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Voter Identification Laws: In the Name of Reform or Suppression?

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Running Title: Voter Identification Laws

Voter Identification Laws: In the Name of Reform or Suppression?

By

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of the requirements for
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ABSTRACT

ADVISOR: Clifford Brown, Jr.

Voter identification laws have been at the center of controversy in political discourse for some time now. Proponents of voter identification laws claim that they are necessary in order to curb public opinion regarding voter identity fraud. Even if there were no evidence of fraud in the system, they would still be necessary to protect the integrity of the system. Opponents counter back that due to the lack of evidence of voter identity fraud, these requirements are a part of partisan politics in which the right wing is attempting to disenfranchise groups that tend to vote democratic. These attempts are part of a larger right wing agenda to roll back voting rights in order to go back to the voting landscape of the 1950's. Studies that have sought to measure whether these laws have a disproportionate effect on turnout are split, although there is an increase in consensus concerning the disproportionate effects of these laws as more stringent requirements are being implemented and as there are more election cycles. However, this still indicates a need for solutions, and calls for a review by the state and federal governments, and the courts.

Chapter 1

Introduction

Voter identification laws are electoral rules imposed by state legislatures that require voters to present some form of identification (which varies by state) in order to be able to cast a standard ballot. Those voters who do not have the requisite forms of identification must follow alternative rules that may still allow them to cast a standard ballot or may require them to cast a provisional ballot. Again, these rules vary by state, depending on the voter identification requirement they have in place.

The recent implementation of these rules by over 30 states has been controversial and there has been an extensive literature highlighting the controversy surrounding them. The implementation of these laws, some argue, is all in the name of reform, which follows an historical trend of attempting to make the system fairer for all. Others alternatively, see these laws as part of a retrograde motion in the history of electoral reform and part of a trend of politically motivated tactics aimed at restricting certain groups from voting. These are the two major viewpoints analyzed and examined throughout the literature, which clearly shows us that there is a conflict in regards to the effects that these laws may have on the electorate.

The issue of voter identification laws seems to be polarized along partisan lines, as states that have implemented voter identification requirements tend to have Republican-controlled legislatures, Republican governors in office, or both. Proponents of these voter identification laws like to cite voter identity fraud as the reason for implementing these requirements. Although the identity fraud they cite may not be prevalent or widespread, pointing to the possibility of fraud can cause voters' confidence in the electoral system to dwindle. Thus, implementing these laws would work to increase voter's confidence in the system. Opponents of voter identification laws argue that voter fraud is extremely rare, particularly voter impersonation fraud, so these

laws are a mechanism to suppress the vote of certain groups that tend to favor the Democratic party: racial minorities, the poor, young voters, and the elderly.

Since 2005, 32 states have implemented some form of voter identification requirement as a prerequisite to cast a ballot on Election Day. This means that more than half of the nation is subject to these laws, which some scholars have argued could have tremendous implications (Hajnal, Lajevardi, Nielson 2016). Provisions in the law vary state by state, but can be categorized in one of the following ways: strict photo ID, strict non-photo ID, non-strict photo ID, and non-strict, non-photo ID. States that have voter identification laws categorized as “strict” means that voters that do not have the acceptable forms of identification must vote on a provisional ballot, and take additional steps after Election Day in order for their votes to be counted (Underhill 2016). States that do not have “strict” requirements means that at least some voters are able to cast a ballot that will be counted without having to take additional steps if they do not have the proper identification (Underhill 2016). There are 11 states that have some form of a strict voter identification law. Those states that have strict photo ID laws are: Georgia, Indiana, Kansas, Mississippi, North Dakota, Tennessee, Texas, Virginia, and Wisconsin. Those states with strict non-photo ID laws are: Arizona and Ohio (Underhill 2016). Some states are expecting a transition in the near future to some form of voter identification law. For example, North Carolina did not require the presentation of any document in order to vote; however in 2016, a non-strict, non-photo ID requirement was implemented. The current data shows that there is a national movement towards enacting some form of voter identification legislation.

This trend began to attract the attention of scholars, raising two primary questions: (1) the question of the level of fraud in the system and (2) the effect of the ID laws on the electorate. There has been no serious literature that suggests that there is widespread, systematic voter fraud.

Scholars such as Hasen (2012), Minnite (2010), and Berman (2015) suggest that voter fraud is extremely rare, and attempts to roll back electoral reforms are a part of partisan politics aimed to maintain control for the political party in power. The literature goes on to suggest that even if fraud were pervasive in the system, it would not be through voter impersonation fraud, which is the only type of fraud voter identification laws could control. Voter impersonation fraud would need to be widespread and meticulously coordinated in order to have any effects on electoral outcomes.

Another aspect of the literature on voter identification laws that has been analyzed is the effect that they have had on turnout. However, much of it stresses the caveat that there is not enough empirical evidence to demonstrate any statistical proof concerning the effects such laws have on election outcomes and turnout, as there have not been enough election cycles. Still, others believe that they have found evidence that would suggest whether or not there is an impact. This has shown that scholars have not reached a consensus on whether or not voter identification requirements deter voting and/or decrease turnout of particular groups. Baretto et al. (2007), Pitts and Neumann (2009), Alvarez et al. (2011), Gaughan (2013), and Wilson (2013), ultimately conclude that voter identification laws have not excluded any particular groups from voting. Some even suggest that due to the implementation of the provisional ballot through the Help America Vote Act of 2002, there is very little evidence to suggest that anyone has been denied their right to vote due to the lack of proper identification.

On the other hand, there have been studies performed by scholars such as de Alth (2008), Atkeson (2009), Davidson (2009), Hood & Bullock (2012), Cobb (2012), and Hajnal, Lajevardi, Nielson (2016), that conclude that voter identification laws do present a disproportionate burden on minority groups that attempt to exercise their right to vote. The aspect of time is particularly

interesting in this case, showing that since time has progressed since the implementation of these voter identification requirements, the literature seems to be finding more deterrent effects of the laws. This group of literature touches upon important aspects surrounding the controversy of voter identification laws. They examine the role of polling place workers and the discretion they tend to have regarding the implementation of these voter identification requirements. The negative effects that restrictive voting laws have on turnout in both congressional and presidential election cycles has also been analyzed. Bentele and O'Brien (2013) and Hicks (2015) have analyzed the demobilization strategies associated with voter identification laws, and how political parties are more prone to pursuing these demobilization tactics, rather than the mobilization of their own bases.

Lastly, the perception of voter fraud among the electorate was also an important factor that has been mentioned in the literature. Ansolabehere and Persily (2008), Wilson (2013), and Atkeson (2014), found that the electorate's perception of voter fraud increases public opinion favoring the implementation of voter identification requirements. This debate centers on the struggle between electoral integrity and voter access, the literature suggesting that voters are more likely to support reforms that protect the integrity of the process, at the expense of ballot accessibility.

There is much dispute surrounding the recent spike in the implementation of voter identification laws for the various reasons outlined above. As will be mentioned in the next chapter, beginning in the late 1800's to the early 21st century, electoral reforms were aimed at cleaning up the voting process and making it fairer, while also extending suffrage to groups that had been barred from participating. However, at the turn of the 21st century, there seems to be a backwards shift in electoral reform aimed at limiting the electoral power of certain groups. Voter

identification laws are a part of this general trend. This thesis will examine this trend with voter identification laws and the evidence provided by the literature that has shown that there is conflict in the scholarly studies as to the effects these laws have. Through the growing evidence that has come out of the literature, I will attempt to show that this is a politically motivated scheme with the Republican Party being at the forefront of this movement, ultimately using voter identification laws as a modern day poll tax.

In chapter three, I will examine these counter-attacks and how the change of political climate has led to these attacks on voting rights, ultimately answering the question of why is this retrograde motion happening now. The Republican Party's attempt to gain control and maintain their power in state legislatures, the federal government, the media, and the courts, is part of this larger right-wing agenda.

Chapter four will focus on the voter identification laws themselves and the arguments surrounding them from both sides of the aisle. The central argument of voter identification laws will be analyzed through a cornerstone struggle between proponents and opponents of the laws: the deterrence of fraud verses the disproportionate deterrence of qualified voters at the polls. In other words, voter identification laws being a part of a larger narrative between the struggle of "protecting the integrity of the ballot" and having the polls accessible to all qualified voters. This chapter will also look into the battles voter identification laws have had in the court system, and how they were indirectly affected by the Supreme Court's decision to gut the pre-clearance formula of the Voting Rights Act in *Shelby County v. Holder*.

Chapter five will be centered on case studies surrounding the states that have (successfully or unsuccessfully) legislated voter identification requirements. The states I will particularly be focusing on are Georgia, Pennsylvania, Minnesota, Ohio, Rhode Island, and

North Carolina. A history of the legislative process and court proceedings will be incorporated outlining how each of these states has reached the voter identification laws that are currently in place in their state.

Lastly, I will end with my own conclusions and propose a couple of solutions that I find to be alternatives to the voter identification requirements being implemented by state legislatures.

Ultimately, the goal of this thesis is to examine the degree to which there is solid evidence established regarding the effects that the laws have on particular electoral groups. Historically, there was a general positive progression of electoral reforms that make the voting process fairer, cleaner, and more broad-based. However, at the turn of the 21st century, state legislatures have been implementing laws that show a counter-reform movement that is challenging the progress made during the 19th and 20th centuries in the area of electoral reform. This movement is reversing the progress without explicit evidence of fraud in the system, as there has not been any serious literature that suggests there is widespread, systematic voter fraud.

Chapter 2

Background: Reform and Results of Reform

A citizen's right to vote is seen as the cornerstone of democracy. The opportunity for one to participate in a process that can affect his or her daily life is what some may regard as a civic duty; it is one of the important things that makes them an American. Meredith Rolfe finds that "voting is understood as a fundamental act of the American citizen... [Voting] is symbolically linked to American citizenship, and that the boundaries of American citizenship have been historically defined through the extension of the franchise" (2012, 43, 49).

Dating back to the end of the 20th century, there have been many attempts and eventual successes in the area of electoral reform. These reforms took place in two contexts of American history, beginning with the progressive era of the 1890's to the 1920's, and the post-progressive era of the 1960's to the beginning of the 21st century. The intentions of these reforms were to not only make the system fairer, cleaner, and more responsive to the citizenry, but to expand suffrage to groups that had been denied it or discouraged from exercising it. Beginning in the late 1800's, a variety of election reforms began to take shape, which ultimately resulted in a century-long direction of progress of expanding the vote and making the system fairer for all groups. This progression can be seen through reforms such as the change to direct primaries and the extension of voting rights to women, young people (18-20), and African Americans. Although there has been this century-long trend of progress in electoral reform, there has been some markers arising recently, indicating a retrograde motion. In order to understand this reverse motion, understanding the history of the electoral reforms that took place during the progressive and post-progressive eras is important.

In the Progressive Era beginning in the 1890's and ending around the 1920's, several electoral reforms were implemented: the introduction of the Australian ballot, ballot design reforms, introduction of initiatives and referenda, direct primaries, the direct election of U.S.

Senators, attempts of campaign finance reforms, and the extension of suffrage to women. After American society recuperated from the Great Depression and World War II, electoral reform began to arise again in the Post Progressive Era that began in the 1960's and lasted until the turn of the 21st century. During this time, reforms included: redistricting, extending suffrage to 18-20 year olds, the Voting Rights Act, regulation of campaign finance, and the introduction of absentee ballots, early voting, and mail-in voting as mechanisms to make the process more accessible and convenient.

Electoral Reforms of the Progressive Era:

The shift from the party ballot to a ballot that converted voting into a secretive process for voters was a milestone in this era of electoral reform. This reform was part of a larger vision to transfer the control of machinery of elections away from party organizations and to the states and voters (Carson and Roberts 2013). In the mid nineteenth century, voters used tickets printed by the political parties where the sizes and colors of the ballot made it obvious which party the voter was supporting (Wang 2012). These ballots made the act of voting a public spectacle, “Parties typically employed different color paper for their ballots to ensure that illiterate voters were using the proper ballot and to monitor the behavior of voters to ensure that they were voting for the ‘correct’ candidates” (Carson and Roberts 2013, 16). This rendered the process open to fraud and intimidation leaving, “voters susceptible to various forms of intimidation and influence” (Bensel 2004). The secret ballot, also known as the Australian ballot, was a way to combat the voter intimidation and influence experienced with the party ballot. Instead of being developed and distributed by the party machines, it was now the job of the state to design and distribute voting ballots at the polls. These new changes, “made it easier for voters to reward or punish elected officials individually since all candidates for elected offices would now be listed

on the same ballot (Carson and Roberts 2013). It shifted the process of voting from a public spectacle to a private practice. Voters were now able to cast their votes without having to succumb to the pressures of others, and were now able to express their own personal ideologies and opinions.

Reforms in the design of the ballot are also significant to the voting process. Studies have shown that complex ballot designs have led to more unrecorded votes during elections (Streb 2008). For example, the butterfly ballot is seen as one of the more extreme designs. This design has the names of the candidates on both sides, with a single column to punch holes in going down the center. This design has the tendency to cause voters confusion, which leads some to having their ballots counted incorrectly. The Democratic Party was a major proponent of the butterfly ballot. “Straight-ticket” ballot designs were also a means of discouraging candidate-by-candidate selection for voters during the process. With “straight-ticket” ballots, voters can just check one box to vote for all the candidates in the party that they identify with. The source of the problem here is that this makes non-partisan office voting less likely (Streb 2008). In order for voters to have their votes counted accurately, it is important that ballots are cast both secretly without any outside pressures, and can be understood.

The implementation of initiatives and referenda are also significant in this progression of opening up the process of voting and making it fairer. Initiatives and referenda are similar, with a few key distinctions. Initiatives are placed on the ballot by obtaining a certain amount of signatures (exact amount varies state by state), and are then voted on directly by the people. This process allows for citizens to have a direct say in public policy, bypassing the legislature altogether (Streb 2008). In contrast, referenda are first passed by the legislature, and then

presented to the people for a “yes” or “no” vote, providing less direct involvement by the people in lawmaking legislation, but still allowing them a voice in adopting it (Streb 2008).

The initiative process emerged at the turn of the 20th century, with the first initiative passed in 1898 by South Dakota. The implementation of this process was grounded in the lack of regulation of campaign contributions to politicians, which fed the fear that these politicians were being bought by special interests (Streb 2008). The initiative process was meant to soothe these fears, “reformers believed that big money would be less influential, party bosses controlled, and grassroots organizations would have a greater voice” (Streb 2008, 45).

The shift in the landscape of the nomination process is also a compelling electoral reform that took place during the progressive era of the 1900’s. Initially, congressional leaders had the power to choose party nominees for President – a process referred to as “King Caucus” (Streb 2008). Later, nominating conventions of elected and party officials, often leading to decisions in “smoke-filled rooms” (where leaders from important states would determine the party’s nominee), meant party control of the process. These caucuses, “sought to nominate candidates that were loyal to the party, able to mobilize party followers, and, in doing so, enhance the overall attractiveness of the party ticket” (Carson and Roberts 2013). This nomination process began to lose legitimacy as the people began to feel that this process was too elitist, and not a very democratic manner in choosing presidential nominees. In describing the disillusionment that the American people began to feel towards this process, Rhodes Cook writes, “To its critics, the caucus was too small in number, too elitist in character, and often too secretive in its deliberations” (Streb 2008, 117). The convention process also proved problematic for morale, in the sense that public opinion increasingly felt that the process was dominated by party bosses and special interest groups that overlooked the needs of the people (Streb 2008). Thus, at the turn

of the 20th century, there was a shift towards the attempt at a more democratic form of nomination process. Progressives at this time advocated for the direct primary, which was viewed as, “a more open, democratic nomination process” (Streb 2008, 117). Through the direct primary process, rank-and-file party members choose the delegates that would later go on to the national convention. This method took power away from party elites, and decentralized it.

However, this process did not last long, as party elites would take the nomination power back by the 1920’s, ultimately creating controversy at the 1968 Democratic nomination, which would spark reform for the nomination process we know today. After the 1968 Democratic convention, Democrats began to implement the McGovern-Fraser reforms (Streb 2008). These reforms added a renewed importance to the delegate selection process of the primaries. The goal was to have a group of delegates chosen that would reflect the party’s rank-and-file in given states. These reforms again, took all of the power away from elitist groups, and placed it in the hands of a larger and more diverse group of people. The shift of states towards this type of process has made the nomination process far more democratic than the previous systems. Ultimately these reforms in the process have expanded the voice of the people, while also leveling the playing field.

Another reform that was implemented in order to increase the direct participation of the electorate was the ratification of the 17th amendment in 1912, which allowed voters to cast direct votes for U.S. senators. Prior to the passage of the 17th amendment, the Constitution allowed state legislatures to elect two senators to represent their state in the U.S. Senate. The direct election of U.S. senators by the people were efforts to have the voters in each state have more of a direct participation in the process, which ultimately, made it cleaner and fairer.

Extending the rights of certain groups of citizens began to emerge in this era. With the passage of the 19th amendment in 1920, women were granted the right to vote and hold political office. The right to vote for women was a part of a larger movement to equalize the rights of women in the United States – to even the playing field between them and the men. This movement for women’s rights first gave national traction in 1848 with the convention in Seneca Falls, New York. After this convention, many suffrage groups were established that advocated for the right to vote for women – a point that became one of the movement’s central points. On the same year as the ratification of the 19th amendment, eight million women across the country voted in the elections for the first time (History.Com Staff). Since 1964, women have made up the majority of both the population in the United States and the electorate base, which has granted “them the power to choose the nation’s presidents and officeholders at every level of government” (Conway 2008, 26).

Electoral Reforms of the Post Progressive Era:

After the events that occurred during the Great Depression and the victory of World War II, electoral reform became a forefront issue once again in American politics.

Next, redistricting was another major reform during this time that was meant to open up the process. Redistricting was a contentious issue during this time, and still is to this day. In 1929, Congress passed a law that limited the size of the House of Representatives at 435 seats. These 435 seats are divided between all of the states depending on their population, which left the door open for redistricting within the state. Malapportionment was quite common before the 1960’s, where state district populations were unequal (Streb 2008). This would soon change with the Supreme Court decision in *Baker v. Carr*, in 1962. The Supreme Court held that in accordance with the equal protection clause of the fourteenth amendment, there was a guarantee

of the right of all citizens to have votes given approximately the same weight, regardless of where they live (Streb 2008). The result of the decision in *Baker*, “established the idea of ‘one person, one vote’ as a constitutional right” in state legislatures (Streb 2008, 100). *Wesberry v. Sanders* extended this principle to include the representation of the House of Representatives. Reforms concerning redistricting have not subsided, as attempts to weaken the “one person, one vote” principle is challenged even today, in the case of *Evenwel v. Abbott*, which will be decided by the Supreme Court in 2016. This case aims to change the “one person, one vote” principle in the process of redistricting, to only apply to registered voters; counterattacks against voting reforms such as this one, form part of the retrogression that has been noticed.

During this period of reform, a non-enfranchised group that gained its legal right to vote was the young. The overwhelming passage of the twenty-sixth amendment in 1971 extended the right to vote to those who were 18-20 years old. Advocacy concerning lowering the age where one could participate in elections first began during World War II in the 1940’s (Marcelo and Lopez 2008). Advocates for lowering the voting age cited that not to enfranchise young people was to create an unfair field, since the law mandated those who were 18 and older to participate in the military. Many believed that “Extending the enfranchisement to 18- to 20- year olds recognized the contributions and sacrifices that these young people have made to the country” (Marcelo and Lopez 2008, 23).

The successful implementation of the twenty-sixth amendment was not possible without the Supreme Court case of *Oregon v. Mitchell*. The state of Oregon challenged the Voting Rights Act clause that attempted to lower the voting age to 18 nationwide, claiming that it was unconstitutional because Congress did not have authority over state elections (Marcelo and Lopez 2008). The Court held that this clause of the Voting Rights Act was indeed

unconstitutional, however, in the majority opinion of Justice Hugo Black, guidance was provided, “Justice Black stated that lowering the minimum voting age should come in the form of an amendment to the U.S. constitution” (Marcelo and Lopez 2008, 18). The Supreme Court’s decision then, mandated that the federal voting age be 18. This created a problem for states whose minimum voting age was set to 21. With the federal voting age at 18, state’s which had a different standard in place, now had to implement two different registration systems, one for federal elections, the other for state elections (Marcelo and Lopez 2008). This then created the pathway for the twenty-sixth amendment, which was ratified in 1971 after being passed by Congress and after Ohio became the thirty-eighth state to ratify it. Once this process was complete, President Nixon commended the accomplishment, “Some 11 million young men and women who have participated in the life of our nation through their work, their studies and their sacrifices for its defense now are to be fully included in the electoral process of our country” (Marcelo and Lopez 2008, 18).

