were technically colorblind (though clearly not race-neutral as to results) in that they were based on the voting rights of one’s ancestors. However, they worked to skew the electorate to include whites and exclude blacks. Working hand-in-glove with literacy tests, grandfather clauses were designed to welcome many white citizens into the electorate who had been excluded by literacy tests, while maintaining the exclusion of many black citizens who were excluded from the electorate by the same literacy tests.”

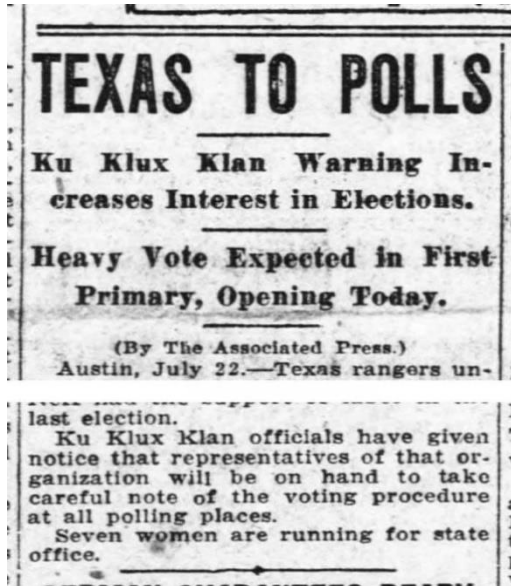
²⁴ “Poll Taxes.” National Museum of American History. May 03, 2018. Accessed March 20, 2019. <http://americanhistory.si.edu/democracy-exhibition/vote-voice/keeping-vote/state-rules-federal-rules/poll-taxes>.

²⁵ The seven southern states that employed some form of grandfather clause were Alabama, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma and Virginia. <https://www.thoughtco.com/grandfather-clauses-voting-rights-4570970>

²⁶ *Guinn & Beal v. United States*, 238 US 347 (1915) Declaring the Grandfather clause of the amendment to the Oklahoma constitution of 1910 void because it violated the 15th amendment to the United States Constitution

²⁷ Ku Klux Klan, Southern Poverty Law Center available at <https://www.splcenter.org/fighting-hate/extremist-files/ideology/ku-klux-klan> reporting that Started during Reconstruction at the end of the Civil War, the Klan quickly mobilized as a vigilante group to intimidate Southern blacks - and any whites who would help them - and to prevent them from enjoying basic civil rights. Outlandish titles (like imperial wizard and exalted cyclops), hooded costumes, violent "night rides," and the notion that the group comprised an "invisible empire" conferred a mystique that only added to the Klan's popularity. Lynchings, tar-and-featherings, rapes and other violent attacks on those challenging white supremacy became a hallmark of the Klan.

Sustained violence and intimidation on the part of whites obstructed black voting rights despite laws enacted to prevent voter intimidation.²⁸



The Ku Klux Klan was only marginally deterred by these laws and continued to commit atrocities against African Americans. In August 1922, the *Topeka State Journal* reported that members of the Ku Klux Klan reportedly flew over Oklahoma City, dropping cards into black neighborhoods, warning people to be cautious for their safety before heading to the polls.²⁹ The *Topeka State Journal* also reported that Klansmen pledged to stake out polling places in Texas that year, with an aim to “take careful note of the voting procedure.”³⁰

The Klan’s strategies of terroristic night raids against African Americans and white Republicans, intimidation, destruction of property, assault, rape and murder were often employed to influence elections by keeping African Americans from the polls.³¹ In 1965, more than 500 non-

²⁸ See The Enforcement Act of 1871, 17 Stat. 13, Pub L 42-22 also known as the Ku Klux Klan Act, 1871 was enacted to enforce the 14th amendment to the Constitution of the United States and protect Blacks from the Ku Klux Klan which stated in part, “...if two or more persons within any state or territory of the United States shall conspire together to...deprive any person or any class of persons of the equal protection of the laws, or of equal privileges or immunities under the laws...[they] shall be punished by a fine not less than five hundred nor more than five thousand dollars, or by imprisonment...for a period of not less than six months or more than six years...” and see “Exhibitions.” Witnesses to History: African American Voting Rights | New-York Historical Society. Accessed March 27, 2019. <http://m.nyhistory.org/exhibition/witnesses-history-african-american-voting-rights>.

²⁹ Michael Kent Curtis, *The Fraying Fabric of Freedom: Crisis and Criminal Law in Struggles for Democracy and Freedom of Expression*, 44 TX Tech LR 89, 112, (Fall 2011) stating that “During Reconstruction, terrorist groups like the Ku Klux Klan perpetrated some of the worst violations of freedom of speech, press, assembly, and association in American history. Klansmen and similar groups whipped, beat, and killed people who supported the Republican Party. They also burned their barns and killed their animals. Typically, the motive was political.” And see Bump, Philip. “The Long History of Black Voter Suppression in American Politics.” *The Washington Post*. November 02, 2016. Accessed March 27, 2019. https://www.washingtonpost.com/news/the-fix/wp/2016/11/02/the-long-history-of-black-voter-suppression-in-american-politics/?utm_term=.e3dc1872e33c. See Geoff Harbaugh, Rachel Maddow Equates Trump’s Voter Fraud Tweet to 1922 KKK leaflets, *Daily Caller*, October 23, 2018 available at <https://www.dailycaller.com/2018/10/23/maddow-equates-trumps-tweet-to-kkk/>.

³⁰ Id.

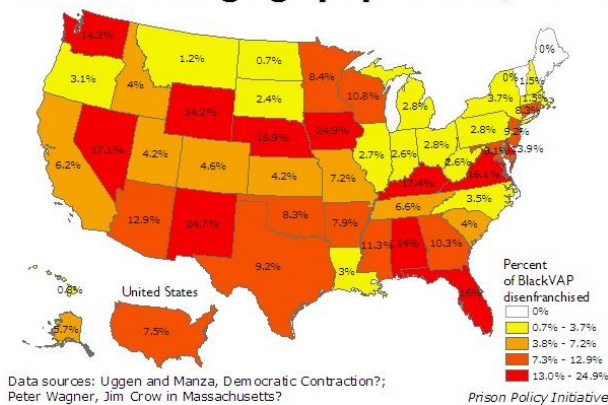
³¹ See Ben Cady & Tom Glazer, *Voters Strike Back: Litigation Against Modern Voter Intimidation*, 39 N.Y.U. Rev. L. & Soc. Change 173, 177 (2015) discussing overt tactics of intimidation aimed at African Americans who routinely faced physical violence and economic reprisal for even attempting to register to vote until the 1960s.

