



Convincing Evidence that States Aim to Suppress Minority Voting

Keith Gunnar Bentele, University of Arizona

Erin O'Brien, University of Massachusetts Boston

Across America, state governments are considering – and in some cases enacting – a veritable flood of new laws regulating voting and limiting access to the polls. Leading the list are laws requiring would-be voters to show specific kinds of photo identification before they can vote – including types of IDs not easily accessible to many otherwise eligible voters. Additional measures include tighter regulation of organizations and individuals who aim to register new voters, shorter periods for early voting, and the repeal of same-day voter registration laws. Many studies show that such measures dissuade or disenfranchise significant numbers of voters. Minorities, young people, and the very old are especially likely to be hampered. Since these groups disproportionately vote for Democrats, the new restrictions have the potential to actually change election outcomes.

Current legal moves to reduce access to the franchise contrast with laws passed in the late 1990s and early 2000s, like early voting and voting by mail, which increased possibilities for voter participation. What explains the recent turnaround – the sharp shift toward restriction? Answering this question is more urgent than ever in the wake of the June 2013 Supreme Court ruling in *Shelby County v. Holder*, which greatly reduces federal supervision of voting rules in states and counties previously covered by Section 5 of the Voting Rights Act of 1965. Under that provision, the Justice Department had to clear in advance new voting rules proposed by jurisdictions with a demonstrated history of discrimination against minority voters. But now all states are free to proceed without this federal check prior to implementation.

Why are Some States Trying to Restrict Electoral Access?

In practice, it is not feasible to study the personal motives of state legislators who propose or vote for hundreds of pieces of legislation across many states. Motives are nearly impossible to prove, anyway. But researchers can systematically explore the patterns and timing of legislative activity in states with different social characteristics and political histories. In other words, we can assess what types of states have been more or less active in proposing and passing voter restrictions and estimate when proposals and enactments are more likely to happen. We did precisely this kind of analysis for state-level voting laws proposed and legislation actually passed from 2006 to 2011. Our findings are striking:

- Restrictive proposals were substantially more likely to be introduced in states with larger African-American and non-citizen populations and higher minority turnout, as well as in states where both minority and low-income turnout recently increased.
- Restrictive laws passed more frequently in states where the proportion of Republicans in the legislature went up or a Republican governor was elected. Of the 41 adopted voter restrictions passed from 2006 to 2011, 34 (or 83%) were passed by Republican-controlled state legislatures. Furthermore, all of the bills requiring either photo ID or proof of citizenship passed in legislatures under Republican control. These are the kinds of measures most likely to reduce voting by Democrat-leaning constituencies.
- Increased competitiveness in the state's previous presidential election contest was associated with more restrictive policy changes in states with larger Republican majorities (but led to fewer restrictive laws in states with larger Democratic majorities).
- States where minority turnout has increased since the previous presidential election were more likely to pass restrictive legislation.

In combination, these findings are consistent with an account in which recently enacted new restrictions on voter access to the polls are intended to suppress minority votes. Carefully analyzed statistical results leave

little doubt that opponents of the new restrictions are justified in their concern that these laws have partisan goals and take aim along racial lines.

Incentives for Voter Suppression

In recent years, the Republican Party has experienced a convergence of pressures that incentivize its officeholders to pursue laws to limit voting by Democratic constituencies. Election defeats for the GOP have been related to the growth of new voter groups seen as challenging for Republican candidates. At the same time, the party as a whole has shifted sharply toward the ideological right, and mythical ideas about rampant “voter fraud” have been disseminated among Republican supporters. In the short term, therefore, Republican officeholders see advantages to proposing and passing restrictive legislation. Such laws may backfire on the GOP in the long-term, but given the immediate desire to win elections, Republicans are often willing to proceed despite negative press, public anger, or worries about what may happen to the future of the party.

A key argument made against the constitutionality of the Voting Rights Act was that the “pre-clearance” rules are no longer necessary because states today have no intention to discriminate. Our findings question this assertion and, more broadly, suggest that review of voting legislation prior to implementation is merited as a way to prevent racial bias.

What Can be Done?

What can Americans do now to stop the new wave of state-level voter restriction measures?

- The Justice Department can still argue in court to maintain pre-clearance rules for states and localities recently found by judges to have discriminated against minority voters.
- The U.S. Congress can enact new legislation to establish nationwide standards to replace the pre-clearance rules (applying only to some states) invalidated by the Supreme Court.
- Citizen movements can fight for equal access to the polls – and push for a Constitutional amendment to guarantee standard voting rights and procedures for all Americans.

Read more in Keith Gunnar Bentele and Erin E. O’Brien, “Jim Crow 2.0?: Why States Consider and Adopt Restrictive Voter Access Policies.” *Perspectives on Politics* (2013).