

Voter Suppression: We Need to Talk

University of Minnesota Retirees Association

June 8, 2021

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ACLU Minnesota

“The right to vote freely for the candidate of one’s choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.”

- *Reynolds v. Sims*, 1964













Forms of Voter Suppression

1. Impose expense and inconvenience
2. Voter ID laws
3. Limit early voting and registration
4. Purge names from voting rolls
5. Felony disenfranchisement
6. Partisan gerrymandering

Forms of Voter Suppression

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ACLU Voting-Access Litigation in Minnesota

Minnesota Secretary of State agreed to mail absentee ballot applications to all voters.

- [NAACP V. SIMON](#)

It was a crime to help more than three voters in Minnesota or for a candidate to help voters. We sued and won.

- [DAI THAO V. SIMON](#)

In-person witness requirement on absentee ballots due to COVID-19 barred in 2020 Election.

- [NAACP V. SIMON](#)

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Voter ID laws are common.

- **34** states have ID requirements
- **7** require voters to present one of short list of government photo IDs.
- More than **30** states have considered requiring government photo IDs.

Voter ID laws are a solution in search of a problem

- Votes in U.S. 2000-14: over one billion
- Credible claims of voter impersonation (the only kind of fraud that ID laws can prevent): 31

What do voter ID laws do?

- Reduce voter turnout by up to 3 %
- Focus their harm on racial minorities and other vulnerable groups.
- Impose a poll tax (even if government-issued ID is free, the documents needed to get one are not)
- ~~Prevent fraud~~ ← NOT

Who is hurt by voter ID laws?

- 21 million citizens (one out of every nine) have no government-issued photo ID
- Who are they?
 - 25% of African-Americans
 - 8% of whites

Who is hurt by voter ID laws?

All ID is not created equal:

- TX: gun permits ok, student IDs not ok
- NC: public assistance IDs not ok
- WI: active duty military IDs ok, VA ID not ok

It can be hard for transgender voters to comply with voter ID.

- More than 25,000 otherwise-eligible transgender voters likely turned away at their polling places.
- About 40% of transgender people do not have an ID that accurately reflects their gender.

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Limits on Early Voting and Voter Are on the Rise

Examples:

- Reductions in early-voting time periods
- Onerous registration requirements
- Limits on absentee and voting by mail

Examples of Limits on Early Voting and Voter Registration (1 of 3)

- **Arizona** – Felony to turn in another's ballot even with voter's permission.
- **Florida** – Reduced early voting and voter registration drives.
- **Georgia** – Reduced early voting.

Examples of Limits on Early Voting and Voter Registration (2 of 3)

- **Iowa** – Required voter ID, restricting registration, and imposing new burdens on registration and absentee voting.
- **Nebraska** – Reduced early-voting period.
- **Ohio** – Reduced early voting, changed absentee and provisional ballot rules.

Examples of Limits on Early Voting and Voter Registration (3 of 3)

- **Tennessee** - Reduced early voting and required proof of citizenship.
- **West Virginia** - Reduced early voting.
- **Wisconsin** - Restricted registration; required photo ID; cut early voting hours and days.

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Purging names from voting rolls

- **Indiana** will purge registered voters from the rolls, although purging process is usually inaccurate.
- **Ohio** targets voters who failed to vote for two years even when they are still eligible to vote and have not moved.

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Felony disenfranchisement strips millions of right to vote.

- 48 out of 50 states prevent some or all people with felony convictions from voting.
- Democracy in Maine and Vermont appears to be alive and well.
- 5 - 6 million Americans cannot vote because of felony convictions.

The Florida Experience

- 10% were banned for life; 20% of Blacks; one of four states with lifetime disenfranchisement
- Florida voters voted overwhelmingly to re-enfranchise those who have completed imprisonment for felonies (Amendment 4)
- Legislature imposed requirement that all fines and fees be paid, with no requirement that total be knowable.
- *Jones v. Florida* (11th Cir., Sept. 11, 2020): No problem!

Felony disenfranchisement laws vary widely.

- 2 states: people with felony convictions.
- 8 states: people with certain felony convictions.
- 20 states: people with felony convictions while they are in prison or on parole.
- 13 states: people with any felony convictions while incarcerated.
- Maine and Vermont allow everyone to vote!

Disfranchisement is rooted in racial prejudice.

