Voter Identification Laws: A History and a Future

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by

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Abstract

Voter Identification laws have been a politically divisive issue in recent years. Those against the laws claim that they disenfranchise certain groups of people, while those in favor of the laws say that they protect the public against voter fraud. Indiana implemented one of the first strict photo voter ID laws and that law was held up by the Supreme Court, though that support may not hold in coming years. There are possible alternatives to voter ID laws that could appease those on both sides of the issue, but they would require Republicans and Democrats to work together to pass appropriate legislation.

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Introduction

Voter Identification laws have become a politically divisive issue in recent years. Since the first voter ID law was passed in early 2003 in Alabama, there have been strong responses from both those in favor of the laws and those against the laws. In 2010, when Republicans experienced large gains in representation in state legislative bodies, voter ID laws became a large priority for many states and were cast into the public spotlight. Since the first law passed in Alabama in 2003, more than 30 states have enacted some form of voter ID law (Lee). One of the more notable of these was passed in the state of Indiana in 2005. This law led to the Supreme Court Case of Crawford v. Marion County Election Board, where the court upheld the law, but with some degree of uncertainty as to whether they agreed with the law's intent or necessity (Electronic Privacy Information Center).

Advocates of such laws claim that they are protecting voters from fraud at the polling place and helping to make sure that each legitimate vote is not diluted by fraudulent votes. Those against the law claim that such laws disenfranchise certain groups of people, such as the elderly, minority, and low-income groups, which are all groups that historically tend to vote Democratic. The issue has become a case of political division between Republicans, who tend to support such laws, and Democrats, who adamantly oppose them (Lee).

Despite the sharp partisan divide that characterizes this issue, there are ways to amend these laws that could potentially appease both parties. The paper will end
with a policy recommendation that attempts to address both the fear of voter fraud
and the concerns of disenfranchising groups of citizens.

What are Voter ID laws?

Voter ID laws come in a variety of different forms. For a state to be
considered a state with a voter ID law they need only to have a law present that
encourages voters to bring some type of identification to the polls. States are
classified by two sets of criteria: photo versus non-photo voter identification and
strict versus non-strict. In states with a photo requirement, the identification used
to vote must include a photograph of the individual. Strict laws are ones in which an
individual cannot cast a ballot without first presenting some type of required
identification. In states with non-strict voter ID laws, individuals are encouraged to
bring some form of identification to the polls, but it is possible to vote without
identification. The laws that are contested today are mostly those that are photo
and strict. Many states have tried to pass strict photo voter ID laws in recent years.

Indiana has a strict photo voter ID requirement and was one of the first
states to do so. On Election Day in the state of Indiana, a person must show
identification that was issued by the state of Indiana or the United State's
government and includes the name of the individual, a photo of the individual, and
an expiration date. Military IDs are exempted from the expiration date requirement,
but student IDs from most state funded universities will not qualify as ID because
they lack an expiration date. In the event that a voter in Indiana is unable to
produce appropriate ID at the polls, they may cast a provisional ballot. This ballot
will only be counted if the voter goes to the designated area by the election board by noon the Monday after the election and shows a valid ID or writes an affidavit saying that they are indigent or have a religious aversion to being photographed. The qualifications for a person to be considered indigent are rather unclear in the statute (Voter Identification Requirements).

In Alabama, the voter ID law is non-strict and non-photo. In this state individuals can vote if they show a government issued ID, an employee ID with photo, a hunting, fishing, or gun permit, their birth certificate, social security card, naturalization document, court record of adoption or name change, Medicaid or Medicare card, electronic benefits transfer card, or any utility bill, bank statement, government check, paycheck or government document showing the name and address of the voter. If an individual is unable to produce an appropriate form of ID, they may vote with a provisional ballot or, if two poll workers recognize the individual and sign the voting sign-in sheet assuring that the voter is who they say they are, they may cast a regular ballot (Voter Identification Requirements).

Indiana and Alabama are at the opposite extremes of voter identification laws. Other states with any voter ID laws in place range somewhere between the requirements of these two states.
History

The first voter ID laws were passed in 2003 in Alabama, Colorado, Montana, North Dakota, and South Dakota, with only South Dakota's law asking that the ID show a photograph of the voting individual. Each of the other state's laws were non-strict and non-photo, meaning that a person could still vote without an ID and the ID was not required to have a photograph of the voting individual on it (Voter Identification Requirements).

