



Millions to the Polls

PRACTICAL POLICIES TO FULFILL THE FREEDOM
TO VOTE FOR ALL AMERICANS

**RESTRICTIVE PHOTO
ID LAW FOR VOTING**

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RESTRICTIVE PHOTO ID LAWS FOR VOTING

- Overly burdensome photo ID laws add an unnecessary layer of bureaucracy that disenfranchises millions of otherwise eligible voters.
- Photo ID requirements place tremendous fiscal burdens on states and localities.
- States should look to their constitutions to protect the freedom to vote from onerous ID laws.

Restrictive photo ID laws for voting are a level of unnecessary red tape and bureaucracy that hinder the freedom to vote. Strict laws that require narrow types of government-issued ID go above and beyond normal registration requirements. Rather than protecting the integrity of our electoral system, restrictive photo ID laws are an example of politicians enacting overly restrictive requirements to manipulate the voting system for their own advantage. As the Pennsylvania House Majority leader said, “Voter ID, which is going to allow Governor Romney to win the state of Pennsylvania: done.”¹

Indeed, far from protecting the integrity of our elections, restrictive photo ID laws take away the right to vote for millions of eligible voters. For instance, when Pennsylvania implemented new restrictive photo ID laws, about nine percent of the state’s already registered voters did not currently possess the necessary identification required at the polling place.² In 2012, 8.5 million people were registered to vote in the state.³ If the ID requirements had been in place, 765,000 eligible voters would not have been able to vote.

Though the state’s law has been challenged in court, it is just one example of the scale of disenfranchisement among eligible voters that can occur through restrictive, unnecessary photo ID laws. Furthermore, while these laws are often defended as necessary to protect our elections, the threat of voter fraud is minimal, if not near zero. A recent study analyzed all cases of alleged voter fraud since 2000 and found just 10 cases of voter impersonation out of 146 million registered voters during that time period, or 1 out of every 15 million voters.⁴

The new, restrictive ID laws being enacted in many states go above and beyond what is required for voter identification. Under the federal Help America Vote Act (HAVA), the only voters required to present identification for voting are first-time voters who registered by mail.⁵ The permissible IDs include utility bills and other more readily available forms of identification, rather than being limited to government-issued photo IDs.

If the first-time voter does not have any of the permitted IDs, she can cast a provisional ballot.⁶ The ID requirement for first-time voters can also be waived under HAVA if the eligible voter submitted either a driver's license number or the last four digits of their Social Security number *and* the state or local election official can match the submitted information to a state identification record.⁷

At least 30 states require some form of identification to be presented at the time of voting before an eligible citizen can vote, but fewer than ten states have passed strict photo ID requirements, and many of these are being challenged in court.⁸

⁹ In states with strict voter ID laws, a voter without valid ID is given a provisional ballot that is kept separate from regular ballots.¹⁰ If the voter does not return within a short period of time after the election to present an acceptable ID, the provisional ballot is never counted. What constitutes valid ID also varies among states with some requiring a photo ID and others allowing Social Security cards, utility bills, and other forms of government issued documents.¹¹

The most onerous voter ID laws require both a photo ID and are “strict” where the provisional ballot is kept separate and not counted if the voter does not return with appropriate

State-Level Constitutional Right to Vote

A part from Arizona, every state affirmatively and explicitly grants the right to vote in its state constitution.²² Of the 49 states, 26 state constitutions state that elections shall be “free,” “free and equal,” or “free and open.”²³ However, state courts have largely under-enforced the right to vote, because they have too closely followed federal court jurisprudence regarding voting rights.²⁴ An opportunity exists for states to better protect the right to vote through enforcement of their state constitutional provisions.

BEST STATE PRACTICES

New Mexico's State Supreme Court has interpreted that a state constitution's “free and equal” or “free and open” elections clause means that “all eligible voters should have the chance to vote.”²⁵ In Wisconsin courts have interpreted the state constitution to provide greater protection to the right to vote than the federal constitution.²⁶

A recent Missouri Supreme Court decision illustrates the difference between the lenient constitutional scrutiny of burdens on non-fundamental interests and stringent scrutiny of burdens on fundamental rights. Holding that voting is a fundamental right under the Missouri state constitution, the Missouri Supreme Court barred enforcement of the state's ID requirements.²⁷

State courts should follow Missouri's lead and interpret the right to vote as a fundamental right and apply a “strict scrutiny” standard when reviewing any law or regulation dealing with voting rights or procedures. Any policy that infringes this fundamental right should be forced to show a **compelling state interest**, the law or policy must be **narrowly tailored** to achieve the goal or interest, and it must be the **least restrictive** means by which the compelling interest is achieved. Any law or policy that does not meet all three of these standards should be struck down as unconstitutional.

ID. Currently, Georgia, Indiana, Kansas, and Tennessee require both a photo and are strict ID states.¹² Arkansas, North Carolina, Mississippi, Pennsylvania, Texas, Virginia, and Wisconsin have all passed similar restrictions but only Texas's law is in effect.¹³

The danger to overly restrictive voter ID laws is that voters who cannot produce the restrictive forms of IDs required are at risk of not having their vote counted—even if they are eligible voters. This segment of the population is not inconsequential 11 percent of Americans, or approximately 23 million citizens of voting age lack the required photo ID and could be turned away from the polls on Election Day.¹⁴

These laws also disproportionately affect people of color and poorer citizens, who are less likely to have the required forms of ID, especially photo ID.¹⁵ Twenty-five percent of voting age African-Americans do not have a government issued photo ID.¹⁶ At least 15 percent of eligible citizens making less than \$35,000 a year also do not have a government issued photo ID.¹⁷ Nearly 20 percent of 18-24 year-olds do not have photo ID with their current address and name.¹⁸ All of these constituencies are at risk of being disenfranchised and denied their basic, fundamental right to vote.

Finally, implementing overly restrictive voter identification laws is expensive. Photo ID requirements, in particular, are fiscally burdensome to states. States that require photo IDs to vote must provide them free of charge because otherwise the photo ID requirement would amount to a de facto poll tax.¹⁹ Indiana, for example, spent more than \$10 million over four years on photo IDs for voting.²⁰ A recent analysis found that photo ID legislation would cost a minimum of \$276 million and could cost up to \$828 million to implement.²¹

POLICY RECOMMENDATIONS

The clearest way to protect the right to vote is to eliminate any ID requirements that go beyond a signature affidavit at the time of voting. In addition:

- The requirements set forth in HAVA should be a ceiling and not a floor. States should not impose further requirements beyond those in HAVA, as detailed in the text.
- HAVA's prescriptions for first-time voters who register by mail should not apply to in-person registrations, including registration drives via local community organizations.
- States should also amend their constitutions to provide an affirmative right to vote. Onerous ID laws can then be challenged as violating the state's constitutionally protected right to vote. ■

ENDNOTES

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4. Natasha Khan & Corbin Carson, *Comprehensive Database of United States Voter Fraud Uncovers No Evidence That Photo ID Is Needed*, (Aug. 12, 2012), available at <http://votingrights.news21.com/article/election-fraud/>.
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6. *Ibid.*
7. *Ibid.*
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