- By the early 20th Century, former Confederate states prohibited nearly all Black citizens from voting. In other states, Blacks were 10 times as likely to be barred.
- As the incarceration rate rises, so does the disfranchised population.
- Racial disparities in incarceration lead to racial disparities in disenfranchisement.

Schroeder et al. v. MN Sec'y of State

- Crime: possession of controlled substance
- Sentence: 365 days in county jail, 40 years of probation
- Jen graduated from college, earned degree in addiction counseling, now a counselor
- Three other plaintiffs, including former ACLU-MN staff member

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Partisan gerrymandering silences voters' voices.

- Wisconsin legislature ensured that majority party would retain control under any likely electoral scenario
- Map-drawing process controlled by GOP staffers and consultants.
- In other states, it's the Democrats.

Partisan gerrymandering works.

- 2012: Republicans got 49% of the vote, but 60 of 99 seats in the Wisconsin Assembly
- 2014: Republicans got 52% of the vote, but 63 of 99 Assembly seats.

Partisan gerrymandering in the Supreme Court

- *Rucho v. Common Cause* (June 27, 2019)
- Question of partisan gerrymandering is a “political question”: **Not** subject to review
 - Majority: Roberts, Alito, Gorsuch, Kavanaugh, Thomas
 - Dissenting: Breyer, Ginsburg, Kagan, Sotomayor

Battleground states? Nearly all of them!

- 389 bills introduced this year in 48 states would make it harder to vote.
- As of May 15, 14 states have 22 new, more restrictive laws.
- 880 bills in 49 states would improve access to voting.

Efforts to limit voting are everywhere!

- Florida: limit drop boxes, add ID requirements, limit who can collect ballots, empower partisan poll watchers.
- Texas: restrict early voting, ban drive-through voting, penalize election officials' mistakes, empower partisan poll watchers.
- Arizona: limit mail-in ballots, purge voting rolls
- Georgia: more ID, limit absentee ballots, ban “line-warming”
- Iowa: reduce early voting and election-day poll hours

For the People Act (Senate Bill 1)

- 818 pages
- Expanded access based on national standard
- More controls on money in politics
- D.C. statehood
- Minnesota is already above the proposed federal “floor”
- Would apply only to federal elections
- D.O.A.

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John Lewis Voting Rights Act (H.R. 4)

- Would undo Shelby County v. Holder (U. S. Sup. Ct., 2013)
- Restore Voting Rights Act of 1965
- Bring back procedure for “pre-clearance”
- Allow more federal observers
- Limit at-large or multi-member districts
- Limit boundary changes, redistricting
- Limit stricter voter I.D. requirements
- Limit reduction and relocation of polling places

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Constitutional limits

- Art. I, §4: Times, places and manner of elections for Congress shall be prescribed by each state legislature, but Congress may make or alter such regulations, except as to places of choosing senators.
- Art. II, §1: Congress may determine the time of choosing presidential electors.
- Amendments 13, 14, 15, 19, 24, 26
- 10th Amendment's "anti-commandeering" provision

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Some good news

Minnesota and other states help ensure that eligible voters can exercise their right to vote:

- early voting
- no-excuse absentee ballots
- election-day registration
- online registration
- automatic registration

Some more good news

26 states and DC have expanded access to the ballot box since 2012, even before the pandemic:

- 37 states and DC: early voting
- 27 states and DC: “no-excuse” absentee voting.
- 15 states and DC: same-day registration
- 35 states and DC: online registration

NOTE: References to the status of litigation and statutes in various states may not be up to date as of the date of this presentation. They do, however, fairly indicate national trends and issues.

The ACLU is fighting voter suppression

- Litigation
- Legislative advocacy (all 50 states and Congress)
- Volunteer-driven activism in all 50 states

In just six years, the ACLU has won victories in Minnesota and 12 other states to safeguard the voting rights of more than 5.6 million people.

Arizona	Arkansas	California
Florida	Iowa	Kansas
New Hampshire	North Carolina	Ohio
Pennsylvania	West Virginia	Wisconsin

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2020 ACLU-MN voting rights work

- Texts and phone calls
- Mailers
- Door-knocks, cards on vehicles
- PSAs
- Posters
- Brochures and pocket cards
- Monitoring polling places
- Election Protection Hotline



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Menu for Change*

- Fix or eliminate Electoral College
- Fix voting infrastructure and impose standards
- Register voters automatically
- Make Election Day a holiday
- End gerrymandering
- Require or reward voting
- Shorten transition period
- DC and Puerto Rico statehood
- Election-Day Registration**
(21 states already have it)

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