



New Voter Suppression Laws and the Voter Fraud Fallacy

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

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at Texas Southern University

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ACKNOWLEDGEMENTS

The Center acknowledges the assistance with this report of:

Professor Marcia Johnson, Research and Writing Supervisor

Dr. Michael Adams, Editing

Andreience Fields, URRC Office Manager, Formatting

Luckett A. Johnson, Consultant, Barbara Jordan Institute, Research and Writing Advisor

URRC Board of Directors

TSU Administration

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Introduction

*Voting is the foundational concept for our entire democratic structure. We think of voting as the most fundamental-right in our democracy. When a group of citizens collectively elects its representatives, it affirms the notion that we govern ourselves by free choice. An individual's right to vote ties that person to our social order, even if that person chooses not to exercise that right. Voting represents the beginning; everything else in our democracy follows the right to vote. Participation is more than just a value. It is a foundational virtue of our democracy.*¹

America's history of limiting access to the polls for specific groups, most commonly race- and gender-based groups, is long and, undeniably, un-democratic. A cornerstone of democracy is one-person, one-vote which both affirms the democratic notion that the majority rules and the use of coalition building to reach the majority needed to rule. When that process is artificially manipulated by denying classes of people the right to be counted based on unconstitutional grounds such as race and gender, then the process itself is undemocratic.

From its earliest days when non-propertied white men were denied the vote due to their poverty and white women denied the vote because of their gender, the American voting system has rested on the foundation of voter suppression. Voter suppression — also known as caging — is any action or behavior intended to deter an individual or group from voting. In the history of American politics, a wide range of dirty tactics have been used by both major political parties to intimidate or disqualify voters traditionally aligned with the opposition.²

Concomitantly, the nation's failure to emerge from the throes of slavery is evident in the widespread practices, policies and laws that restrict a person's access to the voting polls.³ For more than 100 years after emancipation, American local and state governments employed various tools of disenfranchisement particularly targeting women and African Americans. While changes to the United States Constitution and federal law sought to expand voting access, there continued to be state

¹ Joshua A. Douglas, The Foundational Importance of Voting: A Response to Professor Flanders, 66 Okla.L.Rev. 81 (2013)

² Dave Roos, How Voter Suppression Works, available at <https://people.howstuffworks.com/voter-suppression.htm/>

³ Carol Anderson and Dick Durbin, One Person, No Vote: How Voter Suppression is Destroying our Democracy, Bloomsbury Publishing, 2018.

laws passed to circumvent expansion in favor of voter suppression. More than 50 years following the signing of the Voting Rights Act of 1965 into law, states have continued to create laws to thwart the expansion.⁴

Political tools that included literacy tests, poll taxes and terrorism in order to keep African Americans from voting were ultimately struck down. But these laws and tactics of oppression are being replaced by new laws of voter suppression including voter ID requirements, purging of voter rolls and reduced early voting periods.⁵

New laws

There is a widespread debate about the merits of the discriminatory intent of the new voter suppression laws. Many states that are proponents of voter ID laws, closure of voting polls, or reduction of early voting periods claim these new laws are necessary “to reduce fraud and to restore trust in the democratic system.”⁶ Critics of the new laws argue these laws are being enacted for no other reason than to establish barriers that will limit the participation of disadvantaged groups and racial and ethnic minorities.⁷

During his presidency, Ronald Reagan arguably gave voter fraud the rallying cry for restrictionists that it is today when “Republicans recognized that their policies could not attract a majority of voters. Their budget cuts had hit black Americans particularly hard. An attempt to weaken Social Security just before the election bode ill for the midterms, especially since the Republicans had to defend vulnerable senators elected in 1980 on Reagan’s coattails.”⁸ However, Reagan’s claims

⁴ Id.