violent civil rights marchers were attacked by law enforcement officers³² while attempting to march from Selma to Montgomery, Alabama³³ to demand voting rights for African Americans.³⁴ The attack gave rise to passage of the most significant federal law banning intimidation; the Voting Rights Act of 1965, which states in Section 11(b) that “No person ... shall intimidate, threaten, or coerce ... any person for voting or attempting to vote.”³⁵

Nevertheless, incidences of Klan-like voter intimidation have occurred across the country as late as 2016.³⁶

Felony Disenfranchisement

Disenfranchisement of Black voting age population, 2000



³² Though there is no specific data to suggest how many, if any of the officers involved in the attack were members of the Ku Klux Klan or some other white nationalist hate group, it is a fair assumption to make that at the very least some were. According to Mark Potok, a senior fellow at the Southern Poverty Law Center, “As recently as the 1960s, many in law enforcement in the South were members [of the Ku Klux Klan].” <https://imdiversity.com/diversity-news/florida-town-stunned-news-police-klk-ties/> Moreover, see Eric Foner, *Reconstruction* 533 (1988) stating that the Ku Klux Klan, and other groups, such as the Knights of the White Camelia and white-citizens councils, often acted under color of state law, and often with the complicity of state and local government, as they terrorized and murdered, with impunity, the newly freed slaves and any who supported them.

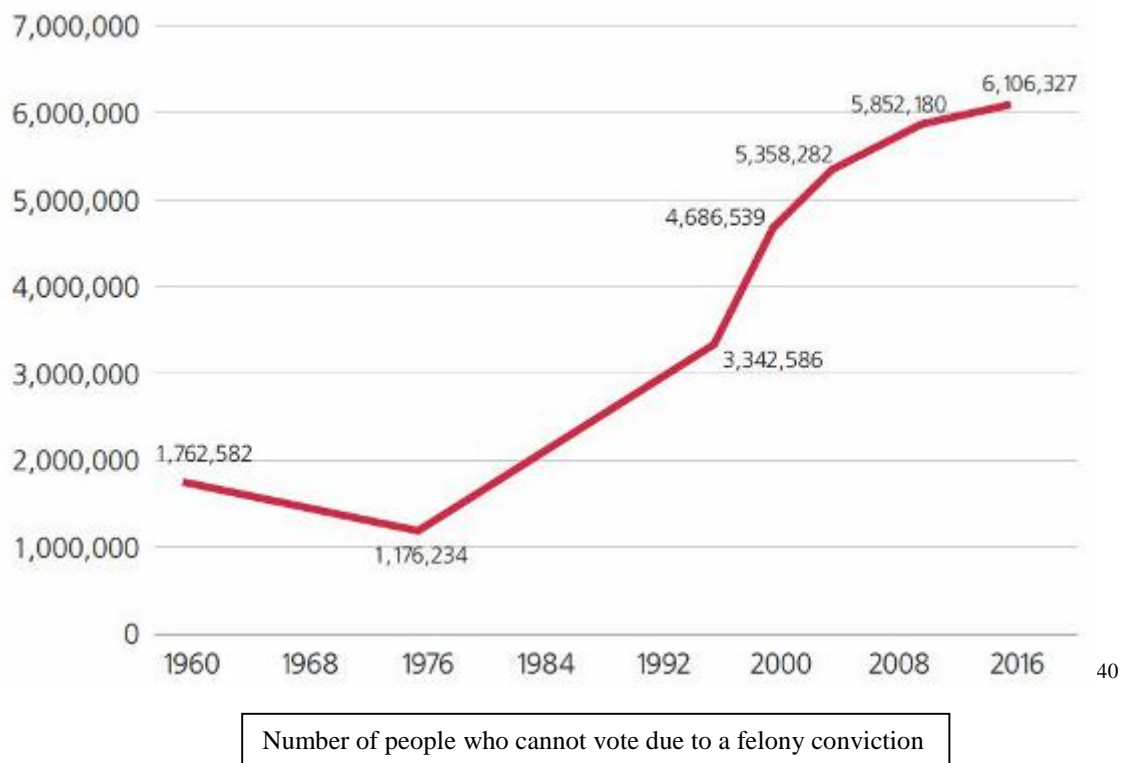
³³ The actual day of the incident, March 7, 1965, has become known as “Bloody Sunday” when voting rights marchers crossed the Edmund Pettus Bridge. Not so ironically, that bridge was named after Civil War Confederate general Edmund Pettus, who later became Grand Dragon of the Ku Klux Klan in Alabama. <https://www.nbcnews.com/news/nbcblk/selma-montgomery-5-things-you-may-not-know-about-bloody-n729276>

³⁴ “Voting Rights Act: Major Dates in History.” American Civil Liberties Union. Accessed February 20, 2019. <https://www.aclu.org/voting-rights-act-major-dates-history>.

³⁵ 52 USC §10101(b)

³⁶ Billy Corriher, how the Klan Act of 1871 is fighting voter intimidation today, *Facing South*, the online magazine of the Institute for Southern Studies, April 19, 2018 available at <https://www.facingsouth.org/2018/04/how-klan-act-1871-fighting-voter-intimidation-today> reporting intimidation activities in Charlottesville, North Carolina, New Jersey and Florida

Even after segregation and Jim Crow voting laws came to a formal end in the south, modern politicians remained susceptible to the temptations of racist dog-whistles as a way of mustering the support of white voters and justifying denying minority voting rights.³⁷ Many southern states, for example, have persisted with segregation-era laws banning felons and ex-felons from voting – a restriction that disenfranchised an estimated six million voters in 2016, a vastly disproportionate number of them African American men.³⁸ The number of disenfranchised individuals has increased dramatically along with the rise in criminal justice populations in recent decades, rising from an estimated 1.17 million in 1976 to 6.1 million.”³⁹



³⁷ Gumbel, Andrew. “America’s Shameful History of Voter Suppression.” The Guardian. September 13, 2017. Accessed March 27, 2019. <https://www.theguardian.com/us-news/2017/sep/13/america-history-voter-suppression-donald-trump-election-fraud>.

³⁸ Id.