Though Indiana was not the first state to pass a voter ID law, this state's law has become the most controversial. Indiana's voter ID law took effect on July 1, 2005 and it requires that anyone who wishes to vote show a government issued photo ID with an expiration date. This law replaced the previous practice of comparing the signature of a voter on Election Day with a previous signature of theirs in the voting system (Electronic Privacy Information Center).

Two notable examples of people having problems with this law are Julia Carson and a group of nuns. Ms. Carson was a United States House of Representatives member in 2006 and was turned away at the polls for not having appropriate identification. She was trying to use her congressional ID card to vote, but since there was no expiration date on the card, she was denied. In 2008, twelve nuns were turned away from polling places in Indiana because they lacked appropriate ID to be in compliance with the statute (Mycoff).

Problems like these and the overall resentment of the law led to two influential court cases being filed to try and overturn Indiana's voter ID law. The
Indiana Democratic Party filed a case, *Indiana Democratic Party v. Rokita* and the American Civil Liberties Union and National Association for the Advancement of Colored People filed a case on behalf of legislator William Crawford, *Crawford v. Marion County Election Board*. The two cases were combined together and filed as *Crawford v Marion County Election Board*. Crawford and the Indiana Democratic Party were suing the government on the grounds that the law disenfranchises the poor and elderly because they cannot afford to get the papers necessary to get an appropriate ID, even though the actual ID is free. When a person goes to get appropriate ID in Indiana they must produce a birth certificate or other governmental proof that they are who they say they are. There are a number of cases where women were unable to get ID because the name on their birth certificate is their maiden name and they cannot provide the paperwork to prove the change. Obtaining the needed paperwork can be expensive and time consuming, with most states charging to send out a new copy of the forms (Electronic Privacy Information Center).

Rokita, acting in his role as the Indiana Secretary of State, and the Marion County Election Board held that the laws prevent fraud, but subsequently failed to prove one instance in which the law had or would have prevented fraud. The very few cases of fraud in Indiana were on absentee ballots and the law does not extend to those individuals that choose to vote via absentee ballot (Electronic Privacy Information Center).
On April 14, 2006, the US District Court for the Southern District of Indiana ruled to uphold the law. Crawford appealed and on January 4, 2007, a three-judge panel of the US Court of Appeals for the 7th Circuit ruled in a two to one decision to uphold the law. Judge Richard Posner wrote the majority opinion for the case and agreed that the law would disenfranchise some voters, but that the risk of fraud outweighed the interests of those who would be disenfranchised. Judge Terrence T. Evans wrote the dissenting opinion, writing "Let's not beat around the bush: The Indiana voter photo ID law is a not-too-thinly-veiled attempt to discourage election-day turnout by certain folks believed to skew Democratic."

Crawford again appealed and on September 25, 2007 the US Supreme Court agreed to hear the case. The question presented before the Supreme Court was whether an Indiana statute mandating that those seeking to vote in-person produce a government-issued photo identification violates the First and Fourteenth Amendments to the United States Constitution? On April 28, 2008 the Supreme Court announced that they had ruled six to three in favor of the law (Electronic Privacy Information Center).

Though the Court ruled that the law could stay in place, the justices were divided into three distinct groups in the opinions that they held about the Constitutionality of the law. The first group included Justice Scalia, Justice Thomas, and Justice Alito and argued that the plaintiff's argument was irrelevant and the burden being placed upon voters by the law was minimal and justified. The group in direct opposition to the first included Justice Souter, Justice Ginsburg, and Justice
Breyer. This group said that the law was unconstitutional because it
disenfranchised certain voters. The last three Justices were less definitive on their
views of such laws. Justice Stevens wrote the lead opinion and was joined by Justice
Kennedy and Chief Justice Roberts. Stevens said that in the specific case at hand,
Crawford had not proven that the law created “excessively burdensome
requirements” on any class of voters. He said that since you cannot quantify the
burden or the benefit of such a law it is very hard to weigh them against one another.
There was no record presented of how many people did not have a valid ID in
Indiana and none of the plaintiff’s witnesses had actually been unable to vote
because of the new law. Stevens then said that he would uphold the law without any
real proof of burden because it deters voter fraud, helps in election modernization,
and safeguards voter’s confidence (Doran).