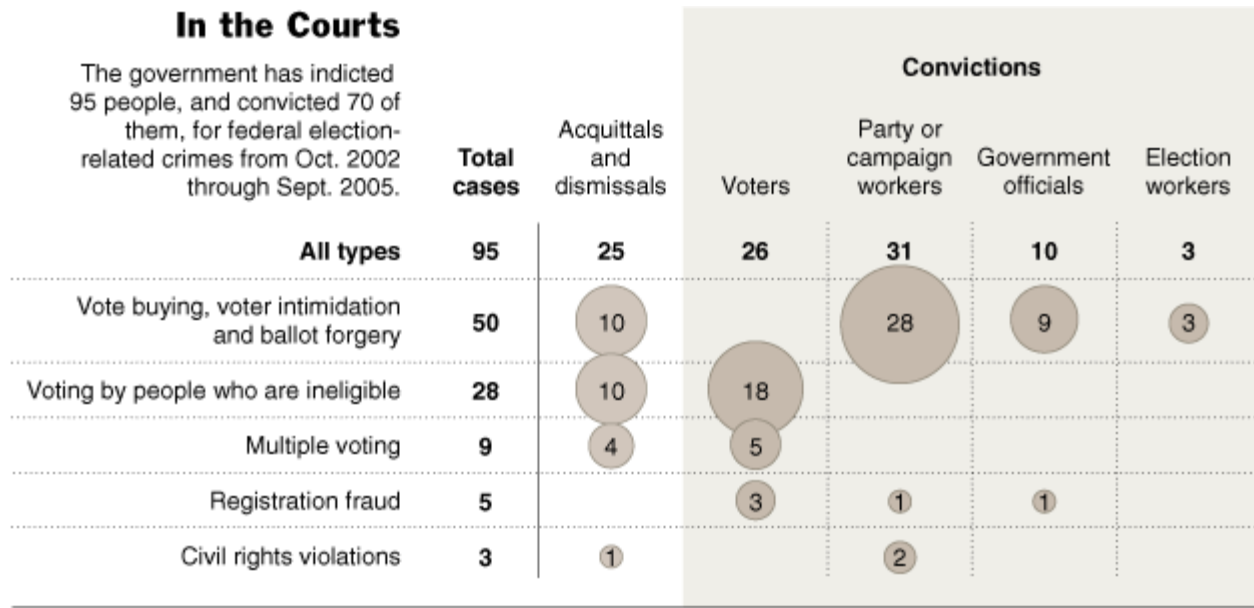
⁵ Id. stating that “the goal of all the GOP voter ID laws is to reduce significantly the demographic and political impact of a growing share of the American electorate. [particularly]...blacks, Latinos, and Asians as well as the poor and students. Unfortunately, it’s working as recent studies report a decline in minority voting in states where IDs are required.

⁶ Zoltan L. Hajnal, Nazita Lajevardi and Lindsay Nielson “Do voter identification laws suppress minority voting?” the Washington Post, 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/?noredirect=on&utm_term=.7df602dfba02

⁷ Id.

⁸ Id.

of voter fraud appear meritless. “Study after study has concluded that, in a nation of more than 300 million people, voter fraud is vanishingly rare.”⁹



Out of the 197 million votes cast for federal candidates between 2002 and 2005, only 40 voters were indicted for voter fraud. Only 26 of those cases, or about .00000013 percent of the votes cast, resulted in convictions or guilty pleas.

Following Reagan’s voter fraud cry, the “GOP launched a ‘ballot integrity’ program to prevent ‘voter fraud,’ claiming that dead or fictional people were casting ballots.”¹⁰ Republicans made the bold claim that elections were being tilted in favor of Democratic candidates specifically because individuals who were ineligible to vote, most often immigrants, cast their “illegal” ballots for Democrats.

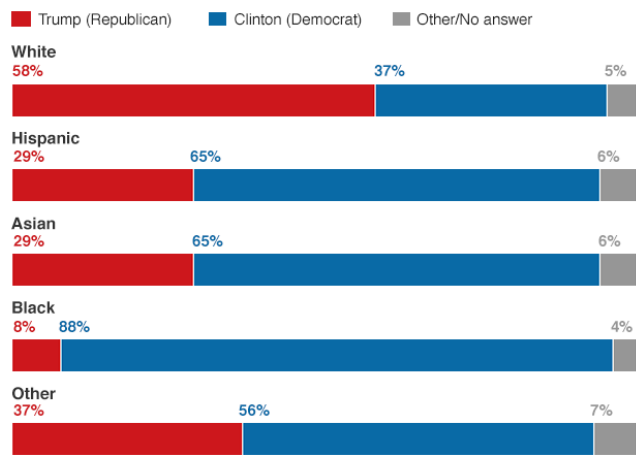
⁹ Heather Cox Richardson, ‘Voter fraud’ is a myth that helps Republicans win, even when their policies aren’t popular’, Boston Globe Media available at <https://www2.bostonglobe.com/ideas/2018/10/23/voter-fraud-myth-helps-republicans-win-even-when-their-policies-aren-popular/dqYDx92NkJ1Ia4nvX2LuiK/story.html>

¹⁰ Id.

