



## **ISSUE ADVISORY: Voter Suppression on Steroids for 2016 Elections**

By Elika Nassirinia and Luna Floyd, NOW Foundation Interns

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*Mary Lou Miller was 7 years old when the 19<sup>th</sup> Amendment was passed. She made a promise to herself to take full advantage of her right to vote, and vote she did, from 1934 onward. Yet just last year, Miller, now 101 years old, was denied the right to vote because she lacked a government issued ID, a requirement under Texas's new voting laws. The problem will be felt in other states: in North Carolina, approximately 218,000 registered voters do not have a government-issued ID required under the state's law to cast a ballot. A disproportionate number are young people and college students. In our present state, voter suppression is no accident. For many it is a reality brought on by legislation intentional in its suppressive aims, measures that have and continue to result in unfair and widespread voting discrimination for already marginalized groups. This is all part of an extensive effort across the country to limit the influence of voters who usually support liberal and progressive candidates and ballot measures.*

**SUMMARY** - The 2016 election, regardless of candidates, will be frustrating for many voters: it will be the first election with significant new barriers in various states, such as new, restrictive voter ID laws and no required federal preclearance before changing voting regulations. In the name of ending mythical voter fraud, these regulations aim to disenfranchise the most vulnerable members of our society: women, people of color, low-income communities, and LGBTQIA people will face increased difficulty when trying to exercise their right to vote in 2016. These efforts are not new – they follow a large-scale pattern of measures carried out by conservative Republicans to elect officials who do not champion equality for women and people of color. Some studies have estimated that three million voters in 30 states could be turned away from voting in the general election this November. However, if Congress passes the Voting Rights Advancement Act (H.R. 2867/S.1659), openly discriminatory efforts to limit voting would once again be against the law. However, passage of the act in the current Republican-controlled Congress will be an uphill challenge.

**New Voter ID Laws Create Roadblocks to Voting** - The 2016 election will be an election where many new voter suppression laws take effect; 17 states will see new restrictions in the form of new voter ID laws. Voter ID laws disproportionately affect certain marginalized communities, often targeting women. Most voter ID laws require a government-issued photo ID, such as a driver's license. This is a form of identification that over 16 million registered voters do not have. Senior citizens, college students, low-income families, and LGBTQIA people may not have these IDs for a variety of reasons.

- *Burdens on low-income communities* - Sammie Lee Bates, a lifelong voter, ran into these problems when trying to vote in the 2014 midterms. As a low-income woman, she had trouble obtaining her Mississippi birth certificate to get the necessary Texas voter

ID. The barrier standing in her way? \$42. "I had to put \$42 where it was doing the most good," Ms. Bates said. "It was feeding my family, because we couldn't eat the birth certificate. That's for sure. And we couldn't pay rent with the birth certificate." Women, especially low-income women and women of color, often have trouble locating documents they can use to get a voter ID; even if a voter ID is technically free, the administrative costs to locate documents can be insurmountable for many eligible voters.

- *Challenges to women* - New voter ID laws also target anyone whose legal name does not match their identification. Women who have been married or divorced may have discrepancies between names, if they change surnames according to their marital status. Up to 90% of women change their names in their lifetimes, but only 66% of women have photo ID with their current names. In states with strict voter ID laws, 34% of women would have to locate and present original marriage or divorce certificates to be able to exercise their right to vote.
- For example, Texas judge Sandra Watts' driver's license was deemed insufficient under the state's new voter ID laws – Watts' license lists her birth surname as her middle name, while the state voting rolls contain her given middle name. As a judge, Watts' access to resources and familiarity with the law allowed her to remedy the situation and eventually vote, but her situation is exceptional considering that many women lack access to such resources.
- *LGBTQIA discrimination* - People in the LGBTQIA community also face harassment and discrimination at polling places under new voter ID laws. Transgender people whose photo IDs might not match their gender identity face harassment: in 2014, Asher Schor chose to challenge the Pennsylvania voter ID law so he and other transgender voters could vote free of discrimination from poll workers. The law violating Schor's civil rights was struck down, as Pennsylvania Commonwealth Court Judge Bernard McGinley held that the law presents a "substantial threat" to the rights of "hundreds of thousands" of potential voters, and found the requirement to violate both state and federal constitutions. Obtaining new identification that reflects gender identity can be impossible, especially for low-income transgender people or people who cannot medically transition. New voter ID laws disproportionately affect transgender and gender nonconforming people at the polls.
- *State laws and voter suppression* - Various state laws present different problems in terms of identification. In Wisconsin, new voter ID laws prevent the use of U.S. Veteran's Administration ID cards to prove identity, often preventing homeless veterans from voting at all. In North Carolina, many early voting days – days historically used by African-American voters – have been eliminated. Famously, Texas accepts concealed-carry handgun permits but not state-issued student IDs for the purposes of voting. These laws form a disturbing pattern: women, LGBTQ people, people of color, and college students face undue difficulties in the voting process since the 2013 evisceration of the Voting Rights Act in the Supreme Court by a conservative 5-4 majority.