Following the passage of the twenty-sixth amendment, other reforms were implemented that have eased registration, which has had significant results on youth registration and turnout. The National Voter Registration Act (NVRA), also known as the “Motor Voter Law” of 2003 enabled citizens to be able to register to vote at the same time they applied for or renewed their driver’s license. The law also allowed these driver’s license bureaus to offer mail-in registration and forbade government workers from challenging new registrants, while also making it difficult for them to purge voter rolls (Fund 2004). In 1972, the registration rate for presidential elections for those 18- to 20- years old was at 60%. In 2004, this increased five percentage points to a record high of 65% (Marcelo and Lopez 2008). Also, the Help America Vote Act passed in 2002, established the Help America Vote College program, introducing young people to the

election system through non-profit organizations such as the National Student and Parent Mock Election (Marcelo and Lopez 2008). Generally, however, the youth coalition is still one that has the lowest registration and turnout rates in comparison with other groups. In the 2004 Presidential Election, 58% of young people were registered to vote, but there was only a 47% turnout rate from this group (Marcelo and Lopez 2008). Although this is a general trend, it is evident that after the passage of the twenty-sixth amendment, the coalition of youth voters did make significant advances after being granted suffrage, and continue to be an important base for parties to attract.

The Voting Rights Act of 1965 also follows this reform trend of not only making the process fairer, but also extending suffrage to African Americans who were historically battling obstacles to the polls. After its passage, the Voting Rights Act has had a number of important effects in American politics, particularly in the South. The results of the Voting Rights Act have been extremely significant, showing that “African Americans now vote at a rate near that of whites, and the Act has allowed more African Americans to serve as elected public officials” (King 2008, 41).

The history of the Voting Rights Act is important in this context as it shows the progression of laws disenfranchising African Americans, and then the shift that made the passage of the Voting Rights Act possible. Post the Civil War era, former confederate states passed Black Codes, which limited the freedom of movement of African Americans, particularly in the South, and restricted their participation in the political arena. Although Blacks did have the right to vote after the Civil War, by the late 1800’s and early 1900’s, there was a combination of strategies used to keep the voice of the African American out of the political arena (King 2008). There were poll taxes, literacy tests, grandfather clauses, gerrymandering, and disenfranchisement of

felons, “A combination of local and state laws and a federal government with a laissez-faire approach to voting rights allowed the political subjugation of American Blacks (King 2008, 41). For instance, poll taxes were not collected at the polls, but rather were fees that needed to be paid prior to Election Day at the county assessor’s office. This created an extra trip for workers and poor blacks and whites. In addition to the poll tax, literacy tests were also used by the state to control the populations that could vote (Wang 2012). They were applied in highly discriminatory ways in many jurisdictions. In 1964, the passage of the twenty-fourth amendment outlawed the use of poll taxes as a requisite to be able to vote. Then, in 1965, we have the passage of the Voting Rights Act, which aimed to address two main concerns: the disenfranchisement of African Americans and the dilution of votes (King 2008).

The Voting Rights Act of 1965 was not just the extension of voting rights to African Americans; it also eliminated many social practices, such as segregation, that prohibited African Americans from being able to participate fully in society. The Voting Rights Act also required the drawing of congressional districts to give minorities representation (King 2008). In a larger context, it was part of several major acts as attempts to create a leveled playing field and to give minority groups the opportunity to become full class citizens and participants in American society.

Post the implementation of the Voting Rights Act of 1965 there were significant effects that shadowed the extension of the vote. For example, in Mississippi between 1964 and 1976, Black voter registration increased from 29,000 voters to 286,000 voters, an increase of 886.2%, “by 1988, a full political generation later, black registration and white registration was nearly even” (King 2008, 48). Here, the addition of a coalition to the electoral base was enfranchised, broadening the base and making the process more democratic as a result. Counter-attacks against

provisions of the Voting Rights Act also arose at the turn of the 21st century that would soon come to change the landscape of voting rights in American politics.

Something that must be noted, not just in relation to the passage of the Voting Rights Act, but also the amendments that extended the franchise and the other electoral reforms outlined here, is the role that the federal government played in the implementation process. In some of these cases, many of the tactics used to make the process unfair and suppress the vote of certain groups, were methods implemented by the state. Electoral reform itself is left up to the discretion of the states as a result of the fourteenth amendment. As King (2008) mentioned above, the federal government itself played a laissez-faire role throughout much of the process, but once it decided to intervene, the implementation of these reforms was more likely and ultimately, achievable.

Now that the process to vote has become fairer and suffrage was extended to those groups that were previously denied the right to vote, voting accessibility started to become the major theme in electoral reform. This led to the adoption of laws implementing absentee ballots, mail-in voting, and early voting. As the American electorate was becoming more mobile, there was a trend in the rise of absentee voting, “The early movement in favor of absentee ballots sought to extend the ability to vote to certain groups of voters who ordinarily would not be able to vote for a variety of reasons” (Hardaway 2008, 105). Although absentee ballot laws were implemented after the Civil War, they were limited to those serving in the military. It was not until 1948, that states began extending absentee ballot requests to those that were sick, and in 1978, California extended their absentee ballot laws to include voters who could or could not make it to the polling place on Election Day (Hardaway 2008). Currently, 20 states require an excuse in order for voters to cast absentee ballots, 27 states and the District of Columbia allow

any qualified voter to vote absentee without having to present an excuse (National Conference of State Legislatures 2016).

In states that have adopted legislation on vote-by mail ballots, all registered voters receive a ballot to be filled out and can either be dropped off or mailed in. Oregon was the first state through a referendum to adopt vote-by mail legislation in 1998 for all of its future elections. Currently, three states have implemented mail-in voting: Oregon, Washington, and Colorado (National Conference of State Legislatures 2016). Lastly, early voting laws began to be broadly adopted in the 1990's. Early voting allows for voters to cast in-person ballots prior to Election Day at public locations such as schools, grocery stores, and shopping malls (Hardaway 2008). Currently, 33 states and the District of Columbia allow qualified voters to cast early ballots, no excuse or justification required (National Conference of State Legislatures 2016). Variation in the amount of time allotted to vote prior to Election Day varies state by state.

All of these reforms being passed starting in the late 1890's up to the early 2000's show this general trend of attempts made to expand suffrage and to clean up the process of voting. The extension of the vote was granted to women and young people; intimidations at the polls against African Americans were outlawed. Ballot reforms, direct primaries, and the introduction of referenda and initiatives, were all attempts to make the process fairer and offer a level playing field to all, with most being successful.

Campaign Finance Reform:

Attempts to reform and regulate campaign finance was an attempt to clean up the electoral process in a broader sense, as opposed to the electoral reforms outlined above which were aimed at cleaning up the process more narrowly. The aim of campaign finance reform was to make the electoral process less subject to influence from a small set of wealthy individuals.

Attempts to regulate campaign finance began in the 1860's and re-emerged significantly in the 1970's.

Campaign finance also has a history of reform that has tried to gear it into making the electoral process fairer and cleaner. The first federal attempt to regulate campaign finance came in 1867 with the implementation of the Naval Appropriations Bill, which aimed to stop the practice of shaking down naval yard workers for political donations. In 1883, the Civil Service Reform Act was an extension of the Naval Appropriations Bill to government workers (Streb 2008). Prior to the 1970's, there was very little successful regulation of money in the system. It was not until 1971, when Congress passed the Federal Election Campaign Act (FECA) and the Revenue Act that the money being poured into campaign finance was brought into the limelight (Streb 2008). Originally, FECA was meant to limit candidate's spending on media ads and permitted the creation of Political Action Committees, which could solicit individual donations that could then be contributed to campaigns. The Revenue Act established a public financing system for presidential elections (Streb 2008). After the Watergate scandal, Congress passed an amendment in 1974 to FECA in order to tighten the regulation of campaign finance. This amendment was made to keep wealthy donors from exaggeratedly influencing elections by donating millions of dollars to candidates and campaigns (Streb 2008). Rules pertaining to a mandatory spending limit for congressional campaigns and the restriction of large sums of money by the candidates contributing to their own campaigns were enacted. The 1974 amendment also established the Federal Election Commission to administer FECA (Streb 2008).

The attempt to regulate campaign finance was not surprisingly met with opposition. *Buckley v. Valeo*, decided by the Supreme Court in 1976 was a cornerstone decision in the realm of campaign finance reform. The Court held that some of the provisions in FECA were

constitutional, while others were not. The provisions regarding capping individual contributions to a candidate was constitutional because it could deter corruption in the electoral process, or even the appearance of corruption (Streb 2008). The provisions regarding the limitation of campaign spending were unconstitutional because these restrictions directly limited the ability of candidates to speak and advance their ideas (Streb 2008). In sum, the Court “distinguished between limiting direct political contributions to candidates and limiting political expenditures by candidates and individuals” (Streb 2008, 153).

After the decision in *Buckley v. Valeo*, Congress passed another amendment to FECA in 1979 allowing parties to be able to accept and send “soft money”. “Soft money” is an opportunity for “individual, corporate, or union gifts that parties could use for grass-roots party building activities such as voter registration or get-out-the-vote drives, but not to support specific candidates or campaigns” (Streb 2008, 154). The reforms surrounding campaign finance continued in 2002 with the passage of the Bipartisan Campaign Reform Act (BCRA). This reform dealt with “soft money”, nonparty electioneering and issue ads, and individual donation limits. Another significant case challenging these amendments was *McConnell v. Federal Election Commission*, which eventually upheld the reforms (Streb 2008).

In 2010, the most recent case involving campaign finance reform, the Supreme Court held in *Citizens United v. Federal Election Commission* that the provision in the BCRA that limited corporations and unions from making independent expenditures and financing electioneering communications was unconstitutional (Dunbar 2012). This decision opened the doors for unlimited amounts of money to be used to persuade or dissuade voters from voting for particular candidates. It was the beginning of attempts to roll back legislation that was intended to control influx of money being poured into the electoral system.

As mentioned above, the progress that was made is recognized, however, recent attempts in electoral reforms have seemed to suggest a retrograde motion in the area of voting rights and accessibility. Arguments concerning the balance between preventing voter identity fraud and the importance of ensuring access to the polls for all groups have sparked significantly over the past decade. This is where the controversy surrounding voter identification laws arises. These voter identification laws are not the only attempts at restricting the right to vote, as other counterattacks have ascended such as: the removal of campaign finance reform, the Supreme Court declaring certain provisions of the Voting Rights Act unconstitutional, and the shortening of times of early voting and registration. The issue of voter identification laws is becoming an important issue. Politicians and the scholarly community have been paying serious attention to these laws and the effects they may have on the electoral process and bases.

Based off of the reforms outlined, up until the around the 1970's, the Progressive agenda was moving forward in regards to voting rights. The reforms implemented during this era aimed to make the voting process fairer, cleaner, and more broad-based. Those involved in the political arena were generally supportive of these measures, including the courts. For example, in 1962 in the case of *Baker v. Carr*, the Supreme Court had established the "one person, one vote" principle that would guide the process of redistricting in the states, aiming to broaden the base of voters and representation. Once the courts showed that they were on board with making the process cleaner, fairer, and more inclusive, state legislatures then began to follow suit. Unfortunately, at the turn of the 21st century, as we begin to see in the case of campaign finance reform, a partisan dimension began to take over the discourse in voting rights and election law reform that consequently began to reverse the progress made during the Progressive and Post-Progressive eras.

Once again, this is where we start with the issue of voter identification laws. Other “reforms” that state legislatures have been attempting to implement, include the cutback on registration time, the cutback on early voting, and the latest attempt to throw out the “one person, one vote” redistricting principle in the case of *Evenwel v. Abbott*, currently on the Court docket. These counter-reforms are threatening the progress that has been made up until the turn of the 21st century, consequently affecting the same groups that have had a history of their voting rights as citizens questioned.

Chapter 3

Recent Counter-Attacks: The Right Wing Agenda

The matter of voter identification laws is not a new or recent phenomenon. Texas and South Carolina both began to request identification even before the implementation of the Voting Rights Act (Hanmer and Biggers 2015). However, a spike has been noticed in the implementation of more stringent voter identification requirements in state legislatures, “Since 2000, the number of states passing voter identification laws for the first time more than doubled (from 14 to 35)” (Hanmer and Biggers 2015, 1). Many scholars have attributed this rise in the implementation of these laws to the change in climate of U.S. politics, some particularly noting the turnover of many state legislatures (including the federal government) after the 2010-midterm elections, which was a major gain for the Republican Party.

Republican legislators, both at the state and national levels, have overwhelmingly supported the passage of voter identification legislation. Many have attributed this support as part of the right wing agenda, which includes the fear of the Republican Party of being overwhelmed in terms of demographics, as African-American and Latino populations continue to grow at exponential rates¹. The hope of the right wing agenda is a national promotion of conservative ideology to ultimately reverse government programs such as the New Deal and the Johnson society reforms in civil rights. The fear that is associated with the hope of the right wing is that these goals will be frustrated by the changing demographics of American society. This is where this logic of disenfranchisement arises in the right wing’s attempts to counter attack the progressive reforms that have been made in the area of voting rights in the 20th century. In order to maintain their hope of reversing the reforms made during the New Deal and the Johnson society civil rights reforms, through the counter attacks of electoral reforms such as the

¹ Professor Clifford Brown, Union College

implementation of voter identification requirements, it is more convenient for them to go back to the way things were during the pre-1960's voting landscape².

The requirement for a voter to present identification when going to the polls most noticeably had arisen out of the Help America Vote Act of 2002, signed by President George W. Bush. The Help American Vote Act (HAVA) was a response from the federal government to growing concerns pertaining to the "integrity" of the electoral system after the catastrophic presidential election of 2000. Among many other electoral reforms addressed by HAVA was the requirement of providing identification at the polls. However, this burden was only placed on first-time voters who registered by mail to vote (Hershey 2009). In a sense, HAVA imposed a minimal requirement in the realm of voter identification, which was later altered by state legislatures to include more stringent requirements. Hanmer and Biggers particularly identify how the change in power to a Republican-controlled legislature or governorship after the 2010-midterm elections, substantially increased the likelihood that a state would pass a voter identification law (2015).

The right-wing agenda that has propelled the enactment of many of these laws is based on the attempt of the Republican Party to reset the image of what they believe America is. On a national scale, this strategy seems to be working, as many polls have suggested that the public is generally supportive of the enactment of voter identification requirements in order to prevent electoral fraud. In a study conducted through the Caltech/MIT Voting Technology Project, 75% of respondents expressed support for voter identification requirement laws, 17% were opposed, and 8% were unsure (Ansolabehere 2007). Another study conducted by the same organization found that Americans are generally more interested in supporting reform that promotes security,

² Professor Clifford Brown, Union College

as opposed to any other reform that would improve accessibility and convenience (Alvarez et al. 2011). The call to implement voter identification laws in the name of reform is made easier by the right wing camp due to their extensive national network that can propel this narrative to seem more about “protecting the integrity of the system”, rather than partisan politics.

Right wing nonprofit organizations such as the American Legislative Exchange Council (ALEC) have been instrumental in the drafting of the voter identification laws that have been proposed in state legislatures. This group pairs conservative state legislators with large business interests to draft legislation to be introduced on the floor. In 2009, “ALEC drafted model voter ID legislation based on Indiana’s voter ID law. A cover story in ALEC’s magazine praised voter ID laws as, ‘a strong step toward the prevention of fraud at the polls’” (Berman 2015, 261). Between the years of 2011 and 2012, out of sixty-two voter ID statutes that were introduced in thirty-seven states, “more than half were sponsored by members of ALEC, including in Texas. The bills were virtually identical. ‘We’re seeing the same legislation being proposed state by state by state’” (Berman 2015, 261). Organizations, particularly ALEC, have been instrumental in the implementation of voter identification laws that are being passed along partisan lines in the states.

Conservative influence over important parts of the media, increasing control of the courts, of a large percentage of the state legislatures, their think tanks, and attempts to control the educational system have all been a part of this massive agenda. Despite the growing population of groups such as African Americans and Latinos, the right wing agenda’s aim has always been to maintain order and power in the hands of a select group of the predominately male, white, elite, and wealthy; “[Republican Party leaders] have mostly abandoned serious efforts to recruit

many African American voters, and certain other voters of color, into the Republican Party” (Feagin 2012, 97).

Some scholars have attributed the shift in agenda of the Republican Party back to the recession of 1973-1975, where the economic crisis caused many business executives to shift their support from the Democratic Party to the Republican Party. During this era, many white and wealthy corporations and small businesses began to heavily fund existing right-wing think tanks, particularly in certain regions of the country, and also created new ones in order to promote their ideals and ideology to larger audiences (Feagin 2012). The rise of this agenda encompassed:

[The expansion of] their influence over the views expressed in university policy institutes and graduate programs and in the mainstream media. As a result of such efforts, over recent decades they have gotten many right-wing experts into mainstream media presentations and other public discussions and debates; and they have been very successful in conservative campaigns aimed at shaping public views on a great many important social and political issues (Feagin 2012, 87).

From this era onward, a shift of major populations to the Republican Party was taking place. During the presidency of Ronald Reagan in the 1980’s up to the present, many working-class and middle-class whites particularly from the South and suburban areas, shifted to firmly support the Republican Party. Thus, the narrative and control of the mainstream media, think tanks, legislatures, and courts was working for the Republican Party, “Quite clearly, the Reagan team utilized and inspired much far-right and authoritarian social and political thinking and led a major right turn in the contemporary political era” (Feagin 2012, 109). The thinking and policy objectives of the Reagan administration included attacks on civil rights and other progressive domestic policies initiated by earlier Democratic administrations. These policies have included objectives such as electoral reform meant to grant easier access to the ballot for racial minority groups, “Federal agencies such as the FBI were used to police and reduce some voter registration

efforts and turnout campaigns aimed at voters of color” (Feagin 2012, 101). Thus, the battle over electoral reforms has been a constant confrontation between the Republican and Democratic camps, where the agenda of the right wing has sought to diminish accessibility of the ballot to particular groups that generally support the Democratic Party.

Demographic Changes = Extreme Right Turn:

The major shift in support for the Republican Party that took place starting in the 1970’s was not only a shift in population, but a massive shift in ideology as well. With the rise in population of African Americans and Latinos, both major political parties have shifted their ideologies to extremely far right and left standards:

Some political analysts also speak of the ‘disappearing center’ in U.S. politics, but the disappearing center has been much more characteristic of the Republican Party, where Republican leaders and operatives working for Republican candidates like George W. Bush have sought to move the party solidly to the right, in the process often frustrating or marginalizing more moderate and centrist Republicans. The Democratic Party has also been politically ideological in this era, but its substantial group and demographic diversity has made it likewise more diverse in political ideologies, with significant numbers of political moderates and political leaders both being important in the party (Feagin 2012, 123).

The polarization plaguing the political climate in U.S. politics has been a cause of this rift between the two major political parties. The increase in population of racial minority groups has also contributed to this polarization in U.S. politics. This increase was noticed considerably following the 2008 presidential election where almost a quarter of those who voted were voters of color. The voting bloc in this election was seen as the most diverse in American history where five million new voters turned out: two million Blacks, two million Latinos, and 600,000 Asians (Berman 2015). Political analysts have estimated that by the late 2020’s, a majority of young voters will be people of color (Berman 2015). Even currently, the Latino population has played a major role in population growth that has affected congressional reapportionments determined by

the census. Latino groups are estimated to change the composition of congressional representatives particularly in Southwestern states where areas are increasingly being composed of Latinos (Feagin 2012). Late state senator Mario Gallegos Jr., Democrat from Texas, found that voter identification laws were a ploy of the Republican Party to deter Latinos from going to the polls, “The Republican Party is seeing census numbers that the Latino community is voting in record numbers... so I think... it’s a last gasp to try and suppress the vote” (Hasen 2012, 42).

The growing shift in majority population has been followed by a flurry of electoral reforms at both the state and national level. In Texas, for example, “Texas Republicans had begun pushing for voter ID in 2005, after the census declared Texas the country’s fourth majority-minority state, with Blacks, Hispanics, Asians, and other minorities narrowly overtaking whites” (Berman 2015, 255). Thus, the changing demographics of Texas and the push for voter identification laws were going hand in hand.