³⁹ Uggen, C., Larson, L., & Shannon, S. (2016). “6 million lost voters: State-level estimates of felony disenfranchisement, 2016.” Washington, DC: The Sentencing Project. Available at <https://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/>

⁴⁰ Number of people by State Who Cannot Vote due to a Felony Conviction, State Felon Disenfranchisement tables, 2016 last updated 10.4.17 available at <https://felonvoting.procon.org/view.resource.php?resourceID=000287>

Felony disenfranchisement is the exclusion of people who are otherwise eligible to vote from voting as a result of a felony conviction.⁴¹ Felony disenfranchisement policies have a disproportionate impact on communities of color.⁴² Black Americans of voting age are more than four times more likely to lose their voting rights than the rest of the adult population, with one of every 13 black adults disenfranchised nationally.⁴³ As of 2016, in four states – Florida (21 percent), Kentucky (26 percent), Tennessee (21 percent), and Virginia (22 percent) – more than one in five black adults was disenfranchised. In total, 2.2 million black citizens are banned from voting.⁴⁴

In the post-Reconstruction period, several Southern states tailored their disenfranchisement laws in order to bar black male voters, targeting those offenses believed to be committed most frequently by the black population.⁴⁵ For example, party leaders in Mississippi called for disenfranchisement for offenses such as burglary, theft, and arson, but not for robbery or murder.⁴⁶ The author of Alabama’s disenfranchisement provision “estimated the crime of wife-beating alone would disqualify sixty percent of the Negroes,” resulting in a policy that would disenfranchise a man for beating his wife, but not for killing her.⁴⁷

Persons currently in prison or jail represent a minority of the total disenfranchised population. In fact, 77 percent of disenfranchised voters live in their communities, either under probation or parole

⁴¹ Ann Cammett, *Shadow Citizens: Felony Disenfranchisement and the Criminalization of Debt* 117 Penn St. L. Rev. 349 at notes 3-5 (fall 2012)

⁴² “Felony Disenfranchisement: A Primer.” The Sentencing Project. Accessed April 02, 2019. <https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/>.

⁴³ Id.

⁴⁴ Uggen, C., Larson, L., & Shannon, S. *supra* n 39

⁴⁵ Holloway, P. (2009). ‘A chicken-stealer shall lose his vote’: Disenfranchisement for larceny in the South, 1874-1890. *Journal of Southern History*, 75 (4), 931-962.

⁴⁶ Mauer, M. (2002). Mass imprisonment and the disappearing voters. In M. Mauer & M. Chesney-Lind (Eds.), *Invisible punishment: The collateral consequences of mass imprisonment* (pp. 50-58). New York, NY: The New Press.

⁴⁷ Shapiro, A. (1993). Challenging criminal disenfranchisement under the Voting Rights Act: A new strategy. *Yale Law Journal*, 103 (2), 537-566.

supervision or having completed their sentence.⁴⁸ An estimated 3.1 million people are disenfranchised due to state laws that restrict voting rights even after completion of sentences.⁴⁹

As voting regulations vary by state, voting disenfranchisement regulations also vary by state. States vary as to whether they make felony disenfranchisement permanent or restore suffrage after a person has served a sentence or completed parole or probation.⁵⁰ Nonetheless, approximately “five million Americans convicted of felonies who have already completed their sentences are permanently disenfranchised.”⁵¹

Voter Identification

Today, voter identification laws are the most widely used tool for voter suppression. As of 2018, 35 states have laws requiring voters to show some form of identification at the polls. The 35 states are: Alabama, Alaska, Arkansas, Arizona, Colorado, Connecticut, Delaware, Florida, Georgia,

⁴⁸ Uggen, supra n. 39. 6 million lost voters: State-level estimates of felony disenfranchisement, 2016. Washington, DC: The Sentencing Project.

⁴⁹ “Felony Disenfranchisement: A Primer.” The Sentencing Project. July 17, 2018. Accessed April 01, 2019. <https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/> finding “As of 2016, an estimated 6.1 million people are disenfranchised due to a felony conviction, a figure that has escalated dramatically in recent decades as the population under criminal justice supervision has increased. There were an estimated 1.17 million people disenfranchised in 1976, 3.34 million in 1996, and 5.85 million in 2010.

- Approximately 2.5 percent of the total U.S. voting age population – 1 of every 40 adults – is disenfranchised due to a current or previous felony conviction.
- Individuals who have completed their sentences in the 12 states that disenfranchise people post-sentence make up over 50 percent of the entire disenfranchised population, totaling almost 3.1 million people.
- Rates of disenfranchisement vary dramatically by state due to broad variations in voting prohibitions. In six states – Alabama, Florida, Kentucky, Mississippi, Tennessee, and Virginia – more than 7 percent of the adult population is disenfranchised.
- The state of Florida alone accounts for more than a quarter (27 percent) of the disenfranchised population nationally, and its nearly 1.5 million individuals disenfranchised post-sentence account for nearly half (48 percent) of the national total.
- One in 13 African Americans of voting age is disenfranchised, a rate more than four times greater than that of non-African Americans. Over 7.4 percent of the adult African American population is disenfranchised compared to 1.8 percent of the non-African American population.
- African American disenfranchisement rates also vary significantly by state. In four states – Florida (21 percent), Kentucky (26 percent), Tennessee (21 percent), and Virginia (22 percent) – more than one in five African Americans is disenfranchised.”

⁵⁰ Bowers, Melanie M; Preuhs, Robert R (September 2009). “Collateral Consequences of a Collateral Penalty: The Negative Effect of Felon Disenfranchisement Laws on the Political Participation of Non-felons.” <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1540-6237.2009.00640.x>

⁵¹ Fair-Vote “Right to Vote Amendment” available at https://www.fairvote.org/right_to_vote_amendment

Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, New Hampshire, North Carolina, North Dakota, Oklahoma, Ohio, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Wisconsin, Washington, and West Virginia.⁵²

Of the 35 states with voter IDs laws, Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia are the 11 historically Confederate States of America.⁵³ The historically Confederate States of America seceded from the United States in 1860 because they “fear[ed]” that “their way of life, based on slavery, was irretrievably threatened by the election of President Abraham Lincoln.”⁵⁴ In addition, six of the 11 Confederate States – Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia were originally covered⁵⁵ by Section 5 of the Voting Rights Act of 1965.⁵⁶

Each voter ID laws state has an enforceable voter ID law, however, each state may require a different form of ID. Amongst the 35 states, some accept “driver’s license, state-issued identification cards, military IDs, and tribal IDs.”⁵⁷ While other states – see table 1 – “accept non-photo identification such as a bank statement with name and address or other document that does not necessarily have a photo.”⁵⁸ Seven of the voter ID laws states — Georgia, Indiana, Kansas, Mississippi, Tennessee, Virginia and Wisconsin — have what the National Conference of State

⁵² National Conference of State Legislatures “Voter Identification Requirements | Voter Id Laws” available at <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>

⁵³ The Editors of Encyclopedia Britannica “Confederate States of America” available at <https://www.britannica.com/topic/Confederate-States-of-America> and *see* Anthony J. Gaughan, Has the South Changed? Shelby County and the Expansion of the Voter ID Battlefield, 19 Tex.J. on C.L. & C.R. 109 (Fall 2014) for a discussion of the impact of the Voter Id laws and the southern confederate states responses to them

⁵⁴ History.com Editors “Confederate States of America” available at <https://www.history.com/topics/american-civil-war/confederate-states-of-america>, accessed March 20, 2019.

