

# THE IMPLICATIONS OF VOTER IDENTIFICATION LAWS: VOTER FRAUD OR VOTER SUPPRESSION?

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## About the Author

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## Summary of Submission

Figueroa analyzes the legality and controversy of implementing stricter voter identification laws in the United States electoral system. Through her examination of *Crawford v. Marion County Election Board*, Figueroa discusses the Court's approval of Indiana's strict voter identification laws in order to prevent fraud, which as a result, increased people's trust in the fairness of the voting system. Yet Figueroa balances her analysis by presenting multiple opposing arguments, particularly exploring the consequences of restricting or disenfranchising certain demographics of voters who currently are eligible to participate in the election process. Figueroa's work illuminates the ongoing relevance of this issue at the crux of political, economic, and social justice concerns.

## THE IMPLICATIONS OF VOTER IDENTIFICATION LAWS: VOTER FRAUD OR VOTER SUPPRESSION?

### Introduction

In recent years, several states have implemented voter identification laws, in which one must present a valid form of identification in order to vote. Lawmakers have stated that these laws have been implemented in efforts to restore the fairness of elections and prevent voter fraud. However, many believe that voter identification laws simply make voting more restrictive, imposing risks of voter suppression as a result.

This research paper aims to analyze the legal advantages and disadvantages of having stricter voter identification laws. First, it will introduce a brief history of this debate, explaining this issue's importance and controversy. The paper will then explore both sides of this issue, identifying the reasoning in favor of these laws, and then comparing those arguments to the views of the opposition, which argues that the ramifications of strict voter ID laws far outweigh any potential benefits.

Historically, there have been accounts of alleged voter fraud since as early as the first United States presidential election; even George Washington in the late 1700s allegedly bribed his potential voters with alcohol in order to gain votes.<sup>1</sup> Voter fraud has become a substantial problem in the United States, and many seek to improve the voting system and prevent such fraud from occurring by imposing strict voter identification laws. However, the opponents of such laws are more concerned with the consequences.

There has been controversy over such laws based on the perspective that they depress turnout among lawful voters.<sup>2</sup> Opponents of these laws argue that there is a disproportionate impact in the implementation of such laws, provoking debate on whether or not these strict voter ID laws “disparately impact and therefore discriminate against people of color.”<sup>3</sup>

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<sup>1</sup> Michael D. Gilbert, “The Problem of Voter Fraud.” *Columbia Law Review* 115 (2015): 739.

<sup>2</sup> Ibid.

<sup>3</sup> Deuel Ross, “Pouring Old Poison into New Bottles: How Discretion and the Discriminatory Administration of Voter ID Laws Recreate Literacy Tests,” *Columbia Human Rights Law Review* 45 (2014): 362.

Supporters of strict voter identification laws argue these main points:

- (1) Strict voter identification laws are necessary to prevent in-person voter fraud.
- (2) The implementation of strict voter identification laws will increase confidence in the voting system.

There is, however, significant opposition to strict voter identification laws, for the following reasons:

- (1) Strict voter identification laws will discourage people from registering to vote, thus decreasing voter turnout.
- (2) Strict voter identification laws are modern-day Jim Crow laws.
- (3) The indirect result of these strict voter identification laws is the disenfranchisement of minority and elderly voters.

### **Support for Strict Voter Identification Laws**

As of 2015, thirty-six states had voter identification laws implemented in their own districts.<sup>4</sup> Such laws require voters to present a valid form of identification before voting. Most of these laws allow such identification to be in the form of a utility bill for proof of residence, a birth certificate, a firearms owner's license, and even a fishing license.<sup>5</sup> Several states, however, including Indiana and Texas, have implemented or tried to implement laws that require showing a valid form of government-issued photo identification before voting.<sup>6</sup>

While the opponents argue that in-person voting fraud is “extraordinarily rare,” supporters find that the number of incidents matters less than the fact that voter fraud is indeed occurring.<sup>7</sup> There have been various cases in which non-U.S. citizens have engaged in voter fraud—not just by voting illegally, but by doing so

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<sup>4</sup> Jocelyn Friedrichs Benson, “Voter Fraud or Voter Defrauded? Highlighting an Inconsistent Consideration of Election Fraud,” *Harvard Civil Rights-Civil Liberties Law Review* 44, no. 1 (2009).

<sup>5</sup> Marjorie Randon Hershey, “What We Know about Voter-ID Laws, Registration, and Turnout,” *PS: Political Science and Politics* 42, no. 1 (2009): 87–91.