As we have previously seen, throughout the 20th century, there was this general positive movement towards granting suffrage and making the ballot accessible to minority groups, “The common thread that connects the second half of the 19th century with the early 21st century is that measures to reform electoral practices are often driven by partisan motivations that see political gain in keeping whole classes of people from casting ballots” (Wang 2012, 25). This trend is noticed at the turn of the 21st century, where we begin to see this counter-attack on electoral reform that has been making access to the ballot more difficult for certain groups, all in the name of “protecting the integrity of the ballot box and the election system”. Conservative congressmen have generally pushed electoral reforms that have hindered particular groups from practicing their right to vote, whereas liberal officials have generally condemned the enactment of these laws. Anthony Hensley, a Kansas Democratic state senate minority leader has publicly

condemned the narrative of the right wing in the push to enact voter identification laws as “a solution in search of a problem”, (Fund 2004, 138). David Jordan, a Mississippi Democratic state senator called the ID requirement, “rotten from the core. It is evil. It is wrong... This is a back door to a poll tax” (Fund 2004, 139). The issue of voter identification laws, and electoral reform in general, is a highly politicized and polarized issue.

“Protecting the Integrity of the System”:

The effects of these counter-reforms have included: the removal of campaign finance reform, the invalidation of Section 4 of the Voting Rights Act by the Supreme Court, interference with voting that has included too few voting booths and outdated voting machines, shortened registration time, and the cut back on early voting. The voter identification issue is not an isolated phenomenon as we can see by the other “reforms” that have been implemented both on the state and national levels, “The new measures were more sophisticated and less obvious than the poll taxes and literacy tests of yesteryear, but they had the same intended effect: to control who could participate in the democratic process and to once again make voting a privilege, not a fundamental right” (Berman 2015, 264.).

This general counter-attack on electoral reforms can be put into a broader context in which the right wing is known for thinking strategically, whereas the left wing is known for thinking tactically. In the specific case of voter identification laws, the narrative put forth by the conservative camp in support of this legislation, has mainly been composed as a solution to stop and prevent widespread voter identity fraud that could drastically impact election outcomes. This narrative targeting voter identity fraud and its perception by elected officials and public opinion has been heavily studied and analyzed. A study conducted by Stephen Ansolabehere and Nathaniel Persily published in the Harvard Law Review found that the concept of ideology better

explains the divisions in opinions concerning voter fraud concluding that those who believe one form of fraud occurs frequently are likely to believe that other forms occur frequently (2008). This concept is well manipulated by the right wing in their fight to have these voter ID requirements implemented.

However, there are still many scholars that are skeptical of this claim concerning voter fraud, as they contest that there is very little to no evidence that voter fraud occurs, especially the type of voter fraud that a voter identification law would prevent, voter impersonation fraud. These allegations of voter fraud have been said by scholars to be a, “veil[ed] political strategy for winning elections by tamping down turnout among socially subordinate groups” (Minnite 2010, 88). Mark Barnett, the former Attorney General for South Dakota, denounced allegations of fraud by the Republican National Committee during the congressional elections between Senator Tim Johnson (D-SD) and his challenger, John Thune (R-SD) (Minnite 2010). Senator Johnson narrowly defeated Thune in order to retain his seat in the House of Representatives by approximately 524 votes. The Republican National Committee claimed that invalid votes cast through fraud had secured Senator Johnson’s seat for him (Minnite 2010). Mark Barnett responded with, “I’m still only aware of two cases where criminal law may have been violated... I just don’t want the suggestion out that there is widespread fraud when we don’t have any evidence of that” (Minnite 2010, 3). Just as many conservative politicians believe that voter fraud is rampant in the system, many scholars believe that the evidence to prove such an assertion is scant. The voter identification requirements being pushed by the right wing would only protect the system against voter impersonation fraud, either someone falsely claiming to be another voter, or someone falsely claiming to be a deceased voter that was not purged from the voting roll. Many scholars have found, however, that this type of fraud is much less likely to

occur than other types of fraud. Voter registration fraud, double voting, absentee ballot fraud, and fraud committed by election officials or with the cooperation of poll workers are more likely to occur during elections, and are not types of fraud that are protected by voter identification laws (Ahlquist et al. 2014). Even in this case however, the evidence is still very scant, there have only been isolated cases of real fraud, and most of it is registration fraud, not systemic voter impersonation fraud. Taking it a step further, the fraud that has been caught has actually been more of official/administrative incompetence, which is being mistaken for as voter fraud (Hasen 2012).

The issue of voter fraud sparks much debate between both political camps and scholars, particularly in the effects that it has on election outcomes. One general consensus between all of these groups is that measuring the amount of voter fraud that occurs is difficult because of its nature; it is a tactic that is not meant to be noticed. However, the argument against the assertion that voter fraud could determine electoral outcomes is also intriguing, “the vast majority of Americans committing an act of voter fraud – forging registration cards, stealing an identity to vote more than once, or knowingly voting illegally – is even more irrational than the individual act of voting” (Minnite 2010, 5). In order for voter impersonation fraud to be as successful in determining electoral outcomes as the right wing claims, the act would have to be meticulously calculated and widespread, leading many scholars to believe that because of the difficulty and strategic planning it would take, voter identity fraud is simply not widespread enough.

Lorraine Minnite in her book, *The Myth of Voter Fraud* does an extensive analysis about the issue of voter fraud where she finds that “fraud itself is a relatively rare event. Rather, the problem is the myth of voter fraud that can influence the vote count, and, more important, shapes the rules that erode voting rights” (2010, 127). This myth of voter fraud is what the right wing

agenda has capitalized on in their narrative to have the public support the implementation of voter identification requirements to vote. Scholars have attributed this narrative of invoking fraud to be a part of the right wing's modern-day southern strategy. Minnite attributes the likelihood of electoral fraud occurring to election administration, which she finds to "present a far greater threat to the integrity of elections... Given the number of poll workers, administrative clerks, and voters there are in any given statewide or federal election, and given the increasing complexity of election rules, technical violations are simply inevitable" (2010, 6, 88). As the right wing is concerned about the "integrity of the system" in terms of identity fraud, the left wing is concerned with the integrity of the system in terms of accessibility, "The integrity of the ballot box is just as important to the credibility of elections as access to it" (Fund 2004, 8). The false perception of voter fraud is what is dominating the public opinion arena, which has the ability to cause effects that have the real potential to undermine the integrity of the electoral process.

In a short-term versus long-term perspective, the assertion of voter fraud has the minimal potential of determining close election outcomes, particularly in the case of voter identification laws. This short-term effect is also a part of the major narrative adopted by the right wing. However, when considering the long-term effects that voter identification laws, the cutback in early registration and early voting, the rollback of campaign finance, and the striking down of section 5 of the Voting Rights Act, will have, it begs the question of whether the counter-attacks on these electoral reforms are just the first step in the larger agenda of disenfranchisement. Maria Cardona, a former spokeswoman for the Democratic National Committee has said, "Ballot security and preventing voter fraud are just code words for voter intimidation and suppression" (Fund 2004, 3). Thus, this begs the question of whether the protection of the system from fraud

or the perception of fraud is more important than access to the ballot for all groups of our society.

Through this long-term perspective, scholars have brought up concerns about legislation that sets a precedent in which conditions are being stipulated in order to vote. Matthew Vadum of the *American Spectator* publication has been an active figure in setting conditions such as the voter identification laws in order to access the ballot. As a figure with an ultra conservative ideology, Vadum has been on record saying, “Registering the poor to vote, he contended, is ‘un-American’, like giving ‘burglary tools to criminals’. It is profoundly antisocial and un-American to empower the nonproductive segments of the population to destroy the country—which is precisely why Barack Obama zealously supports registering welfare recipients to vote” (Hasen 2012, 67). Other conservative officials have also been caught on record making comments concerning the disenfranchisement effect that voter identification laws may have on the population. The Pennsylvania state House majority leader, Mark Turzai, a Republican, has said, “Pro-Second Amendment? The Castle Doctrine, it’s done. First pro-life legislation – abortion facility regulations – in 22 years, done. Voter ID, which is gonna allow Governor Romney to win the state of Pennsylvania, done” (Cernetich 2012). It has been comments like these made in the public arena, that have fueled the left into connecting the push for laws such as the voter ID as being part of a strategy to disenfranchise racial minority groups.

Apart from being viewed as a voter suppression tactic and through a short-term versus long-term lens, there is also the issue concerning tactics that mobilize the base versus tactics to demobilize voters that are more likely to vote for the opposing party. The counter-attacks on electoral reforms that have been seen as granting more accessibility to the ballot for minority groups, constitute demobilization efforts on behalf of the right wing. Rather than shift their base

to appeal more to racial minority groups such as African Americans and Latinos, the more strategic move for the Republican Party has been to engage in tactics that disenfranchise these same groups that have tended to compromise the Democratic base. The electoral “reforms” that have been pushed go “well beyond the voter ID. They were designed to impede voters at every step of the electoral process, targeting the very methods that the Obama campaign had used so successfully in 2008 to expand the electorate, like intensive voter registration drives and early voting” (Berman 2015, 261). Now the question becomes: what are the real issues associated with the voter identification laws being implemented in the states?

Chapter 4

The Issue of Voter Identification Laws

The main issue concerning voter identification laws boils down to a battle between the issue of fraud versus the disproportionate deterrence the laws may have for certain electoral blocs. These arguments fall along partisan lines where a predominant number of conservatives believe that voter fraud is a very serious issue for the integrity of the ballot, and thus these voter identification laws are necessary to deter fraud and maintain the “integrity of the system”. On the other side, a predominate number of liberals believe that voter fraud is not as rampant an issue as the right would like to make it seem, and thus this is an issue of disenfranchising certain groups that lean towards voting for democratic candidates. Voter identification laws are a very extensive issue that must be looked at through a series of steps in order to understand the full effects that has launched this intense debate between the two sides.

Legislation concerning these counter-reforms has been a predominately state-led effort, with each state setting different rules and requiring different input from the voters themselves. The federal government has sometimes intervened in the affairs of electoral “reform” in the states, but as we mentioned in chapter two, that has mostly only been when the circumstances were extremely dire. This is no different in the case of voter identification laws. Each state has set a different standard in regard to the type of voter identification requirement they have in place, and the acceptable forms of identification that they allow in order for registered voters to access their right to the ballot. While one state may accept one form of identification, another may not accept that same form of identification – causing disparities not only between identification requirements in each state, but also what types of identification are constituted as acceptable or not. For example, one of the biggest controversies scholars have examined in regards to acceptable forms of identification are how a state may not allow its voters to present a college-issued identification card, but will accept a firearms license as proof of identification.

This variation has the potential to impact various groups of voters, such as out of state college students and in-state college students that do not possess a firearm license. The variation of voter identification laws in the states further complicates the issue surrounding these laws and the effects they have on the electorate.

Categorization of Voter ID Laws:

The National Conference of State Legislatures (NCSL) has analyzed and divided the 50 states into one of five possible categories regarding the type of voter identification law they have in place (Underhill 2016). The five categories are as follows: strict photo ID, strict non-photo ID, photo ID requested (what I refer to as non-strict photo ID), ID requested with a photo not required (what I refer to as non-strict, non-photo ID), and no document required to vote. States that fall into the “strict” category, whether they are strict photo ID or strict non-photo ID means that voters without the acceptable identification mandates must vote on a provisional ballot and take additional steps after Election Day in order for their votes to be counted. The steps that must be taken after Election Day varies by state, where a certain time period is allotted for those who voted on a provisional ballot to go to an election office and present the proper forms of identification in order to have their votes counted (Underhill 2016). States that are considered “non-strict” are those that are categorized as either photo ID requested or ID requested with a photo not required. States classified as “non-strict” vary tremendously on how a voter’s ballot is counted if they do not possess the proper forms of identification required by that state (Underhill 2016). Some states may require these voters to vote on a provisional ballot and take additional steps to have their votes counted, whereas others either give election officials and poll workers the discretion of waving the identification requirement, or allow the voter to sign an affidavit with their name and address to prove their identity (Underhill 2016).

Based off of this categorization method, as of January 4, 2016, the following data on states and their level of scrutiny in terms of the voter identification legislation they have in place has been collected. The following nine states have been categorized as having strict photo ID legislation: Georgia, Indiana, Kansas, Mississippi, North Dakota, Tennessee, Texas, Virginia, and Wisconsin. Two states are categorized as having strict non-photo ID legislation in place: Arizona and Ohio. Eight states have a photo ID requested categorization: Alabama, Florida, Hawaii, Idaho, Louisiana, Michigan, Rhode Island, and South Dakota (Underhill 2016). Fourteen states request ID that is not required to contain a photo: Alaska, Arkansas, Colorado, Connecticut, Delaware, Kentucky, Missouri, Montana, New Hampshire, North Carolina, Oklahoma, South Carolina, Utah, and Washington (Underhill 2016). Lastly, the following seventeen states do not require a document to vote: California, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nebraska, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Vermont, West Virginia, and Wyoming (Underhill 2016).

As can be seen, trying to look at legislation passed on voter identification laws as a whole is an extremely difficult task given that each state has such different standards in place. However, this does have the potential to suggest that the level of difficulty in flushing out these laws has the potential to disenfranchise voters who do not only not possess the proper forms of identification, but also voters who are not aware of what their state does and does not accept. There are many sides to consider concerning the implementation of these voter identification laws.

³ Strict Photo ID	Strict Non-Photo ID	Photo ID Requested	ID Requested; Photo Not Required	No Document Required to Vote
Georgia	Arizona	Alabama	Alaska	California
Indiana	Ohio	Florida	Arkansas	Illinois
Kansas		Hawaii	Colorado	Iowa
Mississippi		Idaho	Connecticut	Maine
North Dakota		Louisiana	Delaware	Maryland
Tennessee		Michigan	Kentucky	Massachusetts
Texas		Rhode Island	Missouri	Minnesota
Virginia		South Dakota	Montana	Nebraska
Wisconsin			New Hampshire	Nevada
			North Carolina	New Jersey
			Oklahoma	New Mexico
			South Carolina	New York
			Utah	Oregon
			Washington	Pennsylvania
				Vermont
				West Virginia
				Wyoming

³ Data collected from the National Council of State Legislatures, last updated on January 4, 2016 (<http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx#6>)

The Help America Vote Act and Voter Identification Laws:

The Help America Vote Act passed in 2002 by Congress and signed by President George W. Bush had a provision concerning a minimal voter identification requirement. The legislation established that voters who have registered by mail must:

- (1) [P]resent to the appropriate State or local election official a current and valid photo identification; or
- (2) presents to the appropriate State or local election official a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter (HAVA, Title III, sec. 303).

The minimum voter identification requirement imposed by HAVA is to a specific group of voters, and was only meant to affect those voters that voted for the first time and who had registered to vote by mail. As we can also see, the law allows for multiple forms of identification to be used by the voter in order to prove their identity when they arrive to the polls. The minimum standard was thus set.

Following the passage of HAVA (a bipartisan effort), four states moved to pass new voter identification laws: Arkansas, Georgia, Michigan, and North Dakota. Arkansas and Georgia held Democratic majorities in their state legislatures, whereas the Republican Party held a majority in Michigan and North Dakota (Hicks et. al. 2015). However, these states simply modified the existing law implemented by HAVA, not yet implementing requirements that required voters to present photo identification, which would soon become a part of legislation in states that would implement more stringent voter identification laws. In 2006, Indiana was the first state to pass a strict photo identification requirement along partisan lines that required voters to present government-issued photo identification in order to vote at the polls on Election Day.

Soon thereafter, more states attempted to implement stricter variations of the photo identification requirement coming out of HAVA. As more states began to draft tougher

legislation, the issue began to become more polarized. One study found that “95.3 percent of 1,222 Republican legislators but just 2.1 percent of Democrats voting on ten voter ID bills introduced by Republican state legislators between 2005 and 2007 supported them” (Erikson and Minnite 2009, 86). From 2001 to 2012, 910 restrictive voter ID bills were introduced in state legislatures, where 15 photo-based requirements were enacted, and 19 added some kind of new requirements on top of the minimum imposed by HAVA. In 2002, there were 50 bill introductions, and that number spiked in 2003 to 93, which came as a direct response of state compliance to HAVA (Hicks et. al. 2015). As can be seen, there is a steady progression in the implementation of more stringent voter identification legislation in the states:

.... Since 2004, states continue to adopt more restrictive voter ID laws reaching a high in 2011 with six states adding photo-based requirements to vote. Over time, the number of states that require identification continues to grow. While in 2001 only fourteen states required identification (four required photo identification and ten allowed non-photo), by 2014 a total of thirty-four states have statutes on the books (seventeen photo laws, fifteen non-photo, and two struck down by state courts) that require voters to present some form of identification (Hicks et. al. 2015, 21).

Following HAVA, there were many attempts by state legislators to implement some form of voter identification laws in their state, out of the 910 bills that were introduced between 2001-2012, only a total of 34 were actually adopted (Hicks et. al. 2015). The blockade that disrupted the adoption of more of these voter identification requirements, likely came from section 5 of the Voting Rights Act that called for jurisdictions with a history of discrimination at the polls to present any electoral reform legislation to the Department of Justice in order to be approved.

Litigation on Voter Identification Requirements:

Crawford v. Marion County Election Board (2008)

As the number of attempts to implement voter identification requirements rose, so did the amount of litigation that put into question the validity of these laws. The most notable and one of

the most significant cases came out of Indiana, *Crawford v. Marion Country Election Board*, which was granted certiorari by the Supreme Court, and was decided in 2008. The identification requirement in Indiana that was called into question was passed in 2005, and called for voters to present a government-issued photograph to confirm their identity in order to vote at the polls on Election Day. It would be one of the strictest identification requirements implemented at that time. Central to the debate presented by attorneys on behalf of the state was the argument pertaining to the integrity of the system, and how voter fraud threatened that integrity. On the other side, attorneys for the prosecution argued that voter fraud was not a rampant issue in the state of Indiana, and was thus a mechanism to attempt to deter particular groups who were most likely not to possess government-issued photo ID's, which also turned out to be groups that leaned towards the Democratic Party (de Alth 2008). In a 6-3 decision, the Court affirmed the lower court's decision upholding the state's identification law, "Central to the Justice's debate and the applicable constitutional balancing test was the degree of the burden that the law imposes on voters" (de Alth 2008, 185).

In the lead opinion written by Justice Stevens, members of the Court had applied the *Burdick* balancing test and concluded that the interests of the state in preventing voter fraud and protecting the integrity of the system outweighed any impact the law would have on populations that would be disenfranchised as a result of the statute (Ellis 2009). In coming to a decision, Justice Stevens considered three main bases in his lead opinion to support the law, "First, it credited the government's argument that the law was necessary to maintain the integrity of elections. The Stevens opinion recognized that Indiana had an interest in modernizing its election process as well as preventing potential voter fraud in light of such risks as over-inflated voter rolls" (Ellis 2009, 1057). The Stevens opinion also highlights the failure of the plaintiffs to

demonstrate one person who had been directly affected by the law, and the failure of the plaintiffs to demonstrate how many voters would actually be affected by the law. The leading opinion also contended:

[C]onceivably, some voters would be effectively shut out by the inability to register under the structure of the law as written, but it declined to overturn the law on this basis. The Stevens opinion contended that on this record, it would be inappropriate to declare the law unconstitutional simply because some voters may be affected, particularly in light of the fact that the government had offered justifiable reasons for enacting the law (Ellis 2009, 1057).

Thus, the Supreme Court held that Indiana's identification requirement could not be struck down on its facial value, even if it might affect the ability of some voters to practice their right to vote.

Two dissenting opinions were written on behalf of this case. Justices Souter and Ginsberg wrote the first dissenting opinion where they dissented on the grounds that there was sufficient evidence presented to suggest that the effect would be significant on a number of identifiable voters. The second dissenting opinion was written by Justice Breyer who dissented due to the burden the law would place on voters, which had not been taken into consideration by the state (Ellis 2009). In the dissenting opinion written by Justice Breyer, he "conclude[ed] by realizing that while the Constitution does not forbid voter identification laws, the Indiana statute in particular overburdens voters who do not possess the applicable photographic identification" (Ellis 2009, 1058). Some on the Court recognized the deterrence that Indiana's statute would have on particular groups of the electorate, while others found the evidence presented not to be enough to classify the statute as unconstitutional.

