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## Voter Identification Laws and the 2016 Election

Conor Grealish

Several federal appellate courts have struck down voter identification laws in Wisconsin, Texas, and North Carolina that had dire effects on the ability for minorities to vote.<sup>1</sup> The Supreme Court has yet to give an opinion as to the Constitutionality of these laws. However, in August 2016, the Supreme Court denied North Carolina's request for the opportunity to enforce their laws despite the appellate court's decision.<sup>2</sup>

Since 2011, several states, mostly Republican leaning states, created laws that required individuals to present photo identification when attempting to vote.<sup>3</sup> For example, Wisconsin and Texas required state photo identification before a citizen was allowed to vote.<sup>4</sup> Some states went even further and made the process to register to vote more difficult. North Carolina's voter identification laws not only required photo identification at the polls, it prohibited a voter's ability to register on Election Day, the ability for people under 18 to register early, and prohibited the ability to cast early ballots.<sup>6</sup>

### VOTER IDENTIFICATION LAWS HAVE A DISPROPORTIONATE EFFECT ON MINORITIES

The effect of these laws disenfranchised a significant portion of the population, specifically Hispanics and African-Americans. For example, more than 600,000 Texans did not have the proper identification required to vote.<sup>7</sup> Texas also failed to provide provisional ballots in an attempt to remedy their situa-

<sup>1</sup> Michael Wines, *As ID Laws Fall, Voters See New Barriers Rise*, THE NEW YORK TIMES (October 25, 2016), <http://www.nytimes.com/2016/10/26/us/elections/voter-id-laws.html>

<sup>2</sup> Ariane de Vogue and Dan Berman, *Supreme Court won't reinstate North Carolina voter ID law*, CNN (August 31, 2016), <http://www.cnn.com/2016/08/31/politics/supreme-court-north-carolina-voter-id/>.

<sup>3</sup> The Week Staff, *The Week*, THE WEEK (October 25, 2014) <http://theweek.com/articles/442819/everything-need-know-about-voter-controversy>.

<sup>4</sup> James B. Kelleher, *Wisconsin Voter ID Law Signed by Scott Walker*, HUFFINGTON POST (July 25, 2011), [http://www.huffingtonpost.com/2011/05/25/wisconsin-voter-id-law-scott-walker\\_n\\_867090.html](http://www.huffingtonpost.com/2011/05/25/wisconsin-voter-id-law-scott-walker_n_867090.html).

<sup>5</sup> Jim Malewitz, *Texas Voter ID Law Violates Voting Rights Act, Court Rules*, TEX. TRIBUNE (July 20, 2016), <https://www.texastribune.org/2016/07/20/appeals-court-rules-texas-voter-id/>.

<sup>6</sup> Michael Wines and Alan Blinder, *Federal Appeals Court Strikes Down North Carolina Voter ID Requirement*, N.Y. TIMES (July 29, 2016), [http://www.nytimes.com/2016/07/30/us/federal-appeals-court-strikes-down-north-carolina-voter-id-provision.html?\\_r=0](http://www.nytimes.com/2016/07/30/us/federal-appeals-court-strikes-down-north-carolina-voter-id-provision.html?_r=0).

<sup>7</sup> Malewitz, *supra* note 4.

tion.<sup>8</sup> Along with not simply allowing people without state IDs to vote, these laws also significantly depressed voter turnout for Hispanics and African Americans, who typically vote for the Democratic Party.<sup>9</sup> Overall, some studies estimate that Democratic voter turnout drops by 7.7 percent in states with strict voter identification laws.<sup>10</sup> Civil rights groups argue that low-income and minority voters do not have the time or money to take off work, purchase a birth certificate, and travel to a government agency to obtain government identification to meet the compliance requirements to vote.<sup>11</sup>

State congressmen, mostly aligned with the Republican Party, argue that these laws are necessary to prevent voter fraud.<sup>12</sup> North Carolina's republican governor, Pat McCrory argues that photo identification is used in a variety of other areas such as boarding an airplane or purchasing Sudafed.<sup>13</sup> Requiring identification for voting should be no different to prevent fraud. However, evidence of mass voter fraud is severely lacking. In the case of Wisconsin, several studies found that voter fraud in the state was "virtually non-existent."<sup>14</sup> In fact, a study discovered only 31 instances of voter fraud among approximately 1 billion ballots cast in all elections since 2000.<sup>15</sup>

### THE COURTS MAKE A STAND

Recently, the fourth and fifth circuit courts, along with a federal judge in Wisconsin, have all struck down voter identification laws.<sup>16</sup> However, the seventh circuit court ruled that the Wisconsin federal judge's ruling would not go

<sup>8</sup> Malewitz, *supra* note 4.

<sup>9</sup> Christopher Ingraham, *New Evidence that Voter ID Laws 'Skew Democracy' in Favor of White Republicans*, WASH. POST (February 4, 2016), <https://www.washingtonpost.com/news/wonk/wp/2016/02/04/new-evidence-that-voter-id-laws-skew-democracy-in-favor-of-white-republicans/>.

<sup>10</sup> Ingraham, *supra* note 8.

<sup>11</sup> The Week Staff, *supra* note 2.

<sup>12</sup> Alice Miranda Ollstein, *Wisconsin's Voter ID Law Is Back in Court Following Election Day Woes*, THINK PROGRESS (April 8, 2016), <https://thinkprogress.org/wisconsins-voter-id-law-is-back-in-court-following-election-day-woes-94a1b00a9d4e#.n98w9lr6t>.