**Data Shows Decline in Democratic, Minority Voters** - Researchers at the University of California, using data from the annual Cooperative Congressional Election Study compared states with strict voter ID laws to those that allow voters without photo ID to cast a ballot. According to an article by Scott Keys writing for ThinkProgress (Feb. 2, 2016) and referring to data from the 2014 election, Democratic turnout drops by an estimated 8.8 percentage points in general elections when strict photo identification laws are in place, compared to just 3.6 percentage points for Republicans. Additionally, researchers found that in primary elections, a strict ID law could be expected to depress Latino turnout by 9.3 points, Black turnout by 8.6 points and Asian American turnout by 12.5 points.

**Voter Suppression Endangers Reproductive Rights** - One of the outcomes of voter suppression in many states has been an increase in the number of drastic restrictions on women's reproductive rights. These restrictions have harrowing consequences for women's rights, supporting the agenda of conservative, anti-abortion rights legislators. According to the Guttmacher Institute, states adopted 288 abortion restrictions from 2010-2015 – more restrictions were passed in these five years than in the 15 year span from 1995-2010.

According to the 2016 *Who Decides?* report by NARAL Pro-Choice America, 22 states enacted 41 anti-abortion rights measures in 2015 alone. Many of these states, including Arizona, Texas, North Dakota, North Carolina, and Wisconsin have enacted voter suppression measures after *Shelby* as well as placing severe limits on abortion rights.

- Arizona, North Carolina, and Texas imposed restrictions on abortion providers meant to force clinics out of practice
- Florida and North Carolina enacted mandatory-delay laws
- Wisconsin banned abortion care after 20 weeks
- North Carolina and Texas enacted measures meant to prevent organizations that provide abortions from receiving certain public funds, yet openly fund “crisis pregnancy centers” that often lie about abortion procedures.
- Texas passed restrictions on young women's access to abortions
- Arizona passed a law forcing women to undergo ultrasound procedures before being able to access abortion care.
- North Dakota's abortion laws ban abortion after six weeks, which is both unenforceable and unconstitutional.

***Shelby County v. Holder* Decision Suppresses Votes** - In the 2013 case *Shelby County v. Holder*, the Supreme Court vote declared section 4(b) of the Voting Rights Act to be unconstitutional. This ruling removed the formula used to determine which states and jurisdictions are subject to federal preclearance before making changes to their voting laws, essentially exempting states from preclearance requirements. Thus states with past histories of voter discrimination – including Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia – no longer require federal approval before enacting changes to their voting laws, removing a significant barrier to protect the votes of already

marginalized groups. Immediately after the ruling several states including Texas, Arizona, North Carolina, and Wisconsin passed a number of voting restrictions – Texas required a photo ID in order to vote, and North Carolina, in addition to enacting a voter ID law, terminated same-day registration for all voters and pre-registration for those under 18. These restrictions pose enormous barriers to the votes of women, communities of color, and young people, barriers which will significantly impact the election of more progressive legislators.

**Felon Disenfranchisement Removes Civil Rights** - Felon disenfranchisement is another crucial barrier to voting rights in the United States. Currently only two states, Maine and Vermont, have no restrictions on the rights of currently or previously imprisoned individuals to vote. Florida, Iowa, and Kentucky permanently disenfranchise an individual convicted of a felony. Other states have varying restrictions on felon voting rights, with the majority prohibiting individuals who are imprisoned, on parole, or on probation from voting. This leads to years of disenfranchisement, lengthy waiting periods, and a complex re-registration process.