The *Crawford* decision opened the floodgates for other states to implement their own voter identification statutes. As a result from the decision of the Supreme Court, Indiana's photo identification statute became the strictest form of voter identification requirement in the nation. The repercussions of *Crawford* were felt by many, "the pendulum ha[d] decidedly shifted from a

vision of voter access unfettered that ought to not be defined by an economic standard. The apparent shift is to a standard where the default position is one where the government’s rationale for election integrity ought to control” (Ellis 2009, 1059). Others have characterized the *Crawford* decision as “signal[ing] that states could implement new voting restrictions merely by invoking the threat of voter fraud, even if such fraud had not actually occurred” (Berman 2015, 254).

Texas v. Holder (2014)

Litigation also took place concerning Texas’s voter ID law that was objected to by the Department of Justice. Texas Republicans had been pushing to implement this voter ID statute since 2005, and it had failed to pass muster through various congresses. In 2011, the fourth attempt to pass the voter identification statute, the law proposed acceptance of the following forms of identification: (1) a driver’s license, (2) a personal ID card issued by the Department of Public Safety, (3) a U.S. military ID card, (4) a U.S. passport, (5) and a U.S. citizenship certificate. An amendment that was later added to the bill included a concealed handgun permit to the list of acceptable forms of ID under the new bill introduced (Berman 2015). This law was put into place in Texas in 2013 (Underhill 2016). The Department of Justice objected to Texas’s implementation of this revised legislation. Months after the objection of the DOJ, Texas data showed that “between 600,000 and 795,000 registered voters lacked government-issued IDs and Hispanic voters were anywhere from 46 percent to 120 percent more likely than white voters to not have one” (Berman 2015, 266). The main issue brought out against the voter ID statute that Texas was trying to implement was the lack of acceptance of student IDs, which many people had testified as being essential to their daily life activities (Berman 2015). The Federal Court in Washington in 2014 sided with the DOJ in rejecting the Texas voter ID statute, in the case of

Texas v. Holder. The court cited three reasons for rejecting the law: “(1) a substantial subgroup of Texas voters, many of whom are African American or Hispanic, lack photo ID; (2) the burdens associated with obtaining ID will weigh most heavily on the poor; and (3) racial minorities in Texas are disproportionately likely to live in poverty” (Berman 2015, 268). Differently from the decision reached in *Crawford*, the decision by the Federal Court in this case found there to be sufficient evidence to determine that there was a significant rate of deterrence for racial minority groups from reaching the polls.

After a federal judge struck down the law, the federal appeals court re-instated the law on the grounds that it was too close to the election for Texas to change the rules. On October 18th, the Supreme Court affirmed that this law could be in place during the election in November 2014. In 2015, a federal appeals court ruled that the ID requirement could not be enforced, which then sent it back down to the lower courts (Underhill 2016). Thus, Texas is still in a state of limbo concerning the validity of their strict photo identification law. Although the case is still making its way through the court system, Texas’ voter ID law is in effect. The only forms of photo identification accepted at the polls are the following: (1) Texas drivers license issued by the Texas Department of Public Safety; (2) Texas Election Identification Certificate; (3) Texas Personal Identification Card; (4) Texas license to carry a handgun; (5) U.S. military identification card containing the person’s photograph; (6) U.S. citizenship certificate containing the person’s photograph; (7) U.S. passport (VoteTexas.Gov).

The voter identification statutes that have gone through the court system have caused much strife in the debate taking place concerning voter identification laws. As can be seen from the decision reached in *Crawford*, the plaintiff’s inability to provide substantial evidence of the deterrent effect of the voter ID statute failed to win over the Supreme Court, although there was

also no substantial evidence presented concerning the amount or even occurrence of fraud in the state of Indiana. Scholars have suggested that:

This inability [of courts and political officials] to account for the indirect costs exasperated the long-standing problem of economic bias and the requirement of an economic stake within society in order to exercise the right to vote... Courts and legislatures weighing the implementation and adjudication of voter identification laws should base their analysis on maintaining the ease with which voters can access the polls as opposed to abstract notions of voter integrity which lack actual substantiation (Ellis 2009, 1064, 1065).

Although the Court had technically constitutionalized the implementation of voter identification statutes at face value, many jurisdictions that fell under the section 5 provision of the Voting Rights Act still had to pass muster under the DOJ, as we could see in the case of Texas's attempts to implement their voter identification statute. Even though the decision in *Crawford* opened up uncharted waters in the case of voter identification statutes, the next landmark Supreme Court case expanded the avenues through which demobilization efforts on behalf of the Republican Party would become successful, all in the name of "reform".

Shelby County v. Holder (2013)

The case of *Shelby County, Alabama v. Holder* (2013) was a suit brought forward that challenged the constitutionality of Sections 4 and 5 of the 1965 Voting Rights Act. These sections in the VRA required certain jurisdictions with a history of racial discrimination in voting to "pre-clear" any changes to the election process to the Department of Justice or the U.S. District Court for the District of Columbia (Coleman and Fisher 2015). Although this case did not deal specifically with the issue of voter identification laws, it is still important to note, as the decision reached by the Court consequently affected the pursuit and enactment of stricter forms of voter identification legislation in the states. The arguments made by plaintiffs in the case cited the progress made since the enactment of the law in 1965, and the unfairness of Congress'

decision in reauthorizing the Act with information collected in the '60's and '70's that was used against these specific jurisdictions (Gaughan 2013). The arguments on the other side have cited that although progress has been made in these jurisdictions, maintaining the “pre-clearance” section of the VRA was vital in continuing to protect the voting rights of racial minorities who have historically had their voting rights abridged (Gaughan 2013).

In a 5-4 decision, the majority of the Court favored the argument made by the plaintiffs and struck down Section 4 of the Voting Rights Act as outdated and “not grounded in current conditions” (Coleman and Fischer 2015). As a result, although Section 5 remains intact, it was rendered inoperable until Congress prescribed a new Section 4 formula. Section 4 of the VRA was a coverage formula that determined which jurisdictions within the states needed to have any changes to their election process pre-cleared. More clearly, Section 4 contained the coverage formula that determined which jurisdictions would fall under Section 5 (Schwartz 2013). The majority opinion was delivered by Chief Justice Roberts who did not deny the need for the Voting Rights Act back in the '60's and '70's, but questioned the need for them in contemporary society, “... voting discrimination still exists; no one doubts that. The question is whether the Act's extraordinary measures, including its disparate treatment of the States, continue to satisfy constitutional requirements. As we put it a short time ago, ‘the Act imposes current burdens and must be justified by current needs’” (Shelby County v. Holder, 570 U.S. 2013, 2). As the Court deemed only Section 4 of the VRA unconstitutional due to the lack of using updated coverage formula data, Chief Justice Roberts concluded the opinion by saying:

But history did not end in 1965. By the time the Act was reauthorized in 2006, there had been 40 more years of it. In assessing the ‘current need’ for a preclearance system that treats States differently from one another today, that history cannot be ignored. During that time, largely because of the Voting Rights Act, voting tests were abolished, disparities in voter registration and turnout due to race were erased, and African-Americans attained political office in record

numbers. And yet the coverage formula that Congress reauthorized in 2006 ignores these developments, keeping the focus on decades-old data relevant to decades-old problems, rather than current data reflecting current needs.

The Fifteenth Amendment commands that the right to vote shall not be denied or abridged on account of race or color, and it gives Congress the power to enforce that command. The Amendment is not designed to punish for the past; its purpose is to ensure a better future. (*Shelby County v. Holder*, 570 U.S. 2013, 20).

As this conclusion by Chief Justice Roberts reflects, the issue at hand here was not whether the VRA was still needed, but rather, the lack of data presented that acknowledged that need in modern day society.

Justice Ruth Bader Ginsberg wrote the dissent in this case, joined by Justices Breyer, Sotomayor, and Kagan. Justice Ginsberg stressed the authority of Congress in enacting and reauthorizing the Voting Rights Act as their domain to protect the constitutional rights of all of its citizens:

With overwhelming support in both Houses, Congress concluded that, for two prime reasons, §5 should continue in force, unabated. First, continuance would facilitate completion of the impressive gains thus far made; and second, continuance would guard against back sliding. Those assessments are well within Congress' province to make and should elicit this Court's unstinting approbation (*Shelby County v. Holder*, 570 U.S. 2013, 1).

The Justices who joined in the dissenting cohort agreed with the defendant's claims that the sections of the VRA that were called into question were necessary to ensure that the work it has excelled in these past 40 years remain untainted. Justice Ginsberg goes on to highlight the continued struggle for voting rights that remains today, and which the majority has failed to recognize. She concludes:

The grand aim of the Act is to secure to all in our polity equal citizen ship stature, a voice in our democracy, undiluted by race. As the record for the 2006 reauthorization makes abundantly clear, second-generation barriers to minority voting rights have emerged in the covered jurisdictions as attempted *substitutes* for the first-generation barriers that originally triggered preclearance in those

jurisdictions. See *supra*, at 5-6, 8, 15-17. The sad irony of today's decision lies in its utter failure to grasp why the VRA has proven effective. The Court appears to believe that the VRA's success in eliminating the specific devices extant in 1965 means that preclearance is no longer needed. *Ante*, at 21-22, 23-24. With that belief, and the argument derived from it, history repeats itself (*Shelby County v. Holder*, 570 U.S. 2013, 35-36).

This dissenting opinion alludes to the consequences of taking away power from the federal government in regards to setting election rules and the ability to check discriminatory practices that may arise in the states. Justice Ginsberg also brings up “reformatory” practices that states have tried to implement in their election rules that actually have discriminatory consequences against particular voting blocs. The dissent placed crucial importance on data that cited that the DOJ had blocked over 700 proposed election law changes in these covered jurisdictions 24 years before the VRA was reauthorized in 2006 (Gaughan 2013). As mentioned previously, counter-attacks on voting rights have included practices such as: the removal of campaign finance reform, the shortening of registration time, the shortening of early voting, and last but not least, the use of voter identification laws. Justice Ginsberg held the belief that the two most relevant questions that the Court should have answered in *Shelby County* were: “(1) Did Congress have the power to reauthorize the VRA in 2006, and (2) Did Congress act ‘rationally’ when doing so?” (Blacksher and Guinier 2014). Based on the result, it can be deduced that the Court found that this was not the case. The counter-attacks on election reforms may be the precise practices that Justice Ginsberg referred to throughout her dissent in expressing her belief that the Voting Rights Act is as relevant and needed today as it was in 2006 and in 1965.

Outcry over the decision made by the Court in *Shelby County* could be heard far and wide. President Barack Obama described his sentiments as being “deeply disappointed” with the decision of the Court and echoed the concerns of Justice Ginsberg as this decision being a “setback for efforts to end voting discrimination” (Gaughan 2013, 121). Many held the belief

that this was the beginning of the gradual withering away of voting rights for racial minorities. Some even contended that this was one of the worst decisions reached by the Court, next in line with the decision reached in *Dred Scott v. Stanford*. Others believed that Section 4 was the heart of the Voting Rights Act, and the Court had essentially gutted it. According to Ryan P. Haygood, the director of the NAACP Legal Defense and Educational Fund's Political Participation Group, Section 5 of the VRA had stopped more than 1,000 discriminatory voting-related changes from being implemented in the states (Myers 2014). Still, there were others who viewed this case as a victory. They found this historic moment to be a step in the right direction towards establishing states rights and minimizing the role of the federal government in state domain issues. The sentiments concerning the Court's decision were very split, to say the least.

Critics of the decision have cited the misplaced responsibility that the Court has placed on the states for control over the change in election laws, "*Shelby County* held that the 'equal sovereignty' of the state of Alabama takes precedence over Congress's exercise of its explicit constitutional power to enforce the voting rights of the descendants of slaves (Blacksher and Guinier 2014). Others followed the same narrative Justice Ginsberg laid out in her dissent, "The post-Shelby voting rights landscape most clearly resembled the period before 1965, which the VRA was meant to end, when the blight of voting discrimination could only be challenged on a torturous case-by-case basis. The loss of Section 5, combined with an often hostile judiciary, created perpetual uncertainty when it came to protecting voting rights" (Berman 2015, 311). These scholars have cited the importance of the VRA in protecting the voting rights of the whole populace. With the loss of Section 5, many began to believe that voting rights were now under attack by a branch of the government that the right wing had sought to control. The loss of Section 5 goes beyond the issue of voter identification laws; there is a larger context here

through the frame of voting rights and attempts to stifle electoral blocs of racial minorities. Post the *Shelby* decision, after the 2014 elections, “[n]ationally, voter turnout plummeted to the lowest level since 1942. In Texas and across the country, the electorate was older, whiter, and more conservative than in 2008, 2012; that is what Republicans wanted” (Berman 2015, 311). *Shelby* was a monumental decision in the battle of contemporary voting rights that would have strategic consequences.

Voter Identification Legislation Post-*Shelby*:

Although the *Shelby* decision dealt specifically with the constitutionality of parts of the Voting Rights Act, it would now affect the landscape of voting rights, both socially and politically. Section 5 of the VRA was instrumental in the blockade against enactment of voter identification requirements in particular jurisdictions. Prior to the final decision reached by the Court in *Shelby*, it was noted that:

Section 5 of the VRA was used to prevent the implementation of voter identification laws in Texas and South Carolina in 2012... Should the Supreme Court decide that Section 5 of the VRA is unconstitutional, a useful tool to block the implementation of laws, which disproportionately disenfranchise minority voters, such the voter ID laws, will no longer be available (Stout and Tate 2013).

Hence, even before the decision in *Shelby*, it was already speculated how a negative decision against the case would affect the political landscape for the implementation of more stringent voter identification laws. Texas and South Carolina were not the only states that the Department of Justice halted in enacting voter identification requirements using Section 5 of the VRA. Since 2010, the DOJ had challenged voter identification reforms in North Carolina, Mississippi, Georgia, and Louisiana to name a few, “But with the preclearance formula voided by *Shelby County*, election officials across the South have now resumed efforts to implement voter ID laws” (Gaughan 2013, 112). Although the jurisdictions covered under Section 5 of the VRA

mainly came from the South, there were still jurisdictions on the national level that were also under the preclearance formula.

Although voter identification laws have been in the limelight of political discourse since the implementation of HAVA in 2002, the decision in *Shelby* allows an unpaved road for more stringent voter identification requirements, such as the strict photo identification requirement in place in Indiana, to be implemented in more states across the nation. Within hours after the decision was released by the Court, “five southern states – Texas, Mississippi, Virginia, South Carolina, and Alabama – indicated that they would move forward with voter ID laws previously blocked by the DOJ” (Gaughan 2013, 126). This reaction by states that hold a majority of Republican legislators in the state governments greatly contributes to the argument made by opponents of the voter identification requirements that this is an issue based off of an extremely polarized and partisan political climate.

Voter identification laws are a national issue, and one that is increasingly seen as correlating directly with party affiliation. In the period between 2005-2007, out of the ten states that passed some form of voter identification law, “more than 95% of Republican legislators overall voted for the laws, whereas barely 2% of Democratic legislators voted for them” (Gaughan 2013, 122-123). As the issue of voter identification laws becomes increasingly polarized, it also starts to become increasingly divided by race, as the two major political parties become more and more polarized along racial lines. Data collected by the Roper Center for Public Opinion Research at the University of Connecticut during the 2012 Presidential Election, found that 59% of white Americans voted for Mitt Romney, and 93% of African Americans, 71% of Latino Americans, and 73% of Asian Americans voted for President Barack Obama (Gaughan 2013).

Data like the one collected by the Roper Center for Public Opinion Research is what opponents of voter identification requirements rely on when citing their views against these requirements due to the disproportionate impact they may have on minority groups. Other studies conducted earlier such as one funded by Caltech/MIT Voting Technology Project in 2007 found there to be a disproportionate effect on the deterrence of voter identification laws. The study concluded that the strictest forms of voter identification requirements, such as presenting photo identification, had a negative impact on the participation of voters, relative to a weaker identification requirement, such as stating one's name. The same study found that stricter voter identification requirements negatively affects turnout for less educated and lower income populations (Alvarez et. al. 2007). An additional study, this time conducted by the Black Youth Project also found there to be disproportionate effects between white and minority youth who were asked to show identification during the 2012 election. In the 30 states that had some form of voter identification requirement in place during this election cycle, 65.2% of minority youth were asked to show identification, whereas, 50.8% of white youth were asked to show identification at the polls (Cohen and Rogowski 2013). Still, there have been studies conducted that have found there to be no deterrent factor on the electorate, much less a disproportionate effect on particular groups.

The Government Accountability Office (GAO) also looked into the issue of what populations had easier access to the requisite forms of identification, and which did not. The GAO is a branch of Congress that is historically known for being a bi-partisan group. In a report released in September of 2014, the GAO found that in the 10 studies of driver's license and state ID ownership, estimated ownership rates of all registered voters ranged from 84 to 95 percent. These rates also varied by racial and ethnic groups. In one study looked at by the GAO, it was

estimated that 85% of White registered voters and 81% of African-American registered voters had the required form of ID for voting purposes in one state. The GAO report also looked into the costs for voters to obtain the requisite forms of ID to be able to vote on Election Day. In the 17 states that require some form of government-issued identification in order to vote, the GAO found that the direct costs to get a driver's license ranged from \$14.50 to \$58.50. These costs exclude the possibility that voters may not have access to the documents needed to get these state IDs or driver's licenses, (such as a birth certificate or a social security card), which would then increase the cost further.

Another facet of the voter identification debate revolves around the controversy of what types of identification should and should not be accepted. For example, there has been an extensive literature written about the use of college student IDs, and whether they should be accepted forms of ID to vote with at the polls, particularly for students who are out-of-state. College students are a critical and large voting constituency, who also tend to display liberal values, "Some states passed legislation that made it easy for college students to vote in the state where they attend college, whereas other state voter ID laws made it harder or impossible for college students to use their college IDs to vote" (Carter 2014, 333-334). Those in favor of having college students vote with their school IDs as being an acceptable form of identification argue that students live in their college towns for four years, and therefore do not move as often as most American families, making them valuable resources to the community around them. However, those against having this electoral bloc vote argue that college students reside in predominately isolated campuses without ever engaging in the community, "which 'distorts the way a community is run', allowing transients to 'descend on a community and take it over'" (Carter 2014, 384). Critics against these arguments, such as David Halperin, the former director

of the National Youth Organization Campus Progress, rebuts that “[new voter ID laws are] absolutely perfectly rigged to prevent students from voting” going on to say that, “Republicans would prefer that students did not vote, particularly non-residents attending college in swing states” (Carter 2014, 383). Facets such as these only lend more complexities into the debate of voter identification laws, and the strategies used to disenfranchise or deter particular groups from making it to the polls.

The Studies:

Although not as extensive as some would guess, there have been a few studies conducted that have attempted to measure the effect that voter identification laws would have on the electorate. The issue here is that these studies vary in their results significantly. Some find their not to be a deterrent effect. Others have found evidence to the contrary, where evidence of voter identification laws negatively affecting voter turnout was found. Still, some claim that there is inconclusive evidence to prove whether or not voter identification laws affect particular groups of the electorate more than others.

“No Deterrent Effect”

In 2009, Robert S. Erikson and Lorraine C. Minnite conducted a study in which they attempted to answer the question of whether state-level participation changed between the 2002 and 2006 midterm elections as a result of changes in the states’ voter ID legislation. Using voter turnout data collected by the Census Bureau’s Current Population Survey (CPS), Erikson and Minnite used the difference-in-differences technique to answer their study question, “The idea is simple. The independent variable is change in legislation between the two elections. The dependent variable is change in voter participation among registered voters between the same two elections” (2009, 89). The measure of legislation used in the study used an order of eight

types of requirements for in-person voting, 0 being the least stringent where a voter only needs to state their name, up to 7, which is when a voter is required to present photo ID. They then performed an OLS regression equation where the dependent variable was the change in turnout, and the independent variable was the change in voter identification legislation, using the 0-7 scale they created (Erikson and Minnite 2009). The main purpose of the study was to measure the effect of the turnout rate at a state-level as a function of state-level factors alone during these two midterm elections. Thus, individual-level characteristics were controlled: age, education, income, race, gender, and marital status (Erikson and Minnite 2009).