This division among the court creates an interesting situation for those still
opposed to photo ID laws. Since three justices seemed to only agree to keep the law
in place because of a lack of concrete evidence, if that evidence could be found and
presented in court, they may be persuaded to decide that such laws are
unconstitutional. The members of the US Supreme Court also have changed since
the time when the Crawford case was heard. This leaves an opening for those who
oppose to law to take a new case to the Supreme Court and potentially get such
voter photo ID laws overturned (Doran).
Pros and Cons

Those who disapprove of such laws claim that they disproportionately affect the elderly, minority and low-income groups. These are all groups that typically tend to vote for Democrats, thus creating the wide division between Democrats and Republicans on this issue. The problem these individuals have with the law is not usually the law on its own, but the effects and potentially unforeseen consequences of the law. In any state that has a voter ID law requirement, the actual ID required to vote must be available to anyone eligible to vote for free. This is to avoid the voter ID law equating to a poll tax. The problem is that getting a valid photo ID for voting requires other paperwork that some people simply do not have access to and obtaining that paperwork can become very costly very quickly. To be eligible to get the free ID, a person must show their original birth certificate proving that they are who they say they are. In cases where individuals do not have a birth certificate, it can cost $25 to get one, assuming that you are trying to vote in the state in which you were born. If an eligible voter is trying to obtain a birth certificate from a state other than the one in which they currently live, the process becomes even more complicated and costly. Another problem is that there are documented cases where women are turned away from receiving their ID because the name on their birth certificate does not match their legal name. This change is due to the women getting married and taking the name of their spouse. These women are then required to show proof of their marriage and their name change before they are eligible for the ID. This adds another cost to getting the ID. Attorney General Eric Holder believes
that even though the ID can be obtained for free, the burdens and costs of obtaining the ID still amount to a poll tax, like those present in the Jim Crow era (Lee).

Something else that can affect a person's ability to obtain appropriate ID is the amount of time it takes a state to present someone with a valid birth certificate if they do not have one. There is a now infamous case of an elderly woman requesting her birth certificate from the state of California so that she could obtain a voter ID in Indiana and it took them almost six months to get her the appropriate birth certificate. There was no hold on her account or reason for the delay, this is simply the normal amount of time it takes to send a birth certificate to an out of state individual. So cost is not the only burden these laws impose on some citizens before they can exercise their right to vote --- for some, having time to obtain the paperwork necessary to get the ID is an additional obstacle (Voting Rights).

Another issue that arises when people are required to show photo ID at the polls is that the only place where they can obtain that ID is at particular offices located within the state. These offices are often very few in number and in some states are open very rarely. The distance of the offices creates a burden of time and transportation that disproportionally advantages the poor, who often are not in a position to take time off work or may not have readily available access to transportation. In a recent case arguing against Texas's voter ID law, a lawyer that was defending the state said that people who live far away from offices in which they can obtain voter IDs should realize that it is the "reality to life of choosing to
live in that part of Texas.” This time burden discourages people from getting the necessary ID to vote, and thus keeps them from voting (Lee).

Those in favor of voter ID laws claim that they are combating voter fraud by requiring voters to prove that they are who they say they are. When the Supreme Court upheld Indiana’s voter ID law in the case of *Crawford v. Marion County Election Board*, the lead opinion noted that protecting voter’s confidence in the voting system was an important and legitimate state interest and voter ID laws were doing exactly that. The problem is that the lead opinion went on to say that while the laws were protected against the perceived threat of voter fraud, that there is “no evidence of such fraud actually occurring in Indiana at any time in its history.”

Texas’ experience is some ways replicates Indiana’s. On the one hand, Texas Attorney General Gregg Abbott is one of the most notable advocates for voter ID laws. Yet he said in an interview with the *Houston Chronicle* that his office has prosecuted about 50 voter fraud cases in recent years. There are 17 million people of voting age in Texas, and only 50 cases of fraud (The 2012 Statistical Abstract).

A *New York Times* article from 2007 said that the Justice Department had filed only 120 cases of voter fraud in a five-year period. Much of that fraud was due to mistakes or misunderstandings, not any legitimate attempts to cheat the system. These 120 cases led to 86 convictions in five-years, meaning an average of 17.2 known cases of voter fraud every year (Lee). According to the United States Census Bureau, there were 234 million people of voting age in America in 2010 (The 2012 Statistical Abstract). The percentage of the number of fraud per year out of the total
voting age population is such a small number that a normal calculator cannot even display it. A report done by News21 found that of the 2,068 alleged election fraud cases brought up around the country, 10 of them involved any type of voter impersonation. Voter impersonation at the polls is truly the only type of fraud that a photo voter ID law could protect against. This means that one out of every 15 million prospective voters were involved in some kind of case accusing them of fraud, with only 120 of those being serious enough to be investigated by the Justice Department (Lee).