<sup>6</sup> Michael D. Gilbert, “The Problem of Voter Fraud,” *Columbia Law Review* 115 (2015): 739.

<sup>7</sup> Deuel Ross, “Pouring Old Poison into New Bottles: How Discretion and the Discriminatory Administration of Voter ID Laws Recreate Literacy Tests,” *Columbia Human Rights Law Review* 45 (2014): 362.

multiple times and in several states.<sup>8</sup> Supporters of strict voter identification laws argue that requiring voters to present a valid ID ensures that each person votes only once.<sup>9</sup> This also ensures that each person who is indeed eligible to vote only registers under his or her real name.

Proponents of strict voter identification laws recognize that their opponents view this as a means of suppressing certain minority votes, yet they dispute its validity. In cases where citizens were given incentives to vote rather than limitations, “there was little to no increase where agencies offered helpful cohesive registration materials.”<sup>10</sup> Furthermore, supporters argue that the overall voter turnout in U.S. elections is already so low compared to other countries that a change in voter identification laws will not have much of an impact regardless.<sup>11</sup>

Finally, supporters argue that voter identification laws do not pose as significant a burden on citizens as opponents argue. In *Crawford v. Marion County Election Bd.*, the Court ruled in favor of Indiana’s strict voter ID law requiring the presentation of a government-issued photo ID. The Court ruled that the State’s interests were “neutral and nondiscriminatory.”<sup>12</sup> The State argued that its proposals were designed to prevent voter fraud and boost public confidence in the voting system. The Court agreed that their intentions were both well-founded and well-supported in that it “encouraged citizen participation in the democratic process,” affirming the State’s decision and agreeing that “these interests were sufficient to outweigh the limited burden on voters’ rights.”<sup>13</sup> Additionally, the Wisconsin case *League of Women Voters of Wis. Educ. Network, Inc. v. Walker* produced the same results. The Court found that the plaintiff, a voters’ group based in Wisconsin, “failed to show that a photo identification requirement was, on its face, an unconstitutional additional qualification for voting.”<sup>14</sup>

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<sup>8</sup> Jocelyn Friedrichs Benson, “Voter Fraud or Voter Defrauded? Highlighting an Inconsistent Consideration of Election Fraud,” *Harvard Civil Rights-Civil Liberties Law Review* 44, no. 1 (2009).

<sup>9</sup> Marjorie Randon Hershey, “What We Know about Voter-ID Laws, Registration, and Turnout,” *PS: Political Science and Politics* 42, no. 1 (2009): 87–91.

<sup>10</sup> *Ibid.*

<sup>11</sup> Niall McCarthy, “The U.S. Trails Behind Other Nations in Voter Turnout,” Statista, April 10, 2018.

<sup>12</sup> *Crawford v. Marion County Election Bd.*, 2008 U.S. LEXIS 3846 (2008).

<sup>13</sup> *Ibid.*

<sup>14</sup> *League of Women Voters of Wis. Educ. Network, Inc. v. Walker*, 2013 Wisc. App. LEXIS 459 (2013).

## Opposition to Strict Voter Identification Laws

Opponents first argue that many eligible voters do not currently have proper voter identification and that such voters face significant obstacles to obtaining it. In 2011, approximately 11 percent of eligible voters did not have a government-issued ID, which is roughly 3.2 million people.<sup>15</sup> All of these citizens would need to pay for an identification card, and opponents believe that this would be both largely inconvenient and unnecessary. Opponents also point out that such laws are indirectly aiming to disenfranchise people of color, because “the cost, time, and other burdens associated with obtaining acceptable ID fall hardest on people of color.”<sup>16</sup>

Supporters of strict voter ID laws have suggested that voter IDs can be acquired at the Department of Motor Vehicles. However, opponents have countered this point by pointing out the sheer inconvenience of DMVs, for two reasons. First, DMVs are often inconveniently located—many people who live in rural areas have to travel for miles before reaching the nearest DMV.<sup>17</sup> Secondly, DMVs have notoriously long wait times. Opponents of voter ID laws emphasize the obvious fact that working-class people are busy, alleging that they simply do not have time to commute all the way to the DMV just to wait for hours, not to mention the fact that many DMVs operate exclusively during business hours. From this perspective, opponents argue that obtaining a government-issued ID is extremely inconvenient. In the context of voter identification laws, they argue that this will decrease voter turnout.