In an attempt to prove their point, investigations were launched into the 1996 state elections in California and Louisiana.¹¹ The Republican-controlled congress investigated the California victory of Representative Loretta Sanchez and Louisiana Senator Mary Landrieu, and found no improprieties.¹²

However, even though both candidates won fair elections, at the end of the investigation, the Republicans introduced a bill requiring voters to prove their citizenship, still insisting that Representative Sanchez won because of non-citizen voters.¹³

Majority of white voters opt for Trump



Source: Edison Research for ABC News, AP, CBS News, CNN, Fox News, NBC News



The political truth behind the false claims of voter fraud

Voter fraud or electoral fraud is the illegal interference with the process by manipulating the results of an election or the rigging of votes.¹⁴ The more common claims of voter fraud include double voting¹⁵, dead voters¹⁶, felon voter fraud¹⁷, voter suppression¹⁸, registration fraud¹⁹, voter impersonation²⁰, fraud by election officials²¹, and ballot harvesting.²²

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ HG Legal Resources “What Is Voter Fraud and How Is It Committed?” <https://www.hg.org/legal-articles/what-is-voter-fraud-and-how-is-it-committed-46791>

¹⁵ “One individual casts more than one ballot in the same election.” Ballotpedia “Electoral Fraud” https://ballotpedia.org/Electoral_fraud

¹⁶ Id. The name of a deceased person remains on a state's official list of registered voters and a living person fraudulently casts a ballot in that name.

¹⁷ Id. The casting of a ballot by a convicted felon who is not eligible to vote as a result of being a felon.

¹⁸ Id. A variety of tactics aimed at lowering or suppressing the number of voters who might otherwise vote in a particular election.

¹⁹ Id. Filling out and submitting a voter registration card for a fictional person or filling out a voter registration card with the name of a real person, but without that person's consent, and forging his or her signature on the card.

²⁰ Id. A person claims to be someone else when casting a vote.

²¹ Id. Manipulation of ballots by officials administering the election, such as tossing out ballots or casting ballots in voters' names.

²² Id. A person requests a mail ballot for someone else or steals a mail ballot, then uses that ballot and forges the intended recipient's signature. Also refers to filling out a ballot for someone else who has requested assistance in filling out a ballot, rather than assisting them. In some states, ballot harvesting refers to the legal practice of third-party collection of multiple absentee ballots for submission.

Nonetheless, there are instances where voter fraud has occurred.²³ Perhaps the best-known incident of voter fraud occurred in Miami, Florida in 1997. The Miami 1997 mayoral race was a hotly contested. In fact, “Independent, former mayor Xavier L. Suarez, Miami’s first Cuban mayor, beat a fellow Cuban-American, Republican Joe Carollo, in a chaotic election that was considered a national embarrassment and sent supporters of both men to jail.”²⁴

That 1997 mayoral race involved uncontroverted absentee ballot fraud. In the primary election, “Carollo received 51.4 percent of the ballots cast at the polls, while Suarez, received 61.5 percent of the absentee ballots, giving Suarez a slim lead of 155 votes over Carollo in total balloting. Because neither candidate received more than 50 percent of the vote, a run-off election was held, and Suarez narrowly won both the precinct and absentee ballots.”²⁵

Neither party secured more than 50 percent of the vote, thus, a run-off election was held. Independent Suarez won both the percent and the absentee ballots of the run-off election.²⁶ “Carollo immediately challenged the initial November 4th election results, claiming fraud in the absentee ballot vote that had swung that election to Suarez, denying Carollo the majority support he received at the polls and forcing him into a run-off.”²⁷ Investigation in the election found that “225 absentee ballots cast had forged signatures; 14 stolen ballots and 140 improperly witnessed ballots. Another 480

²³ Mallory Wilson, *Voter Photo ID Laws: Using Primary Source Election Turnout Data*, 25 *Ind. Int’l & Comp. L. Rev.* 347,348 stating: “Even though it is difficult to detect the full extent of voter fraud, many examples have in fact been documented. In Iowa, three citizens were arrested for voting illegally in both the 2010 and 2011 elections. A study done in 2004 by the New York Daily News found 46,000 people were dually registered in Florida and New York and that somewhere between 400 and 1000 of those people voted in both elections. Because “Florida decided the 2000 presidential election by 537 votes,” it is easy to see how different the result of that election could have been if mechanisms had been in place to prevent people from improperly voting by voting multiple times or voting in inappropriate locations. It is also not hard to imagine how many other elections could have been similarly impacted by cases of in-person voter fraud that occurred but were never caught. It is imperative to the integrity of government that all types of voter fraud be prevented. The best way to stop voter fraud is to require every voter to prove his or her identity before voting.”