⁵⁵ “Covered jurisdictions are subject to preclearance under Section 5 of the Voting Rights Act of 1965” United States Department of Justice “Jurisdictions Previously Covered By Section 5 At The Time Of The Shelby County Decision” available at <https://www.justice.gov/crt/jurisdictions-previously-covered-section-5>

⁵⁶ Id.

⁵⁷ National Conference of State Legislatures “Voter Identification Requirements | Voter Id Laws” available at <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>

⁵⁸ Id.

Legislatures refers to as “strict photo ID”⁵⁹ requirements.⁶⁰ Table one illustrates the difference between states which require photo IDs and the states who accept non-photo IDs.⁶¹

	Photo ID	Non-Photo ID
Strict	Georgia Indiana Kansas Mississippi Tennessee Virginia Wisconsin	Arizona North Dakota Ohio
Non-Strict	Arkansas Alabama Florida Hawaii Idaho Louisiana Michigan Rhode Island South Dakota Texas	Alaska Colorado Connecticut Delaware Iowa Kentucky Missouri Montana New Hampshire North Carolina Oklahoma South Carolina Utah Washington West Virginia
TABLE 1: VOTER IDENTIFICATION LAWS IN FORCE IN 2018⁶²		

⁵⁹ By “strict,” the NCSL means that voters in those states who don’t present acceptable photo ID must vote on a provisional ballot and then come back with an acceptable ID after Election Day for it to be counted. Id.

⁶⁰ See Mallory Wilson, Voter Photo ID Laws: Using Primary Source Election Turnout Data and Foreign Examples to Identify the Proper Mechanisms for Implementation, 25 Ind. Int’l & Comp. L. Rev. 347,351 (Note, 2015); Specht, Paul. “States with voter ID laws have seen ‘zero decrease’ in turnout, NC Republican says” <https://www.politifact.com/north-carolina/statements/2018/jun/20/tim-moore/states-voter-id-laws-have-seen-zero-decrease-turno/> and see *Anthony J. Gaughan, supra n. 52*

⁶¹ National Conference of State Legislatures “Voter Identification Requirements | Voter Id Laws” available at <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>

⁶² “This table refers to laws in effect in 2018; Pennsylvania enacted a strict photo voter ID law, but it was struck down. North Carolina enacted a photo voter ID law that was struck down by the courts. Therefore, these states are not included in this chart of in-force laws.” Id.

Voter identification laws are considered by many liberals and conservatives alike as being a part of an ongoing strategy to roll back decades of progress on voting rights.⁶³ Voter ID laws deprive many voters of their right to vote, reduce participation, and stand in direct opposition to our country’s trend of including more Americans in the democratic process.⁶⁴ Many Americans do not have one of the forms of identification states acceptable for voting.⁶⁵ These voters are disproportionately low-income, racial and ethnic minorities, the elderly, and people with disabilities.⁶⁶ Such voters more frequently have difficulty obtaining ID, because they cannot afford or cannot obtain the underlying documents that are a prerequisite to obtaining government-issued photo ID card.⁶⁷ Thirty-five states have identification requirements at the polls.⁶⁸ Seven states have strict photo ID laws, under which voters must present one of a limited set of forms of government-issued photo ID in order to cast a regular ballot – no exceptions.⁶⁹

	Photo ID	Non-Photo ID
Strict	Georgia Indiana Kansas Mississippi Tennessee Virginia Wisconsin	Arizona North Dakota Ohio
Non-Strict	Arkansas	Alaska

⁶³ Deuel Ross, Pouring Old Poison into New Bottles: How Discretion and the Discriminatory Administration of Voter ID Laws Recreate Literacy Tests, 45 Colum. Hum. Rts. L. Rev. 362, 379 (Winter 2014) stating “Most tellingly, officials who supported voter ID laws or laws restricting early voting as purported anti-fraud measures recently either admitted that these laws in fact served racially discriminatory purposes or were exposed as purposefully callous to the laws’ discriminatory effects. In Florida, the chair of the state Republican Party from 2006 to 2010 confessed that changes to Florida’s early voting laws were not meant to prevent fraud at all. Instead, the threat of fraud was simply a “marketing ploy” to enact laws that would “keep[] [B]lacks from voting.” Citing Alex Seitz-Wald, *Fla. Republican: We Wanted to Suppress Black Votes*, Salon (July 27, 2012, 10:34 AM), http://www.salon.com/2012/07/27/fla_republican_we_suppressed_black_votes. And see “Oppose Voter ID Legislation - Fact Sheet.” American Civil Liberties Union. Accessed April 03, 2019. <https://www.aclu.org/other/oppose-voter-id-legislation-fact-sheet>. But see Mallory Wilson, *supra* n. 59 arguing that voter photo ID laws are necessary to ensure fair election and voting processes and results

⁶⁴ Oppose Voter ID Legislation, *supra* n. 62

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ Id.

⁶⁹ Id.

	Alabama Florida Hawaii Idaho Louisiana Michigan Rhode Island South Dakota Texas	Colorado Connecticut Delaware Iowa Kentucky Missouri Montana New Hampshire North Carolina Oklahoma South Carolina Utah Washington West Virginia
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Table 2: Voter Identification Laws In Force in 2018

Ever since the Supreme Court struck down a key part of the Voting Rights Act in 2013, laws requiring voters to show identification when they vote have speckled the nation, popping up in states from Rhode Island to Arizona.⁷⁰ Almost as quickly, voting rights advocates have taken states like Texas and Alabama to court, arguing that voter identification laws intentionally discriminate against minority voters.⁷¹

⁷⁰ Lapowsky, Issie. “A Dead-Simple Algorithm Reveals the True Toll of Voter ID Laws.” Wired. January 04, 2018. Accessed April 03, 2019. <https://www.wired.com/story/voter-id-law-algorithm/> but see Anthony J. Gaughan, supra n. 52 reporting that “Empirical data reveals that Voter ID laws in the South have thus far not had the negative impact on minority voter turnout that many opponents feared. In fact, the 2012 presidential election provided striking evidence that Voter ID laws have provoked a backlash against such laws. That backlash has led directly to increased minority voter turnout. Ironically, therefore, the controversy over Voter ID laws ultimately had a paradoxically beneficial impact on minority political participation in 2012.