Erikson and Minnite found that the average estimate between going from a less stringent, to a more severe voter ID requirement was associated with a few percentage point less in the voter turnout rate (2009). Moreover, this decrease in voter turnout was found mainly among the least educated in the sample. However, Erikson and Minnite find that the true lesson is that the estimates made by their study are statistically inconclusive:

We obtain this inconclusive result because state turnout varies considerably apart from the variables of our analysis... The observations are considerably dispersed around the regression line. Our imagination might tell us that shifts in voter turnout, especially among registered voters, vary little from state to state. If that were the case, the observations would cluster around the regression lines and we would be obtaining estimates of statistically significant voter ID effects (2009, 98).

As the result of reaching a statistically inconclusive result, Erikson and Minnite have suggested that in order to improve the empirical analysis surrounding voter identification law effects, there is a need for additional election cycles and additional states enforcing strict voter identification laws. They go on further to suggest that a more detailed analysis of aggregate data within and between states would be more useful, rather than survey turnout data.

Another study conducted in 2007 by Jason D. Mycoff, Michael W. Wagner, and David C. Wilson also attempted to determine whether or not voter identification laws had an effect on turnout. Mycoff, Wagner, and Wilson established their belief that the personal cost of voting is an important factor for voters when considering whether or not to go to the polls on Election Day. They noted: “We feel that these differences in interpretation stand testament to the difficulty voters face in interpreting complex election laws that may include ambiguous language” (2007, 9). With particular regard to voter identification laws, they hypothesize that the cost of providing identification is not great enough to cause “would be voters” their chance to vote, and thus believe that voter identification laws would have no effect on turnout.

The methodology used by Mycoff, Wagner, and Wilson was the collection of both aggregate and individual-level data across four federal elections from 2000 to 2006. At the aggregate level, the dependent variable was turnout, the ratio of voters in each state who cast a ballot on Election Day to the number of registered voters in each state. The dependent variable for the individual analysis was the respondent’s self-reported voting behavior during the election cycle. The independent variable for both analyses was the strength of each state’s voter identification law. Similar to the study conducted by Erikson and Minnite, this was measured with the lowest score reflecting the minimalist standard, verifying one’s name, increasing in value depending on the additional requirements voters had to meet in order to cast their ballots, which ended with the most stringent – requiring a government-issued photo identification with an expiration date.

The analysis, on multiple levels, found that the concerns about voter identification laws affecting turnout are unsubstantiated. Voter identification requirements at the state-level showed no significant effect on both the aggregate and individual level turnout rates (Mycoff, Wagner,

and Wilson 2007). One thing that the study points out as being a particularly interesting factor in the individual-level analysis was the regional factor of “the South”, where Southern states averaged lower voter turnout in the aggregate level analysis. As this effect factor was consistent for the 2000, 2002, 2004, and 2006 elections, the study deduces that: “If the original intent of making voting laws more stringent (e.g., government issued photo identification with signatures) was to reduce potential fraud, based on the NES data one might expect Southern states to be the most fearful of the crime. Yet, there is scant evidence of widespread fraud in the South” (2007, 18). Despite this observation, the study finds that the NES results do not offer strong support that individuals living in the South are less likely to vote, nor does it support that effect of the voter identification laws as different based off the factor of “the South”. All in all, this study finds that strong evidence was provided to show that voter turnout is unrelated to the issue of voter identification laws.

Contributing to the work done by Mycoff, Wagner, and Wilson, another study also conducted in 2007 by Michael R. Alvarez, Delia Bailey, and Jonathan Katz, found similar results in accordance with the effect voter identification laws have on turnout. The central focus of this study was to document the effect of voter identification laws on registered voters during the 2000 and 2004 presidential elections, and in the 2002 and 2006 midterm elections, particularly focusing on the interaction between race or ethnicity and barriers for these groups to vote. Based off of theoretical literature on participation, this study hypothesized that:

First... where states have imposed more restrictive identification requirements for registered voters, their participation rates should be lower, than in states, which have less restrictive identification requirements for voting. Second, we also hypothesize that these effects of more restrictive voter identification requirements should be stronger for black and Hispanic registered voters than for white eligible voters... following arguments that minority voters may be less likely to have appropriate government-issued identification, or that they may be less willing to provide that identification in order to vote (Overton 2006a). Similarly, we

hypothesize that the effects of voter identification requirements on voters with lower levels of education and income will be disproportionately negative (2007, 6).

As in the previously mentioned studies, a classification of voter identification legislation was developed with an increasing stringency scale of 1-8, where one represented the least stringent type of law (“Voter must state his/her name), and eight represented the most stringent law in effect (“Voter is required to present photo identification”) (2007, 7). An aggregate and individual-level analysis was used throughout the course of this study.

Alvarez, Bailey, and Katz found that there was no evidence to suggest that voter identification requirements reduced participation at the aggregate level (2007). However, at the individual level, they found that voter identification requirements in their strictest forms (in this particular case, the combination of presenting identification and marching signatures, along with photo identification requirements) seemed to show a negative impact on turnout in comparison with the weakest requirement (stating one’s name). Although they did not find there to be a discriminatory impact on racial minorities in regards to the voter identification laws, they did notice a negative impact correlation for registered voters with lower education and income levels, living in states with stricter identification requirements had a lower turnout rate.

Deterrent Effects of Voter ID Requirements:

Although the studies discussed so far have come to results that many proponents of voter identification laws claim, there have been studies conducted that have come to results on the opposite side of what we have seen so far. Matt A. Barreto, Stephen A. Nuño, and Gabriel R. Sanchez shared their own voter identification legislation research in 2007. In this study, their goal was to analyze the impact of voter identification laws on turnout in the state of Indiana, which had the most stringent voter identification requirement in the nation at the time. Based on

their research around electoral rules and their impact on the electorate, Barreto, Nuño, and Sanchez agree with the literature on how institutional burdens to participating in something such as an election, have historically had the largest impact on those groups with “fewer resources, less education, smaller social networks, and are more institutionally isolated” (e.g. literacy tests, poll taxes) (2007, 3). Based off of these assumptions, they hypothesize that “photo identification laws will have a marked impact on the likelihood of racial and ethnic minorities being able to vote due [to] not having the forms of identification required of the Indiana electoral rules” (2007, 5).

This study was conducted through a statewide telephone survey in Indiana, where a sample of registered voters was identified, and an oversample of African Americans and low-income populations. Another sample of non-registered voters was also used through random digit dialing (RDD) (Barreto, Nuño, Sanchez 2007). The results reached by the survey came from the 1000 interviews that were collected among registered voters, and 500 interviews of non-registered voters. There was a three-step process in using the answers from these interviews:

First... descriptive statistics in the way of crosstabulations for access to photo identification for each key demographic group. Second... bivariate probit regression results predicting access to identification among these same demographic groups... Finally, we examine whether or not people with proper photo ID in Indiana are distributed equally along party lines, or whether the excluded voters (i.e. those without ID) are more likely to support Democratic or Republican candidates (2007, 9-10).

The results found that there was a strong correlation with respect to access to valid photo identification that reduced the chance for groups such as minorities, low income, the less educated, the young, and old residents to vote.

In breaking down the results further, Barreto, Nuño, and Sanchez found significant disparities among key groups. First, they found that active voters are more likely to have the

proper identification under Indiana state law. Second, they found a substantial 6-point gap in access to ID between White and Black registered voters, where 84.2% of registered White voters reported having proper ID, compared to 78.2% of registered Black voters. On the overall adult eligible population scale, they found that 83.2% of all Whites in Indiana had access to photo ID, compared with 71.7% of Blacks. Young voters and elderly voters were also seen to be less likely to have valid ID, compared with those around the ages of 35-54 (Barreto, Nuño, Sanchez 2007). In regards to education and income, there also exhibited discrepancies in regards to access, where those who just had a high school degree were 9.5 percentage points less likely to have access to the required ID. Lastly, when observing by party affiliation, they found that Democrats had lower rates of access to ID's at 81.7%, in comparison with Republicans at 86.2%. As this study found that racial minorities, low income, and less educated groups in Indiana were disproportionately affected by having unequal access to obtain the identification required by Indiana state law to vote, they conclude that this strongly implies that Indiana voter identification laws substantially reduce to chance to vote for these groups (Barreto, Nuño, Sanchez 2007). Furthermore, out of these key groups, the study finds that income was the most significant group to have unequal access, thus the law directly impacted approximately 20% of the residents in Indiana (Barreto, Nuño, Sanchez 2007).

During the 2008 general election, there was a field study conducted in the City of Boston where Rachael V. Cobb, D. James Grenier, and Kevin M. Quinn attempted to analyze whether voter ID laws could be administered in a race-neutral manner. This study decided to focus on the City of Boston, because, "... for a variety of reasons, voter ID laws were *unlikely* to pose issues of racial difference; among these reasons is that poll-workers were given no discretion over whether to request an ID from would-be voters" (2012, 3). The study focused on exit poll data

that sought to learn about the experience of Boston voters, evaluate new poll worker training and protocol, and lastly, assess the reliability in “conducting a student-based, large exit poll in a multi-ethnic, multi-lingual environment” (2012, 10).

Based off of similar regression analyses, the study found that there were substantial differences in requests for identification. Blacks and Hispanics were more likely to be asked for ID than Whites of similar sex, education, and age. They also found that those, whose primary language was not English, were also more likely to be asked for ID (Cobb, Grenier, and Quinn 2008). Thus, Cobb, Grenier, and Quinn found that they had strong evidence to suggest “blacks, Hispanics, and non-English speakers were asked for ID at much higher rates than whites and English speakers” (2012, 22-23). Considering that Massachusetts only had the HAVA requirement in place during this election cycle, Cobb, Grenier, and Quinn articulated three harms that they believe came out of the results of their study. The first was that minorities were disproportionately deprived of the right to vote. Second, was the potential harm that could be caused by the possibility that street-level bureaucrats have the potential to reinforce stereotypes in a race-specific manner. Lastly, the harm caused by racial administration of voter identification harms.

The next study examined the effects of the implementation of the law during the 2012 presidential election. Jon C. Rogowski and Cathy J. Cohen conducted a study during the 2012 general election, where they found that Black and Latino youth were disproportionately affected by voter identification laws. This study was conducted between November 21 and December 5 through an online survey, where a total of 3,517 households participated with a 43.3% completion rate, which allowed for a sample size of 1,522 respondents.

Their data revealed that Black (65.2%) and Latino (57.0%) youth were asked to show photo ID at substantially higher rates than White youth (42.3%). They found this to be particularly striking in states with no identification requirements, where Black youth (65.5%) were asked to show identification at higher rates compared to Latino youth (55.3%) and White youth (42.8%). Furthermore, they looked into the racially discriminatory effects that voter identification laws had, finding that, “Black youth reported that the lack of required identification prevented them from voting at nearly four times the rate of White youth (17.3% compared with 4.7%). Latino youth (8.1%) were also affected at higher rates than white youth” (Rogowski and Cohen 2012, 1). Based off of this data, they find that voter identification laws are not applied consistently by poll workers and that Black youth are significantly more affected than White youth because they are much less likely to possess the most common forms of identification that state laws require such as driver’s licenses, birth certificates, passports, and college ID’s (Rogowski and Cohen 2012).

Voter Identification Laws and the Suppression of Minority Votes (2016):

Lastly, the most recent study conducted, attempts to answer the core question of whether or not voter identification laws ultimately reduce turnout and alter the makeup of the electorate. In this investigation conducted by three researchers at the University of California, San Diego, released in 2016, the researchers examined and analyzed data from the Cooperative Congressional Election Study to compare those states with strict voter ID laws to states that do not require voters to present photo ID at the polls (Hajnal, Lajevardi, Nielson 2016). The aim of the study was to ultimately compare the turnout rates of states with strict voter identification requirements, with turnout rates for those states that are not classified as “strict photo ID”, to test whether these stricter laws had differential effects on the participation of particular groups of the

voting population. Based on the existing literature, much of which was already examined above, the researchers hypothesized that these stricter forms of voter identification requirements did have the potential to dramatically impact turnout (Hajnal, Lajevardi, Nielson 2016). Ultimately, their analysis of the data showed that after controlling for other state level electoral laws that discourage participation, “strict photo identification laws have a differentially negative impact on the turnout of Hispanics, Blacks, and mixed-race Americans in primaries and general elections” (Hajnal, Lajevardi, Nielson 2016).

The paper begins by examining whether identification laws generally affect or lower voter turnout. They look at this data separated by two different categories, turnout in general elections and turnout in primaries. In both cases, they found that there was no obvious relationship between states with strict photo ID requirements and overall voter turnout. In essence, they found that voter identification laws do not increase or decrease turnout levels in the states (Hajnal, Lajevardi, Nielson 2016). However, they then examined the data by adding interactions between strict photo ID laws and race – Blacks, Latinos, Asian Americans, and Mixed Race Americans. In this case, their results suggested that the turnout rates for these groups were negatively and disproportionately impacted by the presence of strict voter identification laws. The models of the study showed:

... [S]ubstantial drops in turnout for minorities under strict voter ID laws. In the general elections, the model predicts Latino turnout was 10.3 points lower in states with photo ID than in states without strict photo ID regulations, all else equal. For multi-racial Americans, turnout was 12.8 points lower under strict photo ID laws. These effects were almost as large in primary elections. Here, a strict photo ID law could be expected to depress Latino turnout by 6.3 points and Black turnout by 1.6 points. Given the already low turnout of most of these groups across the country, these declines are all the more noteworthy (Hajnal, Lajevardi, Nielson 2016, 16).

After examining the effects of the requirements through race, the researchers then looked at the consequences through how it increased the gap in participation between white and non-white groups. During a general election, the gap between Latinos and whites doubled from 5.3 points in states without strict photo ID requirements to 11.9 points in states that did have a strict photo ID law. For African Americans, the results were similar in that the gap doubled from 4.8 points in states with no strict photo requirement, to 8.5 points in states with a strict voter ID law (Hajnal, Lajevardi, Nielson 2016). Consequentially, these numbers affecting turnout and participation gaps could prove to be significant in determining election outcomes, particularly in close, competitive elections.

In accordance with the narrative used by opponents of voter identification laws in that they are a consequence of partisan politics, the paper also analyzed the interactions of strict voter ID laws between partisanship and political ideology. Their results suggested that the effects were substantial (Hajnal, Lajevardi, Nielson 2016). They found that in a general election, Democratic turnout drops by an approximate 7.7 points when a state has a strict photo ID requirement in place. For Republicans, the drop is 4.6 points. In terms of ideology, strong liberals experienced a 10.7-point drop in states with strict photo ID requirements, whereas the drop for strong conservatives was 2.8 points (Hajnal, Lajevardi, Nielson 2016). In this case, there was a substantial and severe difference in the participation of strong liberals and strong conservatives.

This study also analyzed the effects of strict voter identification laws and a voter's immigration status. When the researchers controlled for immigration status, they found that strict voter identification requirements showed to have had a disproportionate effect on naturalized citizens and those who were foreign born; the interactions were negative (Hajnal, Lajevardi, Nielson 2016). In strict photo ID states, naturalized citizens were 12.7 percent less likely to vote

in general elections, and 3.6 percent less likely to vote in primaries (Hajnal, Lajevardi, Nielson 2016). Although the results suggest that there is a deterrent effect for naturalized citizens to go vote in states with strict photo identification requirements, the researchers still felt hesitant in offering a firm connection between strict photo ID laws and immigration.

The researchers also looked at the relationship between strict photo identification requirements and social class, where they found their results to not be as clear as in the other interactions they looked into. They did find a significant turnout reduction during primary elections in the participation of those at the very bottom of the socio-economic ladder who did not have high school degrees. They did not find there to be any other significant reactions in regards to class (Hajnal, Lajevardi, Nielson 2016). However, from what we have reviewed previously, social class and race have shown to have a strong correlation, with African American and Latino groups making up some of the poorest groups.

After finding that states with strict voter identification laws did show to have a disproportionate impact on racial minority groups, the researchers concluded that what's more, is that "these voter ID laws are becoming stricter and more common" (Hajnal, Lajevardi, Nielson 2016, 25). All in all, the researchers conclude, "Given that we find the most pronounced effects among racial and ethnic minorities who have overwhelmingly favored the Democratic Party in recent years, there is reason to suspect that there are, in fact, clear partisan consequences to these laws" (Hajnal, Lajevardi, Nielson 2016, 19). In essence, voter identification requirements have the potential to cause even more damage than they what they have found in their study, if they continue to be enacted and implemented at these rates across the country.

As the outlines of these studies and their results suggest, and what scholars have also commented on, has been the lack of consensus in regards to what effects voter identification laws

have on turnout and on the electorate in general. While some find there to be an effect on racial minority groups, young people, and elderly people, others find that no such effects exist. This only continues to emphasize how difficult it is to obtain empirical research concerning the deterrent effect of voter identification laws. One thing that seems to be agreed upon generally is the idea that as the cost of voting remains low, turnout will remain high and vice versa. However, in this case, the controversial issue turns into whether voter identification legislation comes across as costly to the average voter, thus causing them to refrain from going to the polls on Election Day.

Chapter 5
Case Studies

As of now, much of what we have reviewed has been the literature on voter identification laws on a national level. In order to be able to see the similarities and differences, it is important to also study this phenomenon on a state-by-state basis. This allows for observations to be made concerning the sources of variation that have propelled the implementation of these laws into the national spotlight.

Election law is usually left to the states to decide since it is a state issue under the tenth amendment and others. As this is the case, there are a variety of voter identification requirements in each state. While some are less restrictive such as in states like Massachusetts (no document required to vote) or Connecticut (non-strict, non-photo ID), there are others that are more narrowly tailored such as in Ohio (strict non-photo ID) and Indiana (strict photo ID). According to scholars, there can be many different reasons as to why each state seems to go through a different process in implementing their voter identification requirements. Some of these possibilities range from struggles between the major political parties, the role of the courts in that particular state, and the public opinion of the state's voters. These possibilities can be looked at, on these individual state levels, in order to assess how they play out on a national scale.

Georgia

Georgia is one of nine states that have the strictest form of voter identification requirements in place. In order to be able to cast a ballot in the state of Georgia, one must present a valid form of photo ID. The acceptable forms of photo identification include: a Georgia drivers license (even if expired), an ID card issued by the state of Georgia or the federal government, a free voter ID card issued by the state or county, a U.S. passport, a valid employee ID card containing a photograph from any branch, department, agency, or entity of the U.S. government or state, a valid U.S. military identification card, and a valid tribal identification card (Underhill

2016). In terms of the scholarly literature analyzed, Georgia, similarly to Indiana, could be considered one of the ideal case studies in the study of voter identification requirements, as it contains some of the prime attributes associated with the passage of voter identification laws. In 2005, the 148th legislature of Georgia was Republican dominated, with a Republican majority in both chambers. At the time of the amendments to Georgia's voter identification law, along with a Republican-led legislature, there was also a Republican Governor in office, which allowed for the smooth transition in the implementation of the law (Colwell 2012). Georgia's relation as a Southern state as well, and the fact that most of its jurisdictions were under those that needed to be pre-cleared by the Department of Justice under the Voting Rights Act also makes it a particularly interesting case study. Georgia's strict photo identification requirement, which was an amended version of a 1997 identification law, faced legal challenges that resulted in the state Supreme Court ruling on behalf of the state in allowing the photo identification requirement to stand (Colwell 2012).

In 1997, the Georgia General Assembly amended Title 21 of the Official Code of Georgia Annotated, in which voters were required to present certain forms of government-issued identification in order to cast a ballot on Election Day. The forms of acceptable identification under this amendment included: a Georgia driver's license, a government employee identification card, a passport, a student identification card from a school located in Georgia, and a valid hunting or fishing license (Colwell 2012). If a voter were not able to present either form of acceptable identification, they would still be able to vote, so long as they identified under oath and threat of punishable felony as to their identity (Colwell 2012). There were no challenges to this election law amendment.

In 2005, the law was amended. This time, the law was changed to restrict the forms of acceptable IDs, and introduced the caveat that if a Georgia voter did not present any of the acceptable forms of identification, they would only be allowed to vote on a provisional ballot. In order for the ballot to be counted, the voter would have to verify their identity within a certain amount of time at the county registrar's office with an acceptable form of photo identification (Colwell 2012). The new list of acceptable forms of identification was reduced to the following: a Georgia driver's license, a government employee identification card, a passport, a military ID, or a tribal identification card (Colwell 2012). This new law eliminated the student identification cards and the hunting or fishing licenses that were acceptable under the 1997 amendment. It also added in the requisite that the Georgia's driver's license needed to be an unexpired one. The first suit against the law was brought, where the district court ultimately decided that the law constituted a poll tax on the basis that Georgia voters had to pay a fee to be able to get access to a form of acceptable ID under the new 2005 law (Colwell 2012).