²⁴ Heather Cox Richardson, ‘*Voter fraud’ is a myth that helps Republicans win, even when their policies aren’t popular*’, Boston Globe Media, available at <https://www2.bostonglobe.com/ideas/2018/10/23/voter-fraud-myth-helps-republicans-win-even-when-their-policies-aren-popular/dqYDx92NkJ1Ia4nvX2LuiK/story.html>

²⁵ Lorraine, Minnite “An Analysis of Voter Fraud in the United States”, Demos: A network for Ideas & Action, <https://www.demos.org/sites/default/files/publications/Analysis.pdf> ; See “Former Mayor Wins an Upset in Miami Ballot,” The New York Times, November 14, 1997, A30.

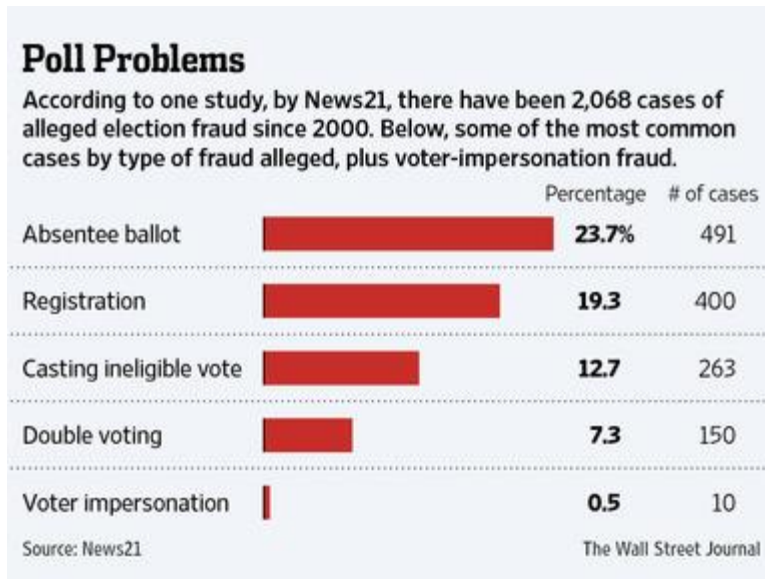
²⁶ Former mayor, *supra* n. 28.

²⁷ *Id.*

ballots were procured or witnessed by 29 “ballot brokers.”²⁸ A total of 36 were arrested and charged with voter fraud. Many of them worked in the Suarez campaign.²⁹ Ultimately Suarez was removed from office and Carollo was reinstated as mayor.

The election, the candidates and the incidences of fraud were considered endemic to Miami’s Latinx community.³⁰ As a consequence, “a Republican-dominated Florida legislature reformed voter fraud by outsourcing voter list maintenance to a private company. Ironically, this resulted in a purge primarily of African-Americans from the voter rolls”.³¹

Miami notwithstanding, the truth is that actual voter fraud is virtually nonexistent. Law



Professor Richard Hassen looked at 30 years of data in search of voter fraud changing the outcome of an election and he couldn’t find a single instance.³² In 2014, a Harvard study showed that the likely percentage of non-citizens voters is “zero”.³³ A nationwide study found that in person voter fraud is non-

²⁸ Id.

²⁹ “18 Are Arrested in 1997 Miami Ballot Fraud,” The New York times, October 29, 1998, A00016. <https://www.nytimes.com/1998/10/29/us/18-are-arrested-in-1997-miami-ballot-fraud.html?auth=login-email>

³⁰See e.g. Glenn Garvin, You can’t keep up with South Florida voter fraud without a scorecard, The Miami Herald, October 28, 2016 available at <https://www.miamiherald.com/news/local/community/miami-dade/article111207622.html>

³¹ Heather Cox Richardson, ‘Voter fraud’ is a myth that helps Republicans win, even when their policies aren’t popular’, Boston Globe Media <https://www2.bostonglobe.com/ideas/2018/10/23/voter-fraud-myth-helps-republicans-win-even-when-their-policies-aren-popular/dqYDx92NkJ1Ia4nvX2LuiK/story.html>