Another problem with this argument is that when fraud occurs, it often occurs with absentee ballots. Absentee ballots are specifically exempt from the statute’s that require identification to be shown before voting. This means that the voter ID laws are having a negligible effect even on the very tiny amount of fraud that is present in America (Lee).

Another larger problem is that while Republican lawmakers often cite theories of voter fraud and protecting people from scams as the main reason for their support of voter ID laws, certain Republicans have openly admitted and encouraged the laws as a way to keep voters that would vote for Democrats away from the polls. Leading up to the 2012 election, Alan Clemmons, a South Carolina state representative who authored the state's voter ID law, passed out bags of peanuts to potential voters that read, “Stop Obama’s nutty agenda and support voter ID.” This was a thinly veiled admittance of the fact that his proposed voter ID law was an attempt to help Republicans win in the state. And in August of 2012,
Clemmons responded to a racist email from a constituent that implied that minority groups without ID were just too lazy to get one with “amen,” (Johnson).

Unfortunately Clemmons is not alone in his open pursuit of votes in any way possible. Also before the 2012 election between Republican Governor Mitt Romney and Incumbent President Barack Obama, the majority leader of the Pennsylvania House of Representatives, Mike Turzai, said, “Voter ID, which is gonna allow Governor Romney to win the state of Pennsylvania, done,” (Lee). This is not to imply that all Republicans are intentionally trying to disenfranchise voters in the hopes of winning, but some members of the Republican party have openly admitted that gaining a partisan advantage is certainly a part of their plan.

The Reality of the Situation

With issues that are as divisive as voter ID laws it is often hard to determine what is fact and what is opinion. One organization that has done research into the area is the Brennan Center, and they found that about 11 percent of US citizens do not have a government-issued photo ID. This is a nation wide figure, but if each state were to adopt the strict laws in place in states like Indiana, this would mean 21 million people currently lack the identification documents they need in order to exercise their right to vote. This does not mean that these people would necessarily find any hardship in obtaining an ID, but simply that if the law came into force today they would not be able to vote (Lee).
Though these individuals would be unable to vote because of their lack of ID, the next question is to examine whether the voter ID law would actually discourage them from voting. An analysis by Reuters and Ipsos that collected data from 20,000 voter interviews, found that those individuals who did not have appropriate ID were less likely to vote than those who had ID regardless of the laws in their state or potential changes to the law. In their study, only one percent of individuals who said they were certain to vote lacked the ID that would be necessary in a strict photo ID voting state. The data from this research study also found that the individuals who lacked appropriate ID were younger people, those without college education, Hispanic, and the poor (Lee).

In a research study done by Jason D. Mycoff, Michael W. Wagner, and David C. Wilson, entitled The Empirical Effects of Voter-ID Laws: Present or Absent?, they examine the statistical effects that have been witnessed thus far from voter ID laws. Because the laws have been in place for such a short time, the article acknowledges that the effects they have uncovered could and are likely to change. They found that to this point voter ID laws lower voter turnout slightly, but have not yet had any tangible effect on turnout as far as they can tell. The reasons for this are that political motivation and socio-demographic factors are a much more clear determinate of whether people will choose to vote or not. The level of education of individuals and their political interests are the two most important factors that show the statistical likelihood that people will show up at the polls. Those individuals who are more likely to vote due to these factors will find a way to get the appropriate ID and to vote. The laws have the most effect upon individuals who
would like to vote, but are not informed about voter ID laws or the requirements they must fulfill. These often include first time voters and individuals whose IDs have expired without their realization. A study based upon six states done in 2009 found that 15% of voting age individuals lack the necessary ID to vote and that among minorities that number goes up to 20%.

In the 2000 Presidential election, the final decision of who would become the President of the United States was determined by which candidate won the state of Florida. It takes 270 electoral votes for a President to win the election. While Florida was still being tallied, Republican candidate George W. Bush had 246 electoral votes and Al Gore, the Democratic candidate, had 266 electoral votes. Florida’s 25 electoral votes were enough to push either candidate over the 270 threshold, and without that state the other candidate would lose (2000 Presidential Election). When the final tally of the state came in, George W. Bush received 2,912,790 votes and Al Gore received 2,912,253 votes. George W. Bush had won Florida by 537 votes and thus won the Presidency. So while the percentage of voters being disenfranchised may be small relative to the population, a very small percentage of voters can make a huge difference in the political results of this country (2000 Presidential General Election Results).

States that have such