In order to remedy the issues that the court had on the amendment of 2005, the state legislature once again amended the law in 2006. The new amendment had two drastic changes to the existing law: (1) to the list of acceptable forms of ID, the "Georgia identification card" was added, and (2) these cards would be provided free of charge to Georgia voters with no exceptions. Even with these changes to the voter identification law, a suit was still brought against the constitutionality of the law under the Georgia state constitution (Colwell 2012). The case of the *Democratic Party of Georgia, Inc. v. Perdue et al.* made its way up to the State Supreme Court where it was upheld as constitutional under the Georgia constitution in a 6 to 1 decision. The Democratic Party of Georgia, Inc. challenged the voter ID law on the basis that it "(1) imposed an unauthorized qualification on the fundamental right of registered Georgia voters

to vote and (2) denied equal protection by unduly burdening the right to vote under the state's constitution" (Von Spakovsky 2011). Similarly in the case of *Crawford* from Indiana, the state Supreme Court upheld the Georgia voter ID requirements on the basis that the state had a vested interest in preventing voter identity fraud. The Georgia Supreme Court "arrived at the conclusion in *Perdue* that the fraud prevention justification was adequate support for the 2006 Act, despite no actual showing of fraud by impersonation in Georgia elections" (Colwell 2012, 1145). This interest of the state is a repeat in the justification of the voter identification requirement that came out of the 2008 *Crawford* decision in Indiana.

Again, we see that through the court system, voter identification laws are viewed based on a balancing scale of the state's interest in preventing fraud and "protecting the integrity of the system", to the burden that the requirement places on the voters. In the case of Georgia, just as we have seen in the case of Indiana, the balancing test favored the interest of the state to prevent fraud that they claim is indeed present in their election system. The court cited lack of evidence on the side of opponents of the law to show that the requirements unduly harmed or prohibited voters from accessing the ballot box. However, on both occasions, the state had also not presented evidence as to the identity fraud that these voter identification requirements were to prevent. This has been brought into question by many scholars opposed to voter identification requirements, and has fueled their discourse on voter identification laws being more of a partisan issue, rather than a prevention of voter identity fraud issue. Georgia continues to have one of the most stringent voter identification laws in the nation.

Pennsylvania

Pennsylvania is one of several states that do not require a document in order for its citizens to vote. However, this was not the case in 2012, when the state attempted to implement a

strict photo identification requirement. The law was immediately challenged by liberal groups claiming that the law would have disproportionate effects on the less privileged and that this was mainly a voter suppression tool backed by the Republican Party to diminish the votes of those who tended to vote Democratic. The Republican leader in the house was even quoted saying that the voter ID requirement would allow Mitt Romney to win Pennsylvania in the 2012 general election (Cernetich 2012). Proponents of the law however, claimed that they were simply “protecting the integrity” of the Pennsylvania election system (Bronner 2012). This narrative falls along the same lines of the narrative that has been gripping the national battle over voter identification laws. It then sets up the case to answer the basic question of whether it is more important to protect the integrity of the system, or to protect access to the polls for all eligible citizens.

The Pennsylvania voter identification law is also very similar in the trend that has been observed with other voter identification requirements in other states, in that support to its passage in the legislature had fallen along partisan lines. The law was first introduced by Republican legislators, passed in both chambers, and was then signed by the Republican governor, Tom Corbett. It did not receive any support from Democratic legislators (Lyman 2014). Governor Tom Corbett signed the voter ID law on March 14th, 2012, and it was challenged on July 25th (Lyman 2014). This only lent further speculation concerning the origins and need for this law to be in place, particularly as a general election in November was soon approaching.

The law was challenged on state constitutional grounds in the courts, and would eventually reach up to the state supreme court, but not until other state judges found that the voter identification bill did not place a significant burden on voters. The case challenging Pennsylvania’s voter ID law, *Applewhite, et al. v. Commonwealth of Pennsylvania, et al.*, was

brought fourth by the ACLU of Pennsylvania, the Advancement Project, the Public Interest Law Center of Philadelphia, and the Washington, D.C. law firm, Arnold & Porter LLP. The lawsuit claimed that the state's voter identification requirement violated the state constitution by depriving citizens their constitutional right to vote (*Applewhite, et al. v. Commonwealth of Pennsylvania, et al.*). The suit sought an order to a preliminary injunction that would stop the law from being implemented in the coming elections.

Judge Robert Simpson declined to issue the preliminary injunction on August 15th. He found that the law was not burdensome enough to go against the state's interest in trying to prevent voter identity fraud, particularly because there was no direct evidence to prove that it would negatively affect groups of the electorate. He justifies his dismissal of the preliminary injunction, "Thus the photo ID requirement of Act 18 is a reasonable, nondiscriminatory, nonsevere burden when viewed in the broader context of the widespread use of photo ID in daily life... The commonwealth's asserted interest in protecting public confidence in elections is a relevant and legitimate state interest sufficiently weighty to justify the burden" (Bronner 2012). In his decision, Judge Simpson also heavily relied on the promises made by state officials to provide identification to those who lacked the requisite ID to be able to vote under the law. State officials claimed that they would organize a broad outreach campaign to provide these IDs, and to those who were not able to get them by the elections in November, would be able to vote through provisional or an absentee ballot (Bronner 2012). Opponents of the voter ID law claimed that the Judge was taking on too much good faith, and that the state had not started to take the necessary steps to even start implementing the initiatives they claimed would ease the burden on voters.

Groups opposed to the law and not content with the decision reached by Judge Simpson said that they would appeal to the State Supreme Court to attempt to bar the law from being implemented before the 2012 November general elections. On September 13th, the State Supreme Court heard oral arguments on the appeal, and on September 18th, in a vote of 4-2, the court issued an order for the case to be remanded back to the lower courts for reconsideration (*Applewhite, et al. v. Commonwealth of Pennsylvania, et al.*). The State Supreme Court wanted the lower courts to determine whether the state's initiatives to provide "liberal access" to ID cards were reliable. The majority wrote, "Upon review, we find that the disconnect between what the law prescribes and how it is being implemented has created a number of conceptual difficulties in addressing the legal issues raised" (Bronner 2012). The State Supreme Court found it much harder than Judge Simpson did to accept the state's assertions that all voters would have the necessary ID by the November elections.

The second trial for a preliminary injunction order began on September 25th, and was again presided over by Judge Simpson. The decision of the order was released on October 2nd. This time around, Judge Simpson issued a partial injunction, which allowed those who did not have the proper ID to vote on a provisional ballot during the November 2012 election. On February 19, 2013, that injunction was later extended to include the May 2013 primary (*Applewhite, et al. v. Commonwealth of Pennsylvania, et al.*).

On July 15, 2013, the trial for a permanent preliminary injunction began, with Judge Bernard L. McGinley presiding over the case. The decision was issued on January 14th, 2014, where a permanent injunction barring the voter ID law from going into effect was issued (*Applewhite, et al. v. Commonwealth of Pennsylvania, et al.*). Judge McGinley noted, "Voting laws are designed to assure a free and fair election... The voter ID law does not further this goal"

(Lyman 2014). In deciding his ruling, Judge McGinley found that the state's efforts in providing those without an ID the necessary identification to vote were full of misinformation. The law was meant to provide those without driver's licenses or other approved identification, these documents, but that actually proved to be difficult on the voter and sometimes impossible to obtain (Lyman 2014). Wendy R. Weiser, the director of the Democracy Program at the Brennan Center for Justice at New York University, commented on the distinction between the voter ID case in Pennsylvania, and the one in Indiana, that was found to be constitutional by the Supreme Court. She noted that the main difference lay in the facts of the two cases (Lyman 2014). Indiana was decided on a theoretical basis, as it was challenged in court even before it was enacted. In the case of Pennsylvania, the Judge was able to see the initial effects it would have on groups of the electorate, as it had been in effect and a significant number of voters claimed to have difficulty in accessing the requisite forms of ID. Weiser says, "The court really looked at the actual impact of the law... Some of the past decisions have come without doing a real, close look at the impact. The issue is how they affect people in practice, not in theory. And in practice, it turns out that a significant number of people can't get the photo ID they need" (Lyman 2014).

In April, Judge McGinley denied the state's motion to reconsider the ruling, and on May 8, 2014, Governor Corbett announced that the state would not be appealing the ruling barring the voter identification law from going into effect to the State Supreme Court (*Applewhite, et al. v. Commonwealth of Pennsylvania, et al.*).

Many proponents of voter identification laws disregard the costs associated with implementing such requirements, not just on the residents, but also on the state. Regardless of whether or not the IDs are provided at "no cost" to the registered voter, there is still the possibility of unforeseen costs that could affect whether the voter would be able to access the ID

or not. A report conducted by the Institute for Race and Justice at Harvard Law School examined and analyzed the costs associated with providing “free” voter ID’s in states with voter ID requirements. The report found that:

.... [T]he expenses for documentation, travel, and waiting time are significant – especially for minority group and low-income voters – typically ranging from about \$75 to \$175. When legal fees are added to these numbers, the costs range as high as \$1,500. Even when adjusted for inflation, these figures represent substantially greater costs than the \$1.50 poll tax outlawed by the 24th amendment in 1964. When aggregating the overall costs to individuals for “free” IDs in all voter ID states, plus the costs to state government for providing “free” IDs, the expenses can accumulate into the \$10’s of millions per state and into the \$100s of millions nationwide (Sobel 2014, 2).

In determining the costs associated with one attempting to get access to the “free” voter IDs offered by the state, the report looked at four factors: (1) Time costs involved in learning about photo voter ID requirements and how to meet them; (2) Costs of purchasing required birth, marriage, naturalization, and other certificates. In some instances, the calculations include legal fees needed to secure these documents; (3) Costs of travel expenses to the departments of vital records and motor vehicles, and the potential cost of hiring a driver and/or vehicle; (4) Costs of travel time and waiting time at the agencies (Sobel 2014). In the particular case of Pennsylvania, the report documented the costs accrued by three individuals who were in need of these voter IDs in order to be able to vote. The first voter accrued a cost of \$133.61. The second voter had a cost of \$172.39, and the last voter was calculated to have spent \$107.25 (Sobel 2014). These results show that these “free” voter ID cards are not in fact free, which calls for courts and state legislatures to relook at these programs implemented by states with voter identification requirements.

Many proponents of the voter identification requirements disregard the costs of obtaining the necessary documents needed to be able to get the “free” IDs offered by the state. In the

particular case of Pennsylvania, the cost of a birth certificate is \$20, which does not include the cost associated with one having to make the trip to retrieve the birth certificate, or the costs with getting the document shipped to their place of residence (Pennsylvania Department of Health). Although the social security card is free to obtain, there is additional documentation needed to be able to apply for the card, such as a U.S. birth certificate or U.S. passport, a U.S. driver's license, a state issued non-driver identification card, and so fourth (Pennsylvania Office of Social Security). Thus, the findings of the report by the Institute for Race and Justice raised significant points in accordance with the claim that as long as voter ID states provide "free" IDs to residents who do not have one in order to vote, those people would not be hindered in their access to the ballot box. This has the very real possibility of not being the case, as the findings show that there are costs associated with these "free" ID cards.

The battle in Pennsylvania over its attempt to implement a strict voter identification requirement was focused mainly in the legal system where decisions on whether or not to uphold the law were being grappled with for about three years. In this particular case, the courts found that the state was not doing its share in ensuring that those without driver's licenses and valid identification were able to obtain one in time for the upcoming elections. Thus, it was their decision to rule against the law. Now, Pennsylvania is one of several states in which no document is required for one to cast a ballot.

Minnesota

Similarly to the case of Pennsylvania, Minnesota was another state that attempted to implement a strict photo identification requirement in order for its residents to cast a standard ballot on Election Day. At the time of the proposal of the legislation, Republicans held a majority in both chambers of the state legislature. Although there was a Democratic governor in place at

the time, in order to amend the constitution in the state of Minnesota, a simple majority in both chambers needs to approve, and then the amendment needs to be voted on by the voters. This process completely bypasses the governor all together. However, the effort to enact the bill failed during the 2012 election, when the voters of Minnesota turned down the voter ID requirement by voting against it in the referenda process. Now, Minnesota is one of various states that do not require a document in order for one to cast a standard ballot.

When the bill was first introduced by the state legislature, it seemed that the bill would pass with relative ease as public opinion in Minnesota was generally in favor of the state implementing a photo identification requirement. In June prior to the November election, a public policy polling survey found that 58% of voters supported the constitutional amendment, requiring voter ID, while 34% opposed (Melillo 2012). The same survey in September showed that opposition to the amendment had begun to increase, while support of the amendment remained stagnant. In September, 39% of voters opposed the amendment, which grew even more in October, when the survey found that 43% were opposed to the voter identification requirement (Melillo 2012). Days before the election, the growth in opposition to the photo ID requirement continued to increase, when a public opinion survey showed that 51% of voters were opposed, in contrast with 46% of voters that still supported it. Finally, during the November election, the amendment was defeated at a count of 52% that were opposed, and 46% that were in support (Melillo 2012).

The results in Minnesota are striking in the sense that public opinion at first glance, greatly favored the passage of an ID requirement. As the election grew closer however, voting rights advocates launched campaigns “to educate the public about how the proposed constitutional amendment would make it harder for Minnesota’s seniors and veterans to vote,

end Election Day registration, and force more people to vote on provisional ballots that might not be counted” (Melillo 2012). While much of the public was in favor of the constitutional amendment at first because most voters had the requisite forms of identification to be able to vote, the campaigns carried out by voting rights advocates educated the public concerning the groups that did not have the required forms of identification, and would thus be negatively impacted by the law.

Those voters that opposed the bill were divided and tested based on their party affiliation. Voters who were registered as Democrats showed a shift of about 30 points from supporting the amendment to opposing it, between June and November, the shift moved from 54% opposed to 82% (Melillo 2012). Voters registered as Independents also exhibited a similar shift, where poll results in June showed that 35% opposed the amendment, and in November, the poll numbers were almost evenly divided between those who supported and opposed the bill. Lastly, voters registered as Republicans, also showed some evidence of switching their stance from supporting to opposing the ID requirement leading up to the election, though not as large of a shift as seen with Democratic and Independent voters (Melillo 2012).

Thus, Minnesota shows us that public opinion has the ability to change regarding the support of voter identification requirements. Once voting rights groups pushed campaigns informing the public of the consequences associated with photo identification requirements, support dwindled tremendously. Minnesota has the possibility of showing us that voters do in fact care about other voters having convenient access in casting a ballot on Election Day, rather than just the sole interest of protecting the integrity of the system from fraud. This possibility collides with the claims made by voter identification proponents that have cited studies that show voters are more willing to give up easy access in return for a fraud-free system. Though those

studies may have generally found that public opinion gears towards integrity, the voters of Minnesota have showed that they also care about access.

Ohio

The state of Ohio has in place one of the strictest non-photo forms of voter ID requirement. In order to be able to cast a ballot on Election Day, a resident of Ohio is required to state their full name, current address, and provide proof of identity. The acceptable forms of ID in Ohio are: an unexpired Ohio driver's license or state identification card, a military identification card, photo identification issued by the United States or the state of Ohio, a current utility bill with the voter's name and current address, a current bank statement, a current government check, a current paycheck, or any other current government document with the voter's name and address (Underhill 2016). In the case that the voter does not have either of these forms on Election Day, they are allowed to vote on a provisional ballot, and must return to the Board of Elections office no later than seven days after the election in order for the provisional ballot to be counted (Underhill 2016). As mentioned previously, the reason Ohio's voter identification law is classified as "strict", is due to the additional steps a voter who votes on a provisional ballot must take after the election in order to have their ballot counted.

Ohio's voter identification requirement is not as big of a surprise to some as, say, Rhode Island's implementation of a voter identification requirement. An important swing state in most elections, Ohio has heavily experienced the counter-attacks against electoral reforms that make voting easier for most groups, particularly racial minority groups and young people. In the past, Governor Kasich had signed legislation that cut off early voting reforms and that has eliminated same day registration for voters (Berman 2015). As for voters who go to vote on Election Day, Ohio is infamous for having too few functioning voting booths at poll places, which has caused

long wait times for voters to be able to cast a ballot. For example, in 2004, a lack of voting machines in polling areas were heavily concentrated in student and minority areas, where a Democratic report predicted a loss of 174,000 potential votes, as voters just became frustrated with the wait and left without casting their ballots (Roth 2015). Hence, Ohio has had a history with counterattacks on electoral reforms that we have previously seen as being most useful to the groups that may be hindered most by voter identification requirements.

The push for the voter identification requirement in Ohio was not a particularly controversial one, unlike that in Pennsylvania and Minnesota. It passed relatively easily through both Republican-led chambers in the legislature, and became law in 2006. The NAACP in Ohio expressed its opposition to the voter ID bill, but did not exert any significant opposition to have the bill stopped. Although the pushback in Ohio was not as evident as in Pennsylvania, the movement it caused post implementation was tremendous, particularly within the African American community as was witnessed in the 2012 presidential election (Ramirez 2012). President Obama was able to win Ohio due to the turnout of the African American community, a record turnout for the group; the turnout of the African American population was even larger than in the 2008 presidential election. They made up 15 percent of the Ohio electorate in 2012, a jump from 2008, where they made up 11 percent of the electorate (Ramirez 2012). As the state of Ohio was engaging in this roll back of electoral reform, racial minority groups felt that their voting rights were in jeopardy, and so turned out in these record numbers to preserve their voting rights.

Liberal groups such as the NAACP, an alliance of Masons, Methodists, and black unions engaged in a coalition to build strong get-out-the vote movements, which in 2012 were successful. They were able to organize door-to-door educational campaigns that would

eventually evolve into registration drives (Ramirez 2012). These campaigns were meant to ensure that African American voters were registered correctly in their districts and were aware of the electoral rules in place in Ohio in order to be able to cast a standard ballot on Election Day.

With a strict non-photo ID requirement already in place in Ohio, there has been recent movement by the Republican dominated legislature to reform the voter ID requirement to refine the acceptable forms of identification even further. In 2015, legislation was introduced by Representative Andrew Brenner, which would only allow a driver's license, passport, military ID, or an \$8.50 special state ID card to be used as authenticating documents (Roth 2015). Representative Brenner had commented on the legislation as being necessary in order to prevent illegal voting by non-residents, non-citizens, or others. However, there has been pushback on this legislation, particularly from Secretary of State, Jon Husted, who is also a Republican. Husted has noted reservations on the bill due to the lack of voter identity fraud that has been documented in the state (Roth 2015). In a 2013 report, only 17 cases were reported of non-citizens casting a ballot, out of a turnout of 5.63 million votes cast. In 2012, a left-leaning think tank, Policy Matters Ohio, also published a report noting that approximately 930,000 eligible voters may not have the identification necessary to vote. Of these eligible voters, there were a disproportionate number of non-whites, college students, and those with low incomes that could be affected by a more stringent voter identification requirement (Roth 2015).

Rhode Island

Rhode Island has turned out to be the biggest surprise among scholars who study electoral reform and voting rights. Not completely falling within the narrative opponents of voter identification laws rely on, such as how these laws are mainly pushed by the right wing, the passage of Rhode Island's voter ID law was definitely not partisan.

In 2011, Rhode Island implemented a non-strict, non-photo ID requirement for its voters. Senator Harold Metts, who also turned out to be the sole black legislator at that time, introduced the bill. In May of 2011, the bill was passed in the state senate with a vote of 28 to 6, with the support of the Senate president (Moakley 2012). The bill was then introduced in the house, where it was co-sponsored by the speaker of the house, Gordon Fox, and it passed with a vote of 52 to 21 in June of 2011. Then governor, Lincoln Chafee, then signed the bill, noting in a statement that he had made efforts to ensure that this bill did not unduly burden citizens of the minority population. He had made sure to speak with “representatives of our State’s minority communities, and I found their concerns about voter fraud and their support for their bill particularly compelling” (Moakley 2012, 365). The voter identification requirement in Rhode Island seemed to pass with relative ease through the state legislature, with little pushback from interest groups and the Democratic Party in the state.