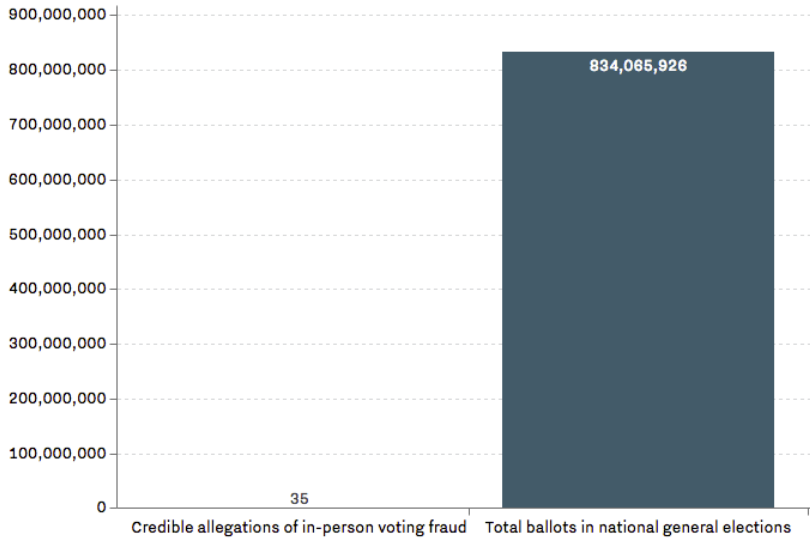
³² Jane Mayer, “The Voter-Fraud Myth - The man who has stoked fear about impostors at the polls”, The New Yorker. Available at <https://www.newyorker.com/magazine/2012/10/29/the-voter-fraud-myth>

³³ Stephen Ansolabehere and Brian F. Schaffner, “The Perils of Cherry-Picking Low Frequency Events in Large Sample Surveys” available at <https://cces.gov.harvard.edu/news/perils-cherry-picking-low-frequency-events-large-sample-surveys>

existent and that the likelihood of in-person voter fraud is equivalent to the likelihood of someone being abducted by aliens.³⁴

The study further found “no evidence of widespread voter impersonation, even in the states

How much in-person voter fraud was there between 2000 and 2014?



Source: Justin Levitt of Loyola Law School and US Elections Project



most contested in the presidential or statewide campaigns. We also find that states with strict voter ID laws and states with same-day voter registration are no different from others in the (non) existence of voter impersonation.”³⁵ In a more recent study conducted by Dartmouth College researchers into President

Trump’s allegations of voter fraud in the 2016 presidential election found no evidence of widespread voter fraud in the election.³⁶ Nor did the study find any abnormalities in the states viewed as problematic voter fraud states such as California, New Hampshire, and Virginia.³⁷ Nonetheless, there were some instances of voter fraud cases during the 2016 election:

³⁴ Ahlquist John S., Mayer Kenneth R., and Jackman Simon “Alien Abduction and Voter Impersonation in the 2012 U.S. General Election: Evidence from a Survey List Experiment” Election Law Journal: Rules, Politics, and Policy VOL. 13, NO. 4. <https://www.liebertpub.com/doi/full/10.1089/elj.2013.0231>

³⁵ Id.

³⁶ Michael Herron and David Cottrell, An Exploration of Donald Trump’s Allegations of Massive Voter Fraud in the 2016 General Election” Electoral Studies 51(1): 123-142. 2018.

³⁷ Id.

- “A woman in Iowa voted twice. Trump supporter Terri Lynn Rote decided to try to vote for her candidate twice in Des Moines and got caught. The case made national headlines by virtue of the fact that it happened when it did, and that she voted for Trump.”
- “A man in Texas voted twice. Phillip Cook was arrested on Election Day after voting twice. He claimed to be an employee of Trump’s campaign who was testing the security of the electoral system. He wasn’t an employee of the campaign — and the polling location’s security worked perfectly well, it seems.”
- “A woman cast a ballot on behalf of her dead husband. Audrey Cook, a Republican election judge in Illinois voted for her dead husband. She and her husband applied for absentee ballots because he was ill. He died before completing his, and she filled it out for him and sent it in. The ballot was not counted.”³⁸

Conclusion

Study after study has shown that voter fraud in American elections are virtually non-existent. There being no problem, actions taken to fix it are nothing less than shams for the nefarious and illegal purpose of suppressing the voting rights of African Americans and other protected classes. When such shams are endorsed, perpetuated and supported by the United States government and governments of various states, under the color of law, it clearly reveals state action to deprive citizens of their rights and is actionable as such.

³⁸ Philip Bump “There Have Been Just Four Documented Cases of Voter Fraud In The 2016 Election”, The Washington Post. https://www.washingtonpost.com/news/the-fix/wp/2016/12/01/0-000002-percent-of-all-the-ballots-cast-in-the-2016-election-were-fraudulent/?utm_term=.4c0333a6d9c5