Although the authors of Voter ID laws certainly do not deserve credit for that development, it is worth keeping in mind when assessing the future of minority voter participation in the South in an age of Voter ID laws.” Hajnal, Zoltan L., Nazita Lajevardi and Lindsay Nielson “But see Do voter identification laws suppress minority voting? Yes...we did the math.” Washington Post. Feb 15, 2017 available at https://www.washingtonpost.com/news/monkey-cage/wp/2017/02/15/do-voter-identification-laws-suppress-minority-voting-yes-we-did-the-research/?utm_term=.042549ead949

⁷¹ See e.g. Texas State Conference of NAACP Branches et. al. v Steen et. al. case number 2:13-cv-00291; North Carolina State Conference of the NAACP et.al. v. Patrick McCrory et. al. 831 F 3d 204 (4th Cir. 2016) Indiana Democratic Party v. Todd Rokita, 458 F. Supp. 2d 775 (S.D. Ind. 2006) and *Crawford v. Marion County Election Board*, 472 F.3d 949 (7th Cir. 2007), affirmed, 553 U.S. 181 (2008) where Judge Posner writes the opinion and later sparks a national debate regarding the court’s opinion upholding the Voter ID law in his book *Reflections on Judging*. But it is clear in the judge’s own words that while he did not state that his opinion was wrong he did say “I may well have been wrong in *Crawford*, because similar (I do not say identical) to Indiana’s represent a “type of law now widely regarded as a means of voter suppression rather than of fraud prevention” See Richard A. Posner I Did no ‘Recant’ on Voter ID Laws, The New Republic, October 27, 2013 available at <https://newrepublic.com/article/115363/richard-posner-i-did-not-recant-my-opinion-voter-id>

Civil-rights group sued Texas over a law that requires certain types of IDs to be able to vote, a practice plaintiffs argued places unfair burdens on minority voters, and over congressional and state House district maps they claim intentionally undercut the voting power of black and Latino voters.⁷² The U.S. Supreme Court last year upheld 10 of the 11 maps in question.⁷³

Closing Poll Places



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In the five years since the U.S. Supreme Court struck down key parts of the Voting Rights Act in *Shelby County v. Holder*, nearly a thousand polling places have been shuttered across the country, many of them in southern black communities.⁷⁵

⁷² Jervis, Rick. "Voting Rights: Texas Voter Purge Is Latest Effort to Target Minority Voters, Activists Say." USA Today. February 07, 2019. Accessed April 11, 2019. <https://www.usatoday.com/story/news/2019/02/06/voting-rights-purge-rolls-texas-gov-abbott-donald-trump/2789929002/>.

⁷³ *Abbott v. Perez*, 138 S.Ct. 2305 (2018) where the Court upheld all but one of Texas's racially gerrymandered legislative district maps which some say takes America back to a time when the Supreme Court openly endorsed voter suppression.

⁷⁴ <http://civilrightsdocs.info/pdf/reports/2016/poll-closure-report-web.pdf>; *Shelby County v. Holder*, 570 U.S. 529 (2013)

⁷⁵ Vasilogambros, Matt. "Polling Places in Black Communities Continue to Close Ahead of November Elections." *Governing*. Accessed April 02, 2019. <https://www.governing.com/topics/politics/sl-polling-place-close-ahead-of-november-elections-black-voters.html>.

Polling places have often been used as political tools to shape the outcome of elections.⁷⁶ Officials can reduce the voter participation of certain groups by eliminating polling places, and increase participation in other groups by placing precincts in key neighborhoods.⁷⁷

In majority-minority urban counties, voters lost an average of seven polling places and more than 200 of the workers who help them cast ballots between 2012 and 2016.⁷⁸ The dearth of places to vote was far worse in some big cities. Election administrators in Chicago’s Cook County closed or moved 95 polling places; Los Angeles County closed 88 sites, and Houston’s Harris County eliminated 27.⁷⁹

Cutting Early Voting

The push to trim early voting provides another clear example of how new voting restrictions target minorities.⁸⁰ For more than two decades, states have been increasing early voting opportunities.⁸¹ In fact, most states now offer early voting, and in the last two presidential elections, a full one-third of Americans voted early.⁸²

Despite this consensus, after the 2008 election, support for early voting eroded among Republican legislators in the South and Midwest.⁸³ What changed? For the first time, African Americans had begun voting early at high rates.⁸⁴ In Southern states, early voting by African Americans nearly

⁷⁶ Id.

⁷⁷ Id.

⁷⁸ Nichols, Mark. “Closed Voting Sites Hit Minority Counties Harder for Busy Midterm Elections.” USA Today. October 31, 2018. Accessed February 21, 2019. <https://www.usatoday.com/story/news/2018/10/30/midterm-elections-closed-voting-sites-impact-minority-voter-turnout/1774221002/>.

⁷⁹ Id.

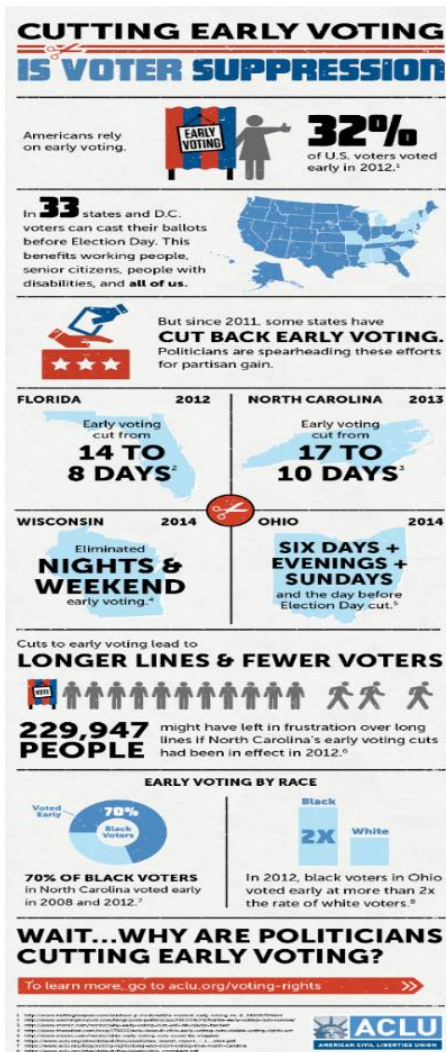
⁸⁰ “Voter Suppression: How Bad? (Pretty Bad).” Improving Judicial Diversity | Brennan Center for Justice. October 01, 2014. Accessed February 28, 2019. <https://www.brennancenter.org/analysis/voter-suppression-how-bad-pretty-bad>.

⁸¹ Id.

⁸² Id.

⁸³ Id.