Opponents also point out the parallels between strict voter identification laws and the historically racist poll tax. In the late 19th century, some states implemented a poll tax as part of the infamous Jim Crow laws, which were specifically designed to restrict voting rights for African Americans at the time. The poll tax was enacted to make voters pay a certain amount of money in order to vote in an election. Decades later, opponents of strict voter identification laws interpret these types of laws as being eerily similar to the poll tax during the post-Civil War era. In a journal published in 2009, Professor Marjorie Randon Hershey from the political

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<sup>15</sup> Stephen Koff, “Rep. Marcia Fudge says 11 percent of eligible voters lack a government ID,” PolitiFact. 2018.

<sup>16</sup> Deuel Ross, “Pouring Old Poison into New Bottles: How Discretion and the Discriminatory Administration of Voter ID Laws Recreate Literacy Tests,” *Columbia Human Rights Law Review* 45 (2014): 362.

<sup>17</sup> Michael D. Gilbert, “The Problem of Voter Fraud,” *Columbia Law Review* 115 (2015): 739.

science department of Indiana University states that the poll tax literally raised the cost of voting, and voter turnout significantly decreased over time because of it, especially in poorer communities.<sup>18</sup> Since strict voter ID laws would require people to purchase a brand new government-issued identification card in order to vote, opponents of these laws argue that this resembles a poll tax to prevent poorer people from voting.

In addition to the poll tax, literacy tests were also in place at the time of Jim Crow laws as a form of “racial apartheid”<sup>19</sup> to disenfranchise African Americans from voting in elections. Prior to the Civil War era, anti-literacy laws forbade African Americans from reading. Even after slavery was abolished by President Abraham Lincoln in 1863, and after African Americans were given the right to vote, racism continued through the use of literacy tests.<sup>20</sup> After the Civil War era, African Americans had just been released from the “peculiar institution” of slavery as so worded by America’s Founding Fathers.<sup>21</sup> Of course, at this time an overwhelming majority of African Americans were illiterate. Thus, the implementation of literacy tests was understood as a racist device to prevent them from participating in elections. Decades later, these restrictions on voting were outlawed by the Voting Rights Acts of 1965 and 1970 enacted by President Lyndon B. Johnson.<sup>22</sup> However, people can identify these same types of limiting features mirrored through the use of voter identification laws, today.

Furthermore, opponents argue that imposing strict voter ID laws, such as requiring government-issued photo identification, will not stop voter fraud as a whole. Opponents find that there are other types of voter fraud that still linger in the voting system—types that are perhaps more important to prevent. Examples include voter fraud from absentee ballots, the packing of voting machines, or ballot manipulation by election officials.

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<sup>18</sup> Marjorie Randon Hershey, “What We Know about Voter-ID Laws, Registration, and Turnout,” *PS: Political Science and Politics* 42, no. 1 (2009): 87–91.

<sup>19</sup> Tracey McCants Lewis, “Legal Storytelling: The Murder of Voter ID,” *Brigham Young University Journal of Public Law* 30 (2015): 41.

<sup>20</sup> Rene R. Rocha and Tetsuya Matsubayashi, “The Politics of Race and Voter ID Laws in the States: The Return of Jim Crow?” *Political Research Quarterly* 67, no. 3 (2014): 666–679.

<sup>21</sup> Deuel Ross, “Pouring Old Poison into New Bottles: How Discretion and the Discriminatory Administration of Voter ID Laws Recreate Literacy Tests,” *Columbia Human Rights Law Review* 45 (2014): 362.

<sup>22</sup> Voting Rights Act of 1965, 89 P.L. 110, 79 Stat. 437.

Opponents of strict voter ID laws believe that these laws do nothing to address these other types of fraud found in the United States electoral system.

## **Conclusion**

In summary, voter fraud has been present throughout United States history. In efforts to reduce such fraud, many states and districts have implemented various voter identification laws. Opponents of such laws, however, have argued that imposing such restrictions on voting is not only discriminatory, but also ineffective.

The 2000 presidential election instilled fear, confusion, and frustration among many American voters. It is essential to establish a clear and fair voting system to restore public confidence in the democratic election process, and it is apparent that strict voter identification laws would help console these doubts.

Yet at the same time, there are some inherent consequences to imposing such limitations on voting. While obtaining a government-issued ID may seem simple in theory, several obstacles may hold eligible voters back from doing so. For example, many people do not have official copies of their birth certificates; that, combined with not having a driver's license, imposes a burden on otherwise eligible American voters. This limitation creates quite the loophole when attempting to register to vote—one needs a birth certificate to obtain a government-issued ID, but needs to show a government-issued ID to acquire a copy of one's own birth certificate. Overall, while voter identification laws may be well-intentioned, they often seem to create a never-ending circle of limitations.

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