At the time of the bill’s passage, the role of the Republican Party was relatively weak within the state, where Republicans only comprised about 16 percent of the legislature’s members (Moakley 2012). This is definitely a deviation from what has been observed in other states such as Texas, Indiana, and Georgia, where the push for voter identification requirements was mainly being pushed by the right wing and their national agenda. However, the ethnic component in the state of Rhode Island seemed to have an impact on the passage of the law, as the support from the minority community was generally large. The two largest minority groups within Rhode Island are African Americans, and the growing bloc of Latinos. As these populations began to increase in size, redistricting plans allowed them to be able to vote in members of racial minorities to the state legislature (Moakley 2012). In 2011, these same elected representatives and activists publicly supported the passage of this voter ID legislation, who

“because of their most recent successes probably felt that, given demographic trends, ultimately they had nothing to lose from the new regulations that would put to rest questions about the legitimacy of their electoral successes (Moakley 2012, 363).

Although clearly not influential enough, there were groups in Rhode Island that opposed the voter identification bill from becoming law, and mounted campaigns against it. The unions, which are a major bloc in the state of Rhode Island, were opposed to the voter ID bill, but at the time of the 2011 legislative session, were not in a particularly favorable situation to mount a strong oppositional force (Moakley 2012). Due to the fiscal crisis of those years, there was a shift in the platform of reform efforts. During this legislative session, the unions were fighting to justify contracts and preserve their existing benefits that were on the block to be eliminated (Moakley 2012). Thus, most of the effort was spent in trying to preserve these platforms, rather than in forming a heavy opposition against the implementation of voter ID requirements.

The American Civil Liberties Union (ACLU) in Rhode Island, Common Cause, and the NAACP were also opposed to voter identification requirements. These groups mounted campaigns against the proposed bill, but their efforts gained little traction due to the same concentration of attention on the fiscal crisis happening within the state (Moakley 2012). Those surprised at the passage of the voter ID legislation were not just surprised by the fact that those on the left heavily supported it. They were also surprised because of the heavy emphasis placed on the fiscal crisis during this legislative session that made it seem that these same distractions would also detract from the passage of this bill, “Partially it was the result of the distraction of the fiscal crisis and partially it was because most observers, given the prevailing crisis mode, did not expect legislation of this type to go forward” (Moakley 2012, 361). There were many things

on the radars of legislators and the public that distracted them from the realities of this proposed legislation.

There was also the notion from interest groups against the voter ID requirement, that proposing this legislation was just another political move that they have seen before, “. . . . But for a while the speculation was that this was a good cop/bad cop strategy, used frequently in the legislature. . . .” (Moakley 2012, 365). As was the custom of this “strategy”, interest groups expected that only one chamber would pass the bill, and at the last minute, the other would not bring it up for a vote, essentially letting the bill die. When this did not turn out to be the case, and both chambers passed the bill, with the house being the last to do so, Rhode Island now had a voter identification requirement (Moakley 2012).

Following the passage of the bill, there was strong criticism against the bill following the narrative that was also very prevalent on the national level, citing the passage of these laws as “a solution looking for a problem”. Even in Rhode Island, there was no hardcore evidence showing fraud in the state, other than a few anecdotal examples, but those would eventually be debunked during campaigns organized by the opposition citing that the perception of fraud was not enough to create more restrictive voting regulations for voters (Moakley 2012). However, despite little evidence of fraud, public opinion even after the passage of the bill was heavily in favor of implementing these new voting requirements. In December of 2011, a poll was administered that asked a group of respondents whether or not they approved of the new law. A majority had responded that they in fact did support the measure (84.9% approved), and there was very little difference in party affiliation. The poll showed that based on party affiliations, nearly 80 percent of Democrats approved of the new legislation, and almost all Republicans (96.6%) were in favor of the new law (Moakley 2012, 365-366). Thus, there seemed to be little difference, at least

between party affiliation and race, of those who supported the passage of the non-strict, non-photo voter identification requirement.

At the end of the 2011 legislative session, Rhode Island implemented new voter identification requirements that would be phased in within two election cycles. The first, to be enacted for 2012, would have poll workers request ID as voters sign in. At this time, acceptable forms of identification included: a driver's license, passport, college ID, U.S. military ID, government-issued medical card, and credit or debit cards (Moakley 2012). Under this law, no voters would be turned away if they did not have any of these forms of identifications on Election Day; instead, they would be allowed to vote on provisional ballots. In the case that they did not have either of these acceptable forms, they would still be allowed to present non-photo identification, which included utility bills, or social security cards that contained their name and address (Moakley 2012). As long as the signature provided at the polls, matches the signature on the registration form, the provisional ballot would be counted. For the 2014 election cycle, the law would change to what is currently in place in the state of Rhode Island, in which poll workers may only accept photo ID's on Election Day (Moakley 2012).

Lastly, with the implementation of a new voter ID requirement, Rhode Island attempted to alleviate this additional burden to the voter by implementing a "mobile operation that travel[ed] to senior centers, homeless shelters, non-profit organizations, and special events to provide free IDs to citizens who lack a photo ID. The state has budgeted funds for this initiative which is a critical component of avoiding a constitutionally troubling indirect poll tax" (Moakley 2012, 367). As to the results of these new requirements, in the 2012 presidential primary, there were 26-voter ID-related provisional ballots cast, where only one was rejected. As of July 2012, after two municipal elections and two statewide elections, 85 voter-ID related provisional ballots

have been cast in the state of Rhode Island, where 20 were rejected (Moakley 2012). It is unclear as to why these ballots were ultimately rejected by poll workers.

North Carolina

Lastly, we turn to look at the state of voting rights in North Carolina. It is important to include North Carolina in the description of these case studies due to the recent steps that have been taken on behalf of the public to protest the state's attempt to implement more stringent voter identification requirements. Currently, North Carolina has a non-strict, photo ID requirement in place. Under this law, a variety of documents are accepted at the polls, including: a North Carolina driver's license that can be expired, a North Carolina state identification card, a passport that can be expired, a U.S. military or veteran's identification card, and a federally recognized tribal enrollment card. This new law was enacted in 2013, and amended in 2015, but did not officially go into effect until 2016, just in time for the upcoming primaries and elections (Underhill 2016). The enactment of this voter identification requirement was accompanied with other electoral reforms in 2013 that many deemed to be tactics to suppress particular voters.

After the Supreme Court struck down the coverage formula of the Voting Rights Act in 2013, the Republican-dominated North Carolina legislature quickly and quietly passed a bill that essentially eliminated everything that encouraged citizens in North Carolina to vote. It was passed in the legislature late on the night of July 25th, after only three days of debate on the floor (Berman, The Nation, 2013). It is important to note that there were jurisdictions in North Carolina that were subject to pre-clearance by the Department of Justice under the Voting Rights Act. Rick Hasen from the Election Law blog called the bill that was passed in 2013, "the most sweeping anti-voter law in at least decades" (Berman, The Nation, 2013). The bill that was passed in North Carolina included the elimination of multiple electoral reforms that had been

used and had benefitted particular groups in the state. The bill had eliminated certain forms of ID from being accepted at the polls under the voter ID law, such as student IDs and public employee IDs. This caused commotion, as there was evidence that 318,000 registered voters in the state lacked the acceptable forms of photo ID that poll workers could accept on Election Day. There is also no evidence to suggest that voter impersonation fraud was a problem in North Carolina, as there were no recorded prosecutions (Berman, *The Nation*, 2013). Next, the bill cut early voting by a week, even though there was evidence that showed that 56% of the residents in North Carolina used early voting in the 2012 election. Lastly, the bill eliminated same-day voter registration during the early voting period despite the fact that 96,000 people used it during the 2012 general election, and “states that have adopted the convenient reform have the highest voter turnout in the country” (Berman, *The Nation*, 2013). The bill also affected other aspects of voter registration and Election Day voting, but the ones outlined above seemed to have sparked the most debate.

The elimination of these reforms sparked considerable outcry, as much of the evidence showed that these reforms were widely used by particular populations in North Carolina, and that these same groups benefitted from them tremendously. For example, it was noted “African-Americans are 23 percent of registered voters in the state, but made up 28 percent of early voters in 2012, 33 percent of those who used same-day registration and 34 percent of those without state-issued ID” (Berman, *The Nation*, 2013). The counter-attacks on electoral reforms that have been mentioned previously is clearly at work in the state of North Carolina as we can see through the passage of this controversial bill in 2013. As also mentioned previously by the literature, reforms such as the cut back of early voting and same-day registration were reforms widely used

by racial minority groups around the country, and the evidence from North Carolina clearly suggests that this is so.

The passage of this bill also falls in line with what many scholars view as the partisan divide taking over these voter suppression tactics. After the bill was passed in North Carolina, the longest standing Democratic state representative, Mickey Michaux, stated: “I want you to understand what this bill means to people... We have fought for, died for, and struggled for our right to vote. You can take these 57 pages of abomination and confine them to the streets of Hell for all eternity” (Berman, *The Nation*, 2013). Anita Earls, the executive director of the Durham-based Southern Coalition for Social Justice and the former assistant attorney general for civil rights during the Clinton administration stated, “We will see long lines, many citizens turned away and not allowed to vote, more provisional ballots cast but many fewer counting, vigilante observers at the polling place and all disproportionately impacting black voters... This new law revives everything we have fought against for the past ten years and eliminates everything we fought for” (Berman, *The Nation*, 2013). This movement towards making voting more difficult for residents in North Carolina has deemed the state as “the new poster child for voter suppression”, being recognized as even worse than the efforts that have been made in Florida (Berman, *The Nation*, 2013).

These rollbacks on electoral reforms have sparked considerable participation on behalf of the public. Voting rights in North Carolina are seen as being in critical danger as scholars and the public alike, view it as the new Selma (Berman, *The Nation*, 2016). Even very recently, on February 13, 2016, tens of thousands of people marched in Raleigh to fight for voting rights, with signs that read, “It’s Our Time, It’s Our Vote” and “Don’t Block the Ballot”. After the passage of the bill that implemented a voter ID requirement, cut back early voting, and

eliminated same-day registration during the early voting period in 2013, it was estimated that thousands of people were turned away on Election Day during the 2014 elections in North Carolina (Berman, *The Nation*, 2016).

The purpose of the march was prompted by the rejection of an eighty-six year old woman from receiving a state photo ID that would allow her to vote for the March primary. The woman, Reba Bowser, had moved from New Hampshire to North Carolina within the last year, and due to the new law taking effect this year, she needed to transfer her New Hampshire ID to a North Carolina state ID (Berman, *The Nation*, 2016). Bowser brought her expired New Hampshire driver's license, two birth certificates, her social security card, a Medicare card, and her apartment lease to the DMV to receive her new North Carolina driver's license. Unfortunately, she was not able to receive her new ID, "[b]ecause the name on her birth certificate, Reba Witner Miller, did not perfectly match the name on her current documents, Reba M. Bowser, following her marriage in 1950" (Berman, *The Nation*, 2016). Eventually, Bowser was able to receive a voter ID, but was only issued it by the DMV when significant public outcry was reported about the incident. There have been other cases similar to this one in North Carolina, which has caused considerable uproar on behalf of the public, particularly regarding the upcoming primary in March.

What has taken place in the state of North Carolina is but one of many examples of how voter identification requirements and the cutbacks on electoral reforms have impacted or hindered particular groups from accessing the ballot box. Due to the rising importance and the attention that legislation such as the one seen in North Carolina has been receiving, voting rights has become one of the foremost civil rights issues of our time.

Conclusion:

These case studies on Georgia, Pennsylvania, Minnesota, Ohio, Rhode Island, and North Carolina have presented the multiple facets associated with the battle concerning voter identification laws. In the cases of Georgia, Minnesota, Ohio, and North Carolina, they have presented as the ideal case studies for opponents of voter identification requirements in that they had legislatures that were dominated by the Republican Party, and thus (coincidentally or not) were more apt to pass stricter forms of the voter identification requirements in the country. These attributes have fallen in line with the major stream of narrative being used by opponents in that this issue is one of partisan control, rather than fraud control. Georgia also presented the attribute of being a Southern state, where many scholars have noted the parallels of these voter identification laws to the practices used in the 1950's prior to the passage of the Voting Rights Act to hinder racial minority groups from voting. In the case of Ohio, it is an important swing state that is vital in many presidential elections, and thus creates the incentive for the right wing to attempt to curtail access to those groups that tend to vote for Democratic candidates.

The commonality in these four states mainly relies on the make-up of their legislatures at the time of the passage of the bill. All four had Republican-dominated legislatures. In three of these states, there were Republican governors in place. These attributes are what Biggers and Hammer find in their analysis of voter identification laws in which they argue that the likelihood of a strict voter identification statute being passed in a state increases when there is partisan control of the state legislature and governorship, along with an increase in population of a racial minority group (2015). These states were able to pass their voter identification requirements due to the increased power of the Republican led legislature, along with un-influential opposition.

In the case of Pennsylvania, although the legislature was also dominated by the right wing at the time of the passage of the law, and was passed along partisan lines by both chambers and signed by a Republican governor, the law was still struck down as a violation of the state constitution. The difference in the case of Pennsylvania lay in the trajectory of the passage of the law. The voter identification requirement in the state had been implemented and enacted, and at work during an election cycle by the time the case reached the state supreme court. Thus, opponents of the voter identification requirement were able to introduce evidence that showed that the law had disproportionately affected particular groups from being able to cast their ballots. This was not the case in states like Indiana and Georgia, where the voter identification requirement was challenged before it was placed in effect during an election. Thus, opponents had a more difficult time in addressing the hindrances the requirements had on the groups that would most likely be affected.

Lastly, we have the case of Rhode Island. As mentioned previously, many were surprised by the passage of a voter identification requirement in the state of Rhode Island. Particularly due to the fact that it did not fall in line with the attributes of states that did manage to pass these laws – mainly being the difference in the party that controlled the legislature at the time of passage. The bill was introduced by the sole black legislator in the state who also identified as a Democrat, and was passed with overwhelming support from both parties. This caused Rhode Island to be seen as an abnormality in the battle of voter identification laws. However, the perception of widespread corruption has led some to believe that the implementation of a voter identification requirement was merely a tactic to clean up the image of the majority party, and help maintain its power in the state, rather than a tactic to suppress voting rights⁴. It also had not

⁴ Professor Clifford Brown, Union College

implemented a strict voter identification requirement, as was the case in Georgia, Ohio, North Carolina, and the attempt by Pennsylvania and Minnesota.

Chapter 6
Conclusions and Solutions

Voter identification requirements have held the national spotlight for some time now, but have yet to bring a mutual consensus on their effects in the scholarly and legal community. Politicians are split as to the need to implement these requirements along polarized party and racial lines. The court system has also shown to be split on whether or not they find these requirements to disproportionately deter particular blocs of voters.

The literature reviewed has looked into the effects voter identification laws may have on particular groups such as racial minorities, young and elderly voters. Much of what is disputed is whether or not there are disproportionate effects associated with the implementation of these laws. Although the literature is still divided in terms of the effects of voter identification requirements (particularly before 2010), with the passage of time, there has been this opportunity for these laws to be implemented and to take effect over multiple election cycles. This has presented the opportunity for many who study electoral “reform” to see that there is an evident impact associated with the implementation of voter identification laws, which has disproportionately affected racial minority groups, young voters, elderly voters, and low-income voters.

The literature has also examined the accessibility of “free” voter ID cards, and the indirect costs associated with obtaining one. Similarly in the case of the effects, the passage of time has proven to show that these “free” voter ID cards are not in fact free, as there are both direct and indirect costs that a voter needs to pay in order to obtain one. The direct costs associated with the “free” ID’s comes out of the documents needed to be able to actually get one, such as a birth certificate and social security card, which some populations do not have easy access to. The indirect costs associated with these ID’s includes the time, knowledge, and effort a voter needs to place aside to go to the office distributing these forms of ID in order to be able to

vote. The costs associated with these “free” ID’s in states that have voter identification requirements strongly resembles the poll taxes that were used to deter African Americans from voting before the enactment of the 24th amendment, and the passage of the Voting Rights Act of 1965. Both these direct and indirect costs raises the costs associated with voting which has shown that as costs to voting rise, incentive to actually go out to the polls drops.

The last major topic that the literature analyzes is the state of voter fraud in the system. While there is some literature that points to fraud in the system, the empirical evidence is that there is no rampant, widespread, or even mildly serious voter identity fraud in the system. The lack of large-scale prosecutions in the name of voter identity fraud confirms that there is no systemic identity fraud that has the potential to influence election outcomes. Scholars that have refuted claims of voter identity fraud have pointed to the influence of the myth of voter fraud that exists and that skews public perception into thinking that voter identification laws are necessary in protecting the “integrity of the system”.

Although voter identification laws are an important issue to look at, they are not an isolated case. The issue of voter identification laws is a part of a larger issue concerning voting rights and ensuring access to the ballot to all groups of the citizenry. At the turn of the 21st century, there has been increased scrutiny against making the ballot box more accessible and making the voting process easier for the voting blocs. As a consequence, states have engaged in the process of cutting back electoral reforms in place that once granted access and convenience to the voters. The cutback on registration times, the cutback on early voting, and the cutback of same-day registration has worked to complicate the process for voters and to increase the costs of voting, which has consequentially deterred many voters from heading to the ballot box on Election Day.

The cutbacks on these electoral reforms has prompted many opponents of voter identification laws to call foul against those trying to make the process more difficult for voters, particularly those groups that have been proven to use these resources in order to vote. As Ari Berman notes in his op-ed article in *The Nation* on July 26, 2013, early voting and same-day registration were electoral reforms disproportionately used more by African Americans in the state of North Carolina. Other scholars have noted that racial minority groups nationwide use these reforms most frequently, and the counterattacks against them are meant to disenfranchise these same groups.

Voter identification laws and voting rights in general have fallen along partisan lines, both on the state and national level. This has led many to believe that the right wing has been playing the field, attempting to expand its agenda to demobilize groups that tend to vote Democratic, which also turn out to be racial minority groups and the young. Since the Supreme Court struck down Section 4 of the Voting Rights Act of 1965, voting rights has been propelled to the forefront of national debate.

The importance of voting rights has been especially at the forefront due to the campaign and election season the nation is currently in. As the presidential election of 2016 is right around the corner, the issue of voting rights has even come up during the Republican and Democratic presidential debates, though not as much as they should as some critics have noted. As this is an important election year for both major political parties, making sure people are able to make it to the polls should be a contentious issue for all candidates involved. This is also a particularly important election season, as this will be the first presidential election in which the entirety of the Voting Rights Act will not be enforced.

On the Democratic side, both Hillary Clinton and Bernie Sanders have made the issue of voting rights a central theme of their platforms. As a reaction to Alabama's closing of 31 driver-licensing offices in mostly rural and black areas in October of 2015, Former Secretary of State Hillary Clinton was quoted saying, "Fifty years after Rosa Parks sat and Dr. Martin Luther King Jr. marched and John Lewis bled, it is hard to believe that we are back having this same debate" (Williams 2015). Senator Bernie Sanders also reacted to Alabama's attempts to suppress voters rights by stating, "Republican cowards all across the country, including Alabama, are very clearly trying to win elections by suppressing the vote and making it harder for low-income people, minorities, young people, and seniors to vote. That has to change. Anyone 18 years of age or older should be automatically registered to vote" (Williams 2015). The comments made by both Democratic presidential candidates surrounding voter identification laws and the attack on voting rights has followed the narrative scholars have pointed to concerning these issues falling along partisan lines.

On the Republican side, both New Jersey Governor Chris Christie and Ohio Governor John Kasich have cut back early voting in their states, which was used substantially by minority voters (Glum 2016). Both Ted Cruz and Marco Rubio have come out supporting the implementation of voter ID laws and their need to protect the integrity of the system (CorrectTheRecord.org). While the Democratic candidates are concerned with protecting access to the ballot, the Republican presidential candidates are more in line with protecting the system "against fraud" alleging they are defending the "integrity" of the system, which falls along the narrative we have seen concerning voter identification laws in the literature.

President Barack Obama has also come out on the issue of voting rights, and specifically addressed the issue in his last State of the Union address in January of 2016. He says:

We have to reduce the influence of money in our politics, so that a handful of families or hidden interests can't bankroll our elections. And if our existing approach to campaign finance reform can't pass muster in the courts, we need to work together to find a real solution – because it's a problem. And most of you don't like raising money. I know; I've done it. We've got to make it easier to vote, not harder. We need to modernize it for the way we live now. This is America: We want to make it easier for people to participate. And over the course of this year, I intend to travel the country to push for reforms that do just that (State of the Union Address, January 13, 2016).