⁸⁴ Id.



tripled between 2004 and 2008, overtaking early voting by whites by a significant margin.⁸⁵ In North Carolina, for example, seven of 10 African Americans voted early in 2008, as compared to half of white voters.⁸⁶

Just as early voting has become successful among minorities and lower-income voters, it has become a target.⁸⁷ Since 2011, eight states that saw recent increases in minority early voting usage have sharply cut back on early voting hours and days—Florida, Georgia, Nebraska, North Carolina, Ohio, Tennessee, West Virginia, and Wisconsin. Generally, the days and hours most likely to be slashed were those most popular with minorities and hourly workers, like Sundays and evenings.⁸⁸

These cuts to early voting threaten turnout by limiting a reform that otherwise works to make voting possible for every eligible citizen.⁸⁹

As the Brennan Center's research has found, early voting is wildly popular among voters and election officials alike. And, early voting has the added advantage of helping elections run more smoothly by diminishing long lines, improving poll worker performance, and allowing earlier detection and correction of any systemic problems with registration, voting machines, or ballots.⁹⁰ Given these advantages, states must take the crucial step of offering voters the opportunity to cast their ballot early. The numbers are in: early voting works.⁹¹

⁸⁵ Id.

⁸⁶ Id.

⁸⁷ Id.

⁸⁸ Id.

⁸⁹ Rice-Johnson, Phoenix. "A Step in the Wrong Direction: Cutting Early Voting Hurts Voters." Brennan Center for Justice. November 05, 2016. Accessed April 02, 2019. <https://www.brennancenter.org/blog/step-wrong-direction-cutting-early-voting-hurts-voters>.

⁹⁰ Id.

⁹¹ Id.

Purging Voters from Voting Rolls and the Illusive Voter Fraud

Across the country, Republican governors, secretaries of state, and state lawmakers have been tightening the restrictions on voting in dozens of states citing concerns about voter fraud despite lacking proof of such fraud.⁹² The result is that voters in North Dakota, Ohio, Missouri, Kansas, and New Hampshire, among other states, are facing restrictive voter ID laws and purges of voter names from the rolls. These restrictions often benefit Republicans, studies have found, because minorities, young voters, and others who might struggle to meet their requirements often vote Democratic.⁹³

Ohio recently passed a law removing people from the voting register if they had not voted for two years and did not return a voter card mailed to their registered address.⁹⁴ The argument for the law was, again, to reduce voter fraud.⁹⁵ Given that there is no evidence at all for such voter fraud, this is unlikely to be the real reason. Critics suggest that the law discriminates against poor people, who may move more frequently due to a lack of rent security, and particularly poor Hispanic voters, who may speak English as a second language and therefore not realize the relevance of the cards.⁹⁶ Both groups are more likely to be Democratic voters. The laws were passed by Republican state legislatures and upheld by conservative-leaning judges.⁹⁷

Texas officials purged about 95,000 people from the voter rolls, saying they do not appear to be U.S. citizens — cited as the beginning of a wider, monthly purge.⁹⁸

⁹² Deuel Ross, Pouring Old Poison into New Bottles: How Discretion and the Discriminatory Administration of Voter ID Laws Recreate Literacy Tests, 45 Colum. Hum. Rts. L. Rev. 362, 378 (Winter 2014); Nilsen, Ella. “Republicans Are Making It Harder for People to Vote in Key 2018 Elections.” Vox. October 25, 2018. Accessed April 11, 2019. <https://www.vox.com/policy-and-politics/2018/10/25/18010928/2018-midterm-elections-voting-rights-purges>.

⁹³ Id.

⁹⁴ Stone, Tobias, and Tobias Stone. “Five Acts of Voter Suppression That Will Sway the Next Election.” Medium.com. August 03, 2018. Accessed February 28, 2019. <https://medium.com/s/story/five-acts-of-voter-suppression-that-will-sway-the-next-election-b6979e9ff94c>.

⁹⁵ Id.

⁹⁶ Id.

⁹⁷ Id.

⁹⁸ Wallace, Jeremy. “Texas Moves to Purge 95,000 Voters Suspected to Be Non-US Citizens.” Houston Chronicle. January 26, 2019. Accessed April 11, 2019. <https://www.chron.com/news/politics/texas/article/Texas-is-purging-95-000-voters-suspected-to-be-13562186.php>.

Texas Secretary of State David Whitley boasted that working with the Department of Public Safety, his office has been able to identify *potential* non-citizens among those registered to vote, including 58,000 who had cast ballots in Texas elections.⁹⁹

The state's list of voters has since shrunk by tens of thousands even after it was discovered that many legitimate voters were mistakenly included in the purge.¹⁰⁰ Lawsuits by civil- and voting-rights groups followed.¹⁰¹

The lawsuits, filed by The American Civil Liberties Union of Texas, the national ACLU, the Texas Civil Rights Project, the civil-rights group Demos, and the Lawyers' Committee for Civil Rights Under Law argue that Whitley's office didn't account for naturalized citizens on the list and called his actions "an unlawful purge of the voting rolls that, by design, target and threaten the voting rights of eligible naturalized citizens and people of color."¹⁰²

Gerrymandering

"Gerrymander" is a distinctly American word dating back to 1812, and it's the best-known trick in the electoral game: moving electoral boundaries to exclude or include a specific voter demographic.¹⁰³ This leads to very strange district maps that have slithers of land connecting two districts in a way that looks unnatural.¹⁰⁴

Gerrymandering relies on "packing" and "cracking" votes.¹⁰⁵ With packing, the voters are clustered into a district that will already be won by the opposition party, so the extra votes are wasted on that candidate and have no effect on the outcome. Cracking is when voters for a party are broken

⁹⁹ Id.

¹⁰⁰ Jervis, Rick, *supra* n 72

¹⁰¹ Id.

¹⁰² Id.

¹⁰³ Stone, Tobias *supra* n 94

¹⁰⁴ Id.