Felon disenfranchisement is particularly significant considering the effects of the prison-industrial complex and the demographics of imprisoned populations. According to a 2016 report by the Prison Policy Initiative, the United States currently imprisons 2.3 million individuals. That is more people, per capita, than any other nation in the world. Racial disparities in prisons are stark – African Americans, while making up 13% of the U.S. population, comprise 40% of the prison population, while Latinos, who make up 16% of the general population, comprise 19% of the prison population. Thus, felon disenfranchisement disproportionately affects the votes of communities of color, groups who statistically vote for more progressive candidates. In addition, women are the fastest growing segment of the prison population, leading these restrictions to increasingly affect the votes of women, particularly women of color.

Restrictions on felon voting rights have consequences that reach beyond the right to vote. They result in feelings of alienation and frustration, of the notion of a lesser citizenship due to a past conviction. These policies affect real people.

- Maryland community organizer Perry Hopkins told The Washington Post, "There is enough discrimination against us...I served my sentence. I paid my debt to society. Why am I still doing time?"
- Navell Gordon, a voting rights organizer from Minnesota, shared with the Star Tribune "At the end of the day I'm out here doing good for my community, and voting is important to me." Gordon wants to set an example for his daughter, and wants to "show her it's good to get out here and vote."
- Mississippi's Leola Strickland understands the importance of voting. "I always voted," she told TIME. "My vote may be the one that counts to get the right person in office. It may be foolish of me to think like that, but that's how I feel." This notion is not foolish, and it is the very reason why restoring voting rights to felons is essential in a democracy.

Measures are being taken to restore voting rights to incarcerated individuals. According to the Brennan Center for Justice, restoration of voting rights to those with past criminal convictions was the second most popular type of reform in the latest congressional session, with 27 bills

introduced in 15 states. The most popular were efforts to modernize registration. Maryland's legislature overrode a gubernatorial veto, ensuring that voting rights are automatically restored to individuals after release from prison, and not taken away from those on probation. This measure restored the rights of approximately 400,000 individuals.

**Virginia Governor Attempts to Restore Civil Rights for Ex-Felons** - Recently, Virginia Gov. Terry McAuliffe (D) issued an executive order to restore voting rights to all felons who have served their sentences and been released from probation or parole, a measure that would restore voting rights to 206,000 individuals. Yet GOP leaders of the Virginia General Assembly sued in order to block the order, arguing that the measure and the minority votes it allows in the swing state is a political favor to Hillary Clinton. McAuliffe asserted that the suit "is an effort to continue to treat [ex-offenders] as second-class citizens," and defended the order, stating that "we benefit from a more just and accountable government when we put trust in all of our citizens to choose their leaders." In Kentucky, Republican Governor Matt Bevin suspended previous Governor Steve Beshear's (D) executive order that would restore voting rights to ex-felons convicted of nonviolent crimes, a decision that, according to the Brennan Center, "sends Kentucky backwards and again makes it one of only three states in the country that permanently disenfranchises Americans for a mistake made in their past."

**Confusion on College Campuses Keeps Young Students from Voting** - Young, civically active college students face many difficulties in voting. Many new voter ID laws, including those in Texas, Wisconsin, and Tennessee, explicitly deny the use of student ID. Under North Carolina law, people who have registered to vote up to 90 days before an election may vote with an out-of-state ID, but if the registration is dated more than 90 days before the election, an out-of-state ID becomes unacceptable. This April a federal district judge upheld the law, deemed one of the most restrictive in the nation. Many students report problems with this law.

Proving residency also poses a problem for many out-of-state students. Misinformation about registering to vote as an out-of-state student abounds: students are incorrectly told they could jeopardize scholarships, make it impossible for their parents to claim them as a dependent on their taxes, and even that their health insurance could be endangered. University of North Carolina sophomore Isatta Feika had to cast a provisional ballot because of her out-of-state ID, and held that it is unlikely for her to vote again in North Carolina after experiencing the difficulties with voter ID laws. Bob Hall, the executive director of Democracy North Carolina, states that because these laws are "so much affecting young people, we're teaching them the wrong lesson about democracy and about voting... we're going right back to this message of 'elections are not for you.'"

**Democratic Lawmakers are Fighting Back** – Last June, the Voting Rights Advancement Act of 2015, sponsored by Rep. Terri Sewell (D-Al-7) and Sen. Patrick Leahy (D-Vt.), was introduced in Congress in response to Shelby, in an effort to modernize the Voting Rights Act in order to address the realities of voter discrimination today. In sponsoring the act, Representative Sewell urged her colleagues to recommit themselves to "restoring the promise of voter equality," asserting that "our nation will cease to be a democracy if we limit access to voting." The act

aims to create a formula for preclearance to cover states with patterns of voting discrimination that may place voters at risk, requiring preclearance for not only southern states but those such as California and New York. The act would require public notice of any changes to voting laws take place at least 180 days before an election, and would protect against changes that discriminate against people of color and language minorities, such as reducing the availability of voting materials in languages other than English, addition or subtraction of state legislative seats that could influence the strength of minority votes, adding barriers to voting registration, and reducing or relocating polling locations. The act would allow a federal court to order a preclearance remedy if it finds any evidence of voting discrimination, expand the Effective Federal Observer Program, and improve voting rights protections for Native Americans and Alaska Natives.