<sup>13</sup> Wines, *supra* note 5.

<sup>14</sup> Ollstein, *supra* note 11.

<sup>15</sup> The Week Staff, *supra* note 2.

<sup>16</sup> Robert Barnes and Ann E. Marimow, *Appeals Court Strikes Down North Carolina's Voter ID Law*, WASH. POST (July 29, 2016), [https://www.washingtonpost.com/local/public-safety/appeals-court-strikes-down-north-carolinas-voter-id-law/2016/07/29/810b5844-4f72-11e6-aa14-e0c1087f7583\\_story.html](https://www.washingtonpost.com/local/public-safety/appeals-court-strikes-down-north-carolinas-voter-id-law/2016/07/29/810b5844-4f72-11e6-aa14-e0c1087f7583_story.html).

into effect for the 2016 election.<sup>17</sup> In the fourth circuit, the court found that North Carolina's voter identification law "was passed with racially discriminatory intent, violating the Constitution and the Voting Rights Act."<sup>18</sup> Some judges have found these laws to be extremely discriminatory and have even compared them to poll taxes.<sup>19</sup> U.S. Seventh Circuit Judge Richard Posner stated, "the only reason to impose voter ID laws is to discourage voting by persons likely to vote against the party responsible for imposing the burdens."<sup>20</sup> Judge Diana Gribbon Motz of the fourth circuit panel stated that these laws "target African Americans with almost surgical precision."<sup>21</sup>

### STATES STILL CREATE BARRIERS

Despite recent rulings in "softening" voter identification laws, some states still authorize measures to prevent voter fraud. Some states will require people without a state id to sign an affidavit swearing to their identity, others will allow people to vote if they present their voter registration card.<sup>22</sup> Some states allow for unique election day procedures to take place that results in the disenfranchisement of some voters. An example from this election occurred in a county in Indiana where the election officials stopped in-person voting in the middle of the day so they could start counting absentee ballots.<sup>23</sup> Even if states continue to attempt to make voting more difficult, these court decisions show that "a political majority does not give you the power to run roughshod of the Constitution."<sup>24</sup>

Voter identification problems are not just limited to states with strict identification laws. Even liberal leaning states such as Illinois have barriers in place that make it difficult for citizens to vote without the proper identification, especially if that citizen is attempting to vote after serving a felony conviction.

<sup>17</sup> Zachary Roth, *Appeals Court Oks Wisconsin's Strict Voter ID Law*, NBC NEWS (August 26, 2016), <http://www.nbcnews.com/politics/elections/appeals-court-oks-wisconsin-s-strict-voter-id-law-n638501>.

<sup>18</sup> Barnes, *supra* note 15.

<sup>19</sup> The Week Staff, *supra* note 2.

<sup>20</sup> The Week Staff, *supra* note 2.

<sup>21</sup> Barnes, *supra* note 15.

<sup>22</sup> Zachary Roth, *Texas Voter ID Ruling Offers Stinging Rebuke to Law's Backers*, NBC NEWS (July 21, 2016), <http://www.nbcnews.com/politics/politics-news/texas-voter-id-ruling-offers-stinging-rebuke-law-s-backers-n614281>.

<sup>23</sup> Interview with Ami Gandhi, Director of Voting Rights and Civic Empowerment, Chicago Lawyers' Committee for Civil Rights, in Chicago, IL. (Nov. 10, 2016).

<sup>24</sup> Wines, *supra* note 5.

tion.<sup>25</sup> For example, one citizen in Illinois recently completed a felony sentence and tried to vote in the 2016 Presidential Election.<sup>26</sup> Per Illinois law, this citizen was dropped from the rolls when he was convicted of his crime.<sup>27</sup> After serving his sentence, this citizen wished to participate in the electoral process again and attempted to re-register to vote.<sup>28</sup> However, he could not register unless he presented a form of identification with an address on it.<sup>29</sup> To receive an ID with his address on it he needed to present a notarized birth certificate to the State, but to get his birth certificate notarized, he needed to present an ID with an address on it.<sup>30</sup> Although this voter tried to take affirmative steps to exercise his right to vote, he was only allowed to use a provisional ballot to vote, which often times do not get counted.<sup>31</sup>

The eventual effect of these rulings on minority voter turnout has yet to be determined, but it is clear that every vote counts. To illustrate this point, President-Elect Donald Trump won the electoral vote, notwithstanding losing the popular vote by just over 2,800,000 votes.<sup>32</sup> Despite voting rights becoming more politicized, many Democrats and Republicans still worked together on election day to get as many people to the polls as possible.<sup>33</sup> The potential political consequences of voter identification laws aside, these court rulings show that the right to vote is still an important Constitutional right in this country and that states should make the process to vote as easy as possible for all American citizens.

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<sup>25</sup> Interview with Ami Gandhi, *supra* note 23.

<sup>26</sup> Interview with Ami Gandhi, *supra* note 23.

<sup>27</sup> Interview with Ami Gandhi, *supra* note 23.

<sup>28</sup> Interview with Ami Gandhi, *supra* note 23.

<sup>29</sup> Interview with Ami Gandhi, *supra* note 23.

<sup>30</sup> Interview with Ami Gandhi, *supra* note 23.

<sup>31</sup> Interview with Ami Gandhi, *supra* note 23.

<sup>32</sup> *2016 Election Results*, CNN (Dec. 23, 2016), <http://www.cnn.com/election/results>.

<sup>33</sup> Interview with Ami Gandhi, *supra* note 23.