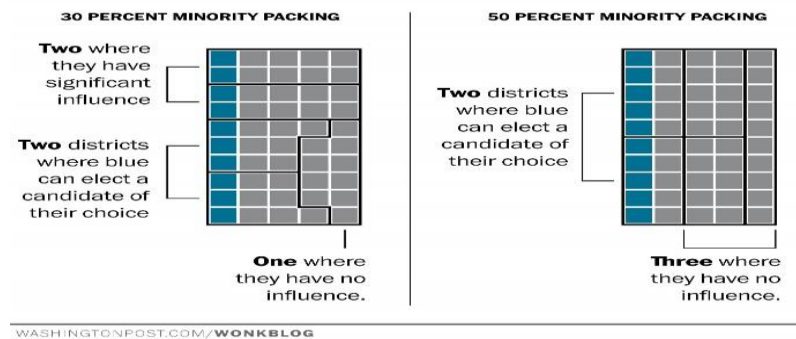
¹⁰⁵ Id.

up into multiple districts where the opposing candidate can win with a large majority, so again their votes are wasted.¹⁰⁶

The mechanism is simple: The political party that controls state legislatures gets to redraw congressional boundaries every 10 years after the results of the most recent Census.¹⁰⁷ Gerrymandering is the partisan redrawing of these boundaries.¹⁰⁸ Basically, it allows politicians to select their voters rather than the voters to choose their representatives.¹⁰⁹

Racial gerrymandering, explained

Here are two ways to divide 50 people in the **gray** majority and **blue** minority into five districts. Suppose minorities must compose at least 30 percent of the electorate in a district to elect their favored candidate. If minorities are “packed in” so they exceed that threshold, they will have less influence in surrounding districts.



Some have identified four main reasons why gerrymandering has gotten more controversial over the last 20 years.¹¹⁰ First, gerrymandering is effective in helping political parties hold power.¹¹¹ Second, gerrymandering has become a much more effective tool in the last 20 years.¹¹² With sophisticated computer programs and ever more detailed information on voters’ location and

¹⁰⁶ Id.

¹⁰⁷ Short, John Rennie, and John Rennie Short. “4 Reasons Gerrymandering Is Getting Worse.” The Conversation. December 11, 2018. Accessed April 18, 2019. <http://theconversation.com/4-reasons-gerrymandering-is-getting-worse-105182>.

¹⁰⁸ Id.

¹⁰⁹ Id. and see Cheryl I Harris, “Too Pure an Air:” Somerset’s Legacy from Anti-Slavery to Colorblindness, 13 Tex. Wesleyan L Rev 439 at 454 stating “Gerrymandering” is the time honoured practice of drawing voting district boundaries to secure a particular outcome. It is often done by political parties to ensure that the existing balance of power remains. It is the favored technique of incumbents to ensure that they will win. It is said that rather than the voters picking the candidates, the candidates pick the voters. Citing *Shaw v Reno*, 509 U.S. 630 (1993).

¹¹⁰ Supra n. 107

¹¹¹ Id. and see Sally Dworak-Fisher, Drawing the Line on Incumbency Protection, 2 Mich.J.Race & L. 131, (Fall 1996) to look back twenty years when the author states that white incumbents are protected at the expense of efforts to enhance minority voting power; the result is a strikingly homogeneous legislature. Today, in the wake of increasingly heterogenous legislatures, there are increasing efforts to make legislative bodies white again

¹¹² Id.

preferences, politicians can now crack and pack with surgical precision.¹¹³ The third reason is that the Supreme Court has effectively sanctioned gerrymandering.¹¹⁴

A fourth reason is that it has been difficult to identify viable alternatives.¹¹⁵ There are numerous potential solutions. The efficiency gap for example measures the number of “wasted” votes for a party that cannot win in a district.¹¹⁶ The difference between the wasted votes for each side, divided by the total number of votes, is the efficiency gap.¹¹⁷

To summarize the legal state of play, the Supreme Court has previously acknowledged that partisan gerrymandering is unconstitutional, but it has never credited any particular methodology to determine whether a map is an unconstitutional partisan gerrymander.¹¹⁸ Because the Supreme Court has never actually invalidated a map on this basis, many (justifiably) believe that, contrary to its dicta, the Supreme Court has no intention of ever curtailing the pernicious practice of extreme partisan gerrymandering.¹¹⁹ This is because, time and again, the Supreme Court has found excuses to avoid overturning even the most egregious of partisan gerrymanders.¹²⁰

One thing that has been overlooked in the discussion about the harmful effects of gerrymandering and voter suppression is its effect on the party that implements it.¹²¹ By changing the rules to exert power even when in the minority, a political party commits itself to prioritizing the pursuit and consolidation of their own power over all else.¹²² In other words, once a party chooses to solidify its then-existing legislative state-level majorities through the systematic

¹¹³ Id.

¹¹⁴ Id.

¹¹⁵ Id. and see Laughlin McDonald, The Looming 2010 Census: A Proposed Judicially Manageable Standard and other Reform Options for Partisan Gerrymandering, 46 Harv.J. on Legis.243, (Winter, 2009) considering a three-part standard for adjudicating claims of partisan gerrymandering but not alternatives to gerrymandering altogether.

¹¹⁶ Id.

¹¹⁷ Id.

¹¹⁸ “Gerrymandering and Voter Suppression Lead to Authoritarianism.” Daily Kos. March 25, 2019. Accessed April 18, 2019. <https://www.dailykos.com/stories/2019/3/25/1845180/->

¹¹⁹ Id.

¹²⁰ Id.

¹²¹ Id.

¹²² Id.

disenfranchisement of opponents, it risks condemning itself into being a party of authoritarianism.¹²³

Gerrymandering has a pernicious impact on the electoral system and on the wider democratic process.¹²⁴ It encourages long-term incumbency and a consequent polarization of political discourses.¹²⁵ In gerrymandered districts, politicians only need to appeal to their base rather than to a wider electorate.¹²⁶

The Courts/Judicial Decisions

A number of factors have converged to turn up the volume on voter suppression.¹²⁷ Courts have been major players in stemming the growth of voting restrictions with the number of court decisions against new restrictions ballooning in recent years.¹²⁸ Some courts have specifically found that government officials intentionally acted to keep minorities from voting.¹²⁹ But despite some victories, a troubling reality has emerged: Even when courts rule against restrictive voting measures, it isn't enough to deter those looking to limit access to the ballot.¹³⁰ Legislatures outed for acting with discriminatory intent merely go back to the legislative drawing boards to fashion laws that appear less discriminatory sufficient to win the support from courts that had earlier found their actions unconstitutional.

¹²³ Id.

¹²⁴ Id.

¹²⁵ Id.

¹²⁶ Id.

¹²⁷ Roth, Zachary, and Wendy R. Weiser. "This Is the Worst Voter Suppression We've Seen in the Modern Era." Brennan Center for Justice. November 02, 2018. Accessed April 23, 2019. <https://www.brennancenter.org/blog/worst-voter-suppression-weve-seen-modern-era>.

¹²⁸ Id. and see Camila Domonoske, As November Approaches, Courts deal series of Blows to Voter ID Laws, National Public radio, available at www.npr.org (2016)

¹²⁹ Id. citing the North Carolina's 4th Circuit Court of Appeals finding that the North Carolina legislators had passed the voter ID laws with discriminatory intent as "the new provisions target African Americans with almost surgical precision".