**New Voting Rights Caucus Promises Change** - In May of this year, a team of four representatives, including Marc Veasey (D-TX-33), Terri Sewell (D-AL-7), Bobby Scott (D-VA-3), and John Lewis (D-GA-5), established the Congressional Voting Rights Caucus. Currently, the caucus has fifty members, all Democrats. The caucus aims to educate the public regarding various voter suppression tactics employed by states since the passage of *Shelby*, advance legislation that blocks current and future voter suppression measures, and modernize the voting process in order to better meet the reality of voting in the 21<sup>st</sup> century. The caucus has endorsed the Voting Rights Advancement Act, among eight others. They plan to introduce a Poll Tax Prohibition Act this June to block associated costs, such as fees associated with getting the paperwork needed for a voter ID or undue travel fees due to polling place closings.

The Transformative Justice Coalition, founded by lawyer and civil rights advocate Barbara Arnwine in 2015, signals another effort to further voting rights. The coalition works to achieve social justice through public education and engagement initiatives, and includes a Democracy and Voting Rights Project dedicated to “informed civil engagement” and “equal voting rights for all” regardless of “race, gender, disability, youth, ethnicity, ESL, and income.”

Since the *Citizens United v. FEC* decision in 2010 to treat political spending as free speech, elections have been flooded with corporate money, inflating the influence of corporations over American elections. Combined with new voter suppression efforts, democracy has been dealt a serious blow in the last six years. By allowing vast sums of corporate money and making it more difficult for marginalized groups to vote, political power remains in the hands of the elite.

**Steps Taken to Limit Polling Places and Early Voting** – According to a recent report on National Public Radio, voters in Maricopa County, Ariz. (Arizona's most populous county) had only 60 polling places in 2016 compared to 200 in 2012. The number of polling places in the county was reduced by 70% in the four year period. In May, a federal judge in Ohio struck down a measure that cut early voting days from 35 to 28. Getting rid of early voting days makes voting impossible for many low-income people of color. Other states have enacted reductions to early voting days as well as eliminating same-day registration – in North Carolina, voters have to make two trips to exercise their civic rights, one to register to vote and one to actually vote. This

is prohibitive to many voters who have to take time off of work and secure childcare. The excuses for these changes are usually cost-based, but their effects are far more insidious.

**Automatic Voter Registration is a Step in the Right Direction** - Positive changes in voting practices have taken place, however. Automatic voter registration, in which the government automatically registers every eligible citizen who has interacted with government agencies unless the individual declines, has gained momentum and bipartisan support in the past year. This system also electronically transfers voter-registration information to election officials, making the process significantly easier and less prone to error. According to the Brennan Center for Justice, in 2016 more automatic voter registration bills have been introduced than any other type of voting legislation. West Virginia, Oregon, and California have passed automatic voter registration bills, and 28 states have considered automatic voter registration this year. Online voter registration also continues to advance throughout the country, and 15 states have thus far considered online registration legislation.

**Why Are There So Many Roadblocks to Voting?** - Since the 2013 Supreme Court decision to repeal the preclearance section of the Voting Rights Act, states such as Texas, Arizona, North Carolina, and Wisconsin have been free to change their voting process however they would like. Almost invariably, these laws disenfranchise women, people of color and minorities, low-income communities, and LGBTQ people. What do these groups have in common? They tend to vote for liberal or progressive candidates.

Conservative politicians tend to advocate for strict voter ID laws, resulting in a pattern where more conservatives are voted into office as fewer people have easy access to the polls. As former South Carolina Senator Jim DeMint and conservative activist said, "...in the states where they do have voter ID laws you've seen ... elections begin to change towards more conservative candidates." DeMint is now the president of the Heritage Foundation, a conservative think tank. Currently, the Heritage Foundation has a list of recommended policies to "preserve voter integrity," including restrictive voter ID and proof of citizenship, as well as the appalling suggestion to "Amend the National Voter Registration Act of 1993 to Allow States to Purge Individuals Who Have Not Voted in Two Federal Elections."