President Obama made clear his alertness to the issue of not just campaign finance, but of voting rights in general, including the issue of voter identification laws.

As disparate as the arguments and the empirical evidence concerning voter identification laws are, there is still hope to believe that a solution can be reached. House Democrats have proposed their own suggestions as alternatives to states implementing voter identification requirements. Democrats introduced in the legislature “The America Votes Act of 2012”, which would allow voters who do not have the required identification to sign an affidavit to vouch to their identity at the polls (NPR, 2012). Congressman Rick Larsen, a Democrat from Washington State, co-sponsored this bill (introduced in Congress) and described it as the first step in preventing the suppression of votes of racial minority groups. Washington State has a similar process to the one proposed by the bill. In the state of Washington, there is an all-mail-in ballot system, where the ballot ticket doubles up as an affidavit as well so that voters do not have to take any additional steps in having their ballots counted (NPR, 2012). The way the ballot works under the proposed legislation, “It would allow a voter to sign an affidavit vouching they are who they are if they come to the polls and do not have a voter ID that is required by their state. It also, then, when they vouch for themselves, that ballot would count as a standard ballot, not a provisional ballot. They don't have to go through another hoop to have that ballot counted”

(NPR, 2012). Unfortunately, the last action taken on the bill was its introduction on the House floor; it did not make any progress from there.

While the bill proposed to Congress seems like a valid solution to the voter ID issue, there are still other solutions that could be explored. Another possible solution could lie in the registration process. As many scholars have previously noted, many of the problems concerning voter fraud, lie in the complications associated with the registration process. Thus, one solution I offer is the automatic registration for those who turn 18-years old into the voting process through a federal agency. Once that voter is registered, they make one trip to a federal agency where they sign their compliance with their state's election rules in regards to federal elections on a hard copy document. This document would then be scanned and entered into a database that would be accessible to poll workers and election officials. On Election Day, the voter would then offer their signature to be cross-matched with the signature on file in this database. Of course, this would not be required of every voter, but would rather serve as an alternative for those who lack government-issued photo ID's.

A solution to the voter identification requirement would probably best be found in the area of a voter providing a signature, because that is something that a voter always carries with them and can be easily verifiable, as in the case of a bank check for example. A downside to this solution would be the interference of the federal government in an area traditionally handled by the states. However, from the evidence documented earlier in this thesis, I find that federal intervention in an important matter such as this is necessary as it was when those 18 to 20 years old were allowed to vote and when it was necessary to pass the Voting Rights Act of 1965. In these cases, it was not until the federal government intervened that the issue of voter suppression was actively being remedied. In the specific case of the enfranchisement of 18-20 year olds,

when the federal government allowed this new group of voters to cast ballots during federal elections, it created this disparity between state and federal elections of who could and could not vote. This disparity incentivized the state to lower the voting age, in order to create a more cost effective and uniform system. My proposal would hopefully echo a similar situation.

For those voters that would not be able to present a signature at the time of casting a ballot such as the disabled, there should be a provision placed that would allow someone to sign an affidavit to attest to the identity of the voter, allowing them to cast a standard ballot on Election Day. This provision would apply to those that fall in the most extreme of cases such as the disabled and homeless.

After examination of the literature and the passage of time, there is sufficient evidence to suggest that our legislatures and courts re-examine the case of voter identification laws and the disproportionate impacts they have shown to have on racial minority groups, the young, the elderly, and the poor. In the specific case of the federal courts, we have seen a hesitation on their behalf to apply a strict scrutiny standard in the review of these voter identification requirements. However, with the evidence presented and established by this thesis, there is now sufficient cause for the courts to apply this strict standard in the future, as cases involving voter identification laws will most likely continue to be heard by the courts. Voting rights is one of the most important benefits allotted to the citizenry, hence, violations that work to limit access to the polls for voters should have the strictest standard allowable applied to it by the legal system. The state legislatures should then follow suit, and also review the implementation of these requirements, in light of the new evidence that continues to come out regarding the disproportionate effects of these laws on particular voting blocs.

Since the start of the 20th century, there has been this general progression towards making the ballot more accessible and making the process cleaner and fairer for all. However, at the turn of the 21st century, there has been this long-lasting effort to roll back the reforms of the Progressive and Post Progressive eras that achieved a more equal, cleaner, and fairer voting environment. The use of voter identification laws are only one facet of this larger agenda on behalf of the right wing to demobilize the growing demographics that have tended to move towards the left. This attack on voting rights is a serious step backwards in an effort to make the political process fairer, cleaner, more democratic, and more responsive to the voters.

The ability to vote is one of the most revered forms through which citizens express themselves in the political arena. Many groups in the past have had their voting rights as citizens stripped away from them, and as a result, created unequal influence within our society. In this time and age, we are a nation that looks to move forward in creating a more fair and equal playing field where all can achieve and have voice in a process that has the potential to affect their daily lives. For many, being a citizen of the United States lies in the ability for one to vote. Thus, voting rights should always be a top policy concern for our government. A government that makes it accessible and convenient for its citizens to access the ballot and exercise its voice, is a government that shows respect and honor to its citizenry.

APPENDIX I: STATE VOTER ID BREAKDOWN⁵

STATE	ACCEPTABLE FORMS OF ID	LEVEL OF SCRUTINY
ALABAMA	<ul style="list-style-type: none"> -Valid Alabama driver's license or non-driver ID card -Valid photo voter ID card or other valid ID card issued by any state or the federal government, as long as it contains a photo -Valid U.S. passport -Valid government employee ID card with a photo -Valid student or employee ID card issued by a college or university in the state, provided it includes a photo -Valid U.S. military ID card containing a photo -Valid tribal ID card containing a photo 	Photo ID Requested
ALASKA	<ul style="list-style-type: none"> -Official voter registration card -Driver's license -Birth certificate -Passport -Hunting or fishing license -Current utility bill, bank statement, paycheck, government check or other government document with the voter's name and address 	ID Requested; Photo not Required
ARIZONA	<ul style="list-style-type: none"> -Valid Arizona driver's license -Valid Arizona non-driver identification -Tribal enrollment card or other form of tribal identification -Valid U.S. federal, state or local government issued identification -Utility bill dated within 90 days of the election -Bank or credit union statement dated within 90 days of the election -Valid Arizona vehicle registration -Indian census card -Property tax statement -Vehicle insurance card -Recorder's Certificate 	Strict Non-Photo ID
ARKANSAS ⁶	<ul style="list-style-type: none"> -A voter ID card issued by the secretary of state -A document or ID card that: <ul style="list-style-type: none"> o shows the name and photograph of 	ID Requested; Photo not Required

⁵ Data collected from the National Council of State Legislatures, last updated on January 4, 2016 (<http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx#6>)

⁶ This law has been struck down by the Arkansas Supreme Court; a pre-existing, non-strict non-photo ID law is in effect.

	<p>the person to whom it was issued;</p> <ul style="list-style-type: none"> ◦ is issued by the U.S. government, the state of Arkansas, or an accredited postsecondary educational institution in Arkansas; and ◦ if displaying an expiration date, is not expired, or expired no more than four years before the date of the election <p>- "Proof of identity" that complies may include without limitation:</p> <ul style="list-style-type: none"> ◦ a driver's license ◦ a photo ID card ◦ a concealed handgun carry license ◦ a U.S. passport ◦ an employee badge or identification document ◦ a U.S. military ID card ◦ a student ID ◦ a public assistance ID ◦ a voter ID card 	
CALIFORNIA		No Document Required to Vote
COLORADO ⁷	<ul style="list-style-type: none"> -Colorado driver's license -CO Dept. of Revenue ID card -U.S. passport -Employee ID card with photo issued by the -U.S. government, CO state government, or political subdivision of CO -Pilot's license -U.S. military ID with photo -A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the elector -Medicare or Medicaid card -Certified copy of birth certificate -Certified documentation of naturalization 	ID Requested; Photo not Required
CONNECTICUT	<ul style="list-style-type: none"> -Social Security card -Any other preprinted form of identification which shows the elector's name and either the elector's address, signature or photograph 	ID Requested; Photo not Required
DELAWARE	<ul style="list-style-type: none"> -Photo ID -Utility bill 	ID Requested; Photo not

⁷ Since the passage of HB 1303 in 2013, most Colorado voters vote by mail. However, at least one location is open on Election Day for in-person voting, and the ID requirement spelled out here applies to those voters.

	<ul style="list-style-type: none"> -Paycheck -Any government document with voter's name and address 	Required
FLORIDA	<ul style="list-style-type: none"> -Florida driver's license -Florida ID card issued by the Dept. of Highway Safety and Motor Vehicles -U.S. passport -Debit or credit card -Military identification -Student identification -Retirement center identification -Neighborhood association ID -Public assistance identification 	Photo ID Requested
GEORGIA	<ul style="list-style-type: none"> -Georgia driver's license, even if expired -ID card issued by the state of Georgia or the federal government -Free voter ID card issued by the state or county -U.S. passport -Valid employee ID card containing a photograph from any branch, department, agency, or entity of the U.S. Government, -Georgia, or any county, municipality, board, authority or other entity of this state -Valid U.S. military identification card -Valid tribal photo ID 	Strict Photo ID
HAWAII	Poll workers request photo ID with a signature. Acceptable types of ID are not specified by law.	Photo ID Requested
IDAHO	<ul style="list-style-type: none"> -Idaho driver's license -Idaho ID card -Passport -ID card, including a photo, issued by an agency of the U.S. government -Tribal ID card, including a photograph -Student ID card, including a photograph, issued by a high school or accredited institution of higher education within the state of Idaho 	Photo ID Requested
ILLINOIS		No Document Required to Vote
INDIANA	<p>Specific forms of ID are not listed in statute. ID must be issued by the state of Indiana or the U.S. government and must show the following:</p> <ul style="list-style-type: none"> -Name of individual to whom it was issued, which must conform to the individual's registration record -Photo of the person to whom it was issued -Expiration date (if it is expired, it must have an expiration date after the most recent general election; military 	Strict Photo ID

	<p>IDs are exempted from the requirement that ID bear an expiration date)</p> <p>-Must be issued by the United States or the state of Indiana</p>	
IOWA		No Document Required to Vote
KANSAS	<p>The following forms of identification are valid if they contain the name and photograph of the voter and have not expired. Expired documents are valid if the bearer is aged 65 or older.</p> <p>-Driver's license issued by Kansas or another state</p> <p>-State identification card</p> <p>-Government-issued concealed carry handgun or weapon license</p> <p>-U.S. passport</p> <p>-Employee badge or identification document issued by a government office or agency</p> <p>-Military ID</p> <p>-Student ID issued by an accredited postsecondary institution in Kansas</p> <p>-Government-issued public assistance ID card</p>	Strict Photo ID
KENTUCKY	<p>-Driver's license</p> <p>-Social Security card</p> <p>-Credit card</p>	ID Requested; Photo not Required
LOUISIANA	<p>-Louisiana driver's license</p> <p>-Louisiana special ID card</p> <p>-Other generally recognized picture identification</p>	Photo ID Requested
MAINE		No Document Required to Vote
MARYLAND		No Document Required to Vote
MASSACHUSETTS		No Document Required to Vote
MICHIGAN	<p>-Michigan driver's license</p> <p>-Michigan personal identification card</p> <p>A voter who does not possess either of the above may show any of the following, as long as they are current:</p> <p>-Driver's license or personal identification card issued by another state</p> <p>-Federal or state government-issued photo ID</p> <p>-U.S. passport</p> <p>-Military ID with photo</p> <p>-Student ID with photo -- from a high school or accredited institution of higher education</p> <p>-Tribal ID with photo</p>	Photo ID Requested

MINNESOTA		No Document Required to Vote
MISSISSIPPI	<ul style="list-style-type: none"> -A driver's license -A photo ID card issued by a branch, department, or entity of the State of Mississippi -A United States passport -A government employee ID card -A firearms license -A student photo ID issued by an accredited Mississippi university, college, or community/junior college -A United States military ID -A tribal photo ID -Any other photo ID issued by any branch, department, agency or entity of the United States government or any state government -A Mississippi Voter Identification Card 	Strict Photo ID
MISSOURI	<ul style="list-style-type: none"> -Identification issued by the federal government, state of Missouri, an agency of the state, or a local election authority; -Identification issued by Missouri institution of higher education, including a university, college, vocational and technical school; -A copy of a current utility bill, bank statement, paycheck, government check or other government document that contains the name and address of the voter; -Driver's license or state identification card issued by another state. 	ID Requested; Photo Not Required
MONTANA	<ul style="list-style-type: none"> -Driver's license -School district or postsecondary education photo identification -Tribal photo identification -Current utility bill, bank statement, paycheck, notice of confirmation of voter registration, government check, or other government document that shows the elector's name and current address 	ID Requested; Photo Not Required
NEBRASKA		No Document Required to Vote
NEVADA		No Document Required to Vote
NEW HAMPSHIRE	<ul style="list-style-type: none"> -A driver's license from NH or any other state, regardless of expiration date -A photo ID card issued by the NH director of motor vehicles -A voter ID card issued under R.S. 	ID Requested; Photo Not Required

	<p>260:21</p> <ul style="list-style-type: none"> -A U.S. armed services photo ID card -A U.S. passport, regardless of expiration date -A valid student ID card -Any other valid photo ID issued by federal, state, county or municipal government -Any other photo ID that is determined to be legitimate by the supervisors of the checklist, the moderator, or the town or city clerk, provided that if any person authorized to challenge a voter under RSA 659:27 objects to the use of such photo identification, the voter shall be required to execute a qualified voter affidavit as if no identification was presented. -Verification of the voter's identity by a moderator or supervisor of the checklist or clerk of a town, ward or city (not a ballot clerk). If any person authorized to challenge a voter does so under this provision, the voter shall be required to fill out a challenged voter affidavit before obtaining a ballot. 	
NEW JERSEY		No Document Required to Vote
NEW MEXICO		No Document Required to Vote
NEW YORK		No Document Required to Vote
NORTH CAROLINA ⁸	<ul style="list-style-type: none"> -NC driver's license (can be expired) -US passport (unexpired) -US military or veterans identification card, issued by the Department of Defense or Department of Veterans Affairs, containing a photo. An ID containing an expiration date must be unexpired, but IDs without an expiration date are also accepted. -A tribal enrollment card issued by a federally recognized tribe. If the card does not have an expiration date, it may still be used if the card has a date of issuance that is within 8 years of the date it is presented. <p>A tribal enrollment card issued by a tribe recognized by North Carolina under Chapter 71A that is (i) issued in accordance with a process approved by the State Board of Elections</p>	Non-strict Photo ID

⁸ North Carolina's voter ID law, enacted in 2013 and amended in 2015, goes into effect in 2016.

	<p>requiring an application and proof of identity equivalent to the requirements for issuance of a special identification card by the Division of Motor Vehicles, and (ii) signed by an elected official of the tribe.</p> <p>-Driver's license or special identification card issued by another state, D.C., or a territory or commonwealth of the U.S. only if the voter's registration was within 90 days of the election.</p> <p>-Voters who are over the age of 70 may use acceptable photo ID that has been expired for any length of time, provided the ID expired after the voter turned 70.</p>	
NORTH DAKOTA	<p>-Valid driver's license or state ID card</p> <p>-Valid government-issued tribal ID card</p> <p>-Long-term care identification certificate (provided by ND facility)</p>	Strict Non-Photo ID
OHIO	<p>-Current and valid photo identification, defined as a document that shows the individual's name and current address, includes a photograph, includes an expiration date that has not passed, and was issued by the U.S. government or the state of Ohio</p> <p>-Current utility bill</p> <p>-Current bank statement</p> <p>-Current government check, paycheck or other government document</p>	Strict Non-Photo ID
OKLAHOMA	<p>"Proof of identity" shall mean a document that satisfies the following:</p> <p>-Shows a name that substantially conforms to the name in the precinct registry</p> <p>-Shows a photograph</p> <p>Includes an expiration date that is after the date of the election</p> <p>-Was issued by the United States, state of Oklahoma, or a federally recognized Indian tribe or nation</p> <p>A voter registration card issued by the appropriate county elections board may serve as proof of identity without meeting all of the above requirements.</p>	ID Requested; Photo not Required
OREGON		No Document Required to Vote

PENNSYLVANIA ⁹		No Document Required to Vote
RHODE ISLAND	<p>A valid and current document showing a photo of the person to whom it was issued, including:</p> <ul style="list-style-type: none"> -RI driver's license -RI voter identification card -U.S. passport -Identification card issued by a U.S. educational institution -U.S. military identification card -Identification card issued by the U.S. government or state of RI -Government-issued medical card 	Photo ID Requested
SOUTH CAROLINA	<ul style="list-style-type: none"> -South Carolina driver's license -Photo ID card issued by the SC Dept. of Motor Vehicles -Passport -Military ID bearing a photo issued by the federal government -South Carolina voter registration card with a photo <p>Voters who have a reasonable impediment to obtaining photo ID may show a non-photo voter registration card in lieu of photo ID, sign an affidavit attesting to the impediment, and cast a provisional ballot.</p>	ID Requested; Photo Not Required
SOUTH DAKOTA	<ul style="list-style-type: none"> -South Dakota driver's license or nondriver identification card -U.S. passport -Photo ID issued by an agency of the U.S. government -Tribal ID card, including a photo -Student ID card, including a photo, issued by an accredited South Dakota school 	Photo ID Requested
TENNESSEE	<ul style="list-style-type: none"> -TN driver's license -Valid photo ID card issued by any state -Valid photo ID license issued by TN Dept. of Safety -Valid U.S. passport -Valid U.S. military ID with photo -TN handgun carry permit with photo 	Strict Photo ID
TEXAS ¹⁰	<ul style="list-style-type: none"> -Election identification certificate -Dept. of Public Safety personal ID 	ID Requested; Photo not

⁹ A strict photo ID law was enacted in 2012, but is currently not in place because the state Supreme Court struck it down.

¹⁰ Strict photo ID was enacted in 2011, and has since faced ongoing court challenges. The Secretary of State's office has said that the law is currently in effect.

	<p>card</p> <ul style="list-style-type: none"> -U.S. military ID -U.S. citizenship certificate -U.S. passport -License to carry a concealed handgun issued by the Dept. of Public Safety <p>All of the above must include a photo of the voter. With the exception of the certificate of citizenship, these forms of ID cannot be expired, or cannot have expired more than 60 days before the election.</p>	Required
UTAH	<ul style="list-style-type: none"> -Current valid UT driver's license -Current valid identification card issued by the state or federal government -UT concealed weapon permit -U.S. passport -Current valid U.S. military ID card -Bureau of Indian Affairs card -Tribal treaty card -Tribal ID card <p>OR</p> <ul style="list-style-type: none"> -Two forms of ID that bear the name of the voter and provide evidence that the voter resides in the precinct 	ID Requested; Photo not Required
VERMONT		No Document Required to Vote
VIRGINIA	<ul style="list-style-type: none"> -Virginia voter registration card -United States passport -Virginia driver's license -Any other identification card issued by a government agency of the Commonwealth, one of its political subdivisions, or the United States -Concealed handgun permit -Any valid student ID card issued by any institution of higher education located in Virginia -Employee identification card 	Strict Photo ID
WASHINGTON ¹¹	<p>The identification must be valid photo identification, such as:</p> <ul style="list-style-type: none"> -A driver's license -A state identification card -A student identification card -A tribal identification card -An employer identification card 	ID Requested; Photo not Required

¹¹ Most Washington voters now vote by mail. However, county auditors are required to open at least one vote center where voters can cast a ballot in person, and the ID requirement spelled out here applies to those voters.

WEST VIRGINIA		No Document Required to Vote
WISCONSIN	<p>-Wisconsin driver's license -ID card issued by a U.S. uniformed service Wisconsin non-driver ID -U.S. Passport -Certificate of naturalization issued not more than 2 years before the election -ID card issued by a federally recognized -Indian tribe in WI -Student ID card with a signature, an issue date, and an expiration date no later than 2 years after the election</p> <p>All of the above must include a photo and a name that conforms to the poll list.</p> <p>If the ID presented is not proof of residence, the elector shall also present proof of residence.</p>	Strict Photo ID
WYOMING		No Document Required to Vote

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