¹³⁰ Id.

Litigation can be expensive and time-consuming, and so these harsh laws often stay in place, fully intact and disenfranchising voters, for one or more elections before a court rules against them.¹³¹ And even if that ruling does come, it may only weaken the law rather than striking it down fully — as happened with Texas’s and Wisconsin’s strict voter ID laws, among other examples.¹³² Strategists posit that such outcomes give would-be vote suppressors little incentive to think twice about pursuing their strategy.¹³³ And in the cases when a court scraps a law entirely, the confusion and misinformation surrounding the process can often keep some voters from the polls.¹³⁴

In December 2015, Greater Birmingham Ministries and the Alabama NAACP filed suit challenging Alabama’s voter ID law, which requires voters to present a photo ID to vote, but allows election officials to vouch for the identity of a voter without ID.¹³⁵ Plaintiffs argued that the state’s photo ID law has a disproportionate impact on minority voters in violation of the Voting Rights Act and the U.S. Constitution.¹³⁶

In February 2018, an Arkansas voter filed a lawsuit against the state’s newly enacted voter ID law, claiming that it violates the state Constitution.¹³⁷ In April 2018, a state trial court issued a preliminary injunction halting enforcement of the state’s voter ID law.¹³⁸ The Arkansas Supreme Court reversed the trial court’s order even though the high court had struck down a previous iteration of the voter ID law as inconsistent with the state Constitution.¹³⁹ After that decision, the

¹³¹ Roth, *supra* n. 127

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Greater Birmingham Ministries v. Alabama*, Civil Action No. 2:15-cv-02193-LSC, filed December 2, 2015 available at www.naacpldf.org and see *Improving Judicial Diversity* | Brennan Center for Justice. November 15, 2018. Accessed February 21, 2019. <https://www.brennancenter.org/analysis/state-voting-rights-litigation-november-2018>.

¹³⁶ *Greater Birmingham*, *supra* n. 135

¹³⁷ *Barry Haas v Mark Martin et.al.*, No. CV-18-752 seeking relief that was preliminarily granted at the trial court but overturned by the state supreme court in *Martin v Haas*, 556 SW3d 509 (Ark 2018).

¹³⁸ *Id.*

¹³⁹ *Martin v. Kohls*, 444 SW 3d 844 (Ark. 2014) holding that law which required voters to show proof of identity in the form of a photo identification, was facially unconstitutional because it imposed an additional requirement to vote that fell outside the Arkansas constitution. The law at issue in that case was subsequently amended by the Arkansas legislature and it is the revised law that was considered in the 2018 case.

state legislature amended the act that was offensive to the Kohls court and passed Act 633 of 2017. The Supreme Court held that the revised law was constitutional and consequently reversed the preliminary injunction.¹⁴⁰

In Texas, activists posit that there remain a number of significant obstacles to the free and fair exercise of the right to vote in that state.¹⁴¹ Redistricting is a major issue, for example, with Supreme Court cases like *Abbott v. Perez* where the court upheld all but one of the states redrawn electoral districts. The U.S. District Court had found that the districts were drawn with racially discriminatory intent for the purpose of diluting the strength of minority votes.¹⁴² Texas has also faced accusation that it is in violation of the Voting Rights Act (VRA) because of a provision of the State's Election Code that imposes limitations on a language-minority voter's ability to have an interpreter of their choice to assist them in the voting process.¹⁴³ The lower court granted the injunction. On appeal to the Fifth Circuit, the Court found that the lower court granted a broad injunction against the state prohibiting it from enforcing any provision of its election code to the extent it was inconsistent with the VRA.¹⁴⁴ The court concluded that the “limitation on voter choice expressed in Tex. Elec. Code § 61.033 impermissibly narrowed the right guaranteed by Section 208 of the VRA”.¹⁴⁵

Conclusion

It is clear that efforts to suppress the rights of targeted American citizens to vote are in place and evolving today. The impact of suppression prolongs historical oppression, particularly for voters of color living in low income, rural and Native American lands. Voter suppression

¹⁴⁰ *Id.*

¹⁴¹ “The Sorry State of Voting Rights in Texas *Supra* n.3

¹⁴² *Abbott v Perez*, 585 U.S. ___, 138 S.Ct. 2305, 201 L.Ed.2d 714 (2018) where a 5-4 ruling upheld the Texas redistricting maps, as revised except for one district in Fort Worth that the court found was an impermissible racial gerrymander.

¹⁴³ *Organization for Chinese Americans-Greater Houston v. Texas*,

¹⁴⁴ *OCA-Greater Houston v Texas*, No. 16-51126 (U.S.C.A.-5th, 2017)

¹⁴⁵ *Id.*

challenges a basic democratic tenet of one person one vote and intensifies the power of the minority (white men) over the majority (people of color).

Today's suppression methods may be less obvious than poll taxes, whites-only primaries and literacy tests of yesteryear, but they are driven by the same purpose of undermining genuine majority rule and deflecting potential threats to the established order.¹⁴⁶

The Voting Rights Act should be restored to help prevent the violation of rights of citizens of color.¹⁴⁷ The United States Supreme Court provided a template, now it is up to Congress to fulfill its responsibility to all of the American people by updating the data on which it relies to support the preclearance requirement in Sections 2 and 4 of the Voting Rights Act.¹⁴⁸ Without this affirmative action, the U.S. Supreme Court, with Congressional acquiescence will have relegated African Americans and other minorities to second class citizens. That will not be tolerated.

¹⁴⁶ Blum, Bill. "Supremes Give Stamp of Approval to Voter Suppression." Progressive.org. June 13, 2018. Accessed April 23, 2019. <https://progressive.org/dispatches/supremes-give-stamp-of-approval-to-voter-suppression-Husted-180613/>.

¹⁴⁷ Ifill, Sherrilyn. "Before 2020: Upgrade Voting Systems, Restore Voting Rights Act, End Voter Suppression." USA Today. November 12, 2018. Accessed January 31, 2019. <https://www.usatoday.com/story/opinion/2018/11/12/end-voter-suppression-restore-voting-rights-act-update-machines-column/1965522002/>.

¹⁴⁸ Carmona, Tom. "Equal Freedom to Vote." Equal Citizens. Accessed April 25, 2019. <https://equalcitizens.us/equal-freedom-to-vote/>. Section 4b of the Act established a formula for determining which states would be subject to federal pre-clearance before it could change its voting laws. When the US Supreme Court struck down section 4b as unconstitutional it necessarily struck down section 2 which was the preclearance rule. Post VRA history shows that continued efforts to exclude African Americans persist and support the need for the Act to this day.