Other conservatives have been far less diplomatic in their speech. A local GOP official in North Carolina, Don Yelton, said in 2013 that the state's restrictive voting law "...hurts a bunch of lazy blacks who wants the government to give them everything." (He was forced to resign after this racist statement).

As a general trend, marginalized groups tend to vote for progressive candidates. By making it more difficult for these groups to vote, election results tend to skew conservative. Voter suppression benefits Republican candidates and facilitates adoption of conservative legislation which, generally, has negative consequences for women and minorities.

What justification is being offered for these new laws? As Jim DeMint asserts, "The left is trying to draw votes from illegals, from voter fraud, a lot of different things." Voter fraud is presented as

the justification for all voter ID laws. Voter fraud is generally considered to be a myth by academics; on purely logical terms, voter impersonation at the polls has a negligible effect on the candidate's chances of being elected, but carries very severe penalties if caught. Every legitimate study of voter fraud has found it to be nearly nonexistent. Voter fraud exists at such a low level that it is incomprehensible to base laws on its occurrence, let alone to actively construct barriers to voting for poor and minority voters.

In a 2015 speech at Texas Southern University, Hillary Clinton asked Republicans to “stop fear-mongering” about a “phantom epidemic of election fraud,” stating “What is happening is a sweeping effort to disempower and disenfranchise people of color, poor people, and young people from one end of our country to the other...it is just wrong...to try to prevent, undermine, and inhibit Americans’ right to vote. And at a time when so many Americans have lost trust in our political system, it’s the opposite of what we should be doing in our country.”

Voting rights expert Barbara Arnwine, in a statement on the Transformative Justice Coalition website, urged readers to support voting rights in 2016. Arnwine stated, “While some ruthlessly seek to deny and suppress the right to vote, many eligible voters struggle to appreciate the connection between the vote and their own daily lives given their disappointments with government. This combination of voter suppression and citizen discouragement is profound and deeply troubling yet not insurmountable. We can make a difference in fighting voter suppression efforts at the policy level and in the streets and homes of America by registering the 50 million unregistered but eligible voters and providing the tools to voters to fight back against the many voter suppression tactics.”

**Conclusion** - Although some states are passing fewer laws that restrict voting now, voter ID bills are still the most common forms of voting restrictions. Other forms of voting restrictions have gained momentum; however, 37 voter ID bills from 19 states were introduced or carried over into the latest congressional session, Missouri introduced a photo ID requirement that passed in the House and awaits a vote in the Senate, and West Virginia passed a slightly less restrictive voter ID requirement. Florida made its laws less restrictive by broadening the photo IDs accepted as forms of identification, adding veterans’ health IDs, government employee IDs, and concealed carry licenses. Efforts to restrict voter mobilization were carried out in two states, as Arizona has made it a felony for any individual other than a family/household member or a caregiver to collect and submit an absentee ballot, and Wisconsin eliminated volunteers who could previously verify voters’ residency when they submitted or collected voter registration applications, threatening the ability of groups to conduct voter registration drives. Finally, 17 states have voting restrictions in place for the first time in the upcoming presidential election, ranging from ID requirements to early voting cutbacks.

**Take Action** - Voter ID laws, restrictive identification requirements, felony disenfranchisement, discrimination against women and minorities: all of these are forms of voter suppression. Since the Supreme Court decision to remove the preclearance clause from the Voting Rights Act, states have been easily passing laws that make it more and more difficult for women and minorities to vote. NOW activists should encourage members of their Congressional delegation



to take a leadership role in helping to pass the Voting Rights Advancement Act that will afford protections to ensure that all members of our society can exercise their fundamental right to vote. Our feminist agenda depends upon strengthening representation in legislatures and in Congress for women and communities of color.

**More Information:**

American Civil Liberties Union

<https://www.aclu.org/issues/voting-rights/fighting-voter-suppression>

Brennan Center for Justice

<https://www.brennancenter.org/issues/restricting-vote>

Congressional Voting Rights Caucus

<https://veasey.house.gov/votingrightscaucus/>

NARAL Pro-Choice America

<http://www.prochoiceamerica.org/assets/download-files/2016-wd-report.pdf>

United States Congress, Voting Rights Advancement Act (H.R. 2867)

<https://www.congress.gov/bill/114th-congress/house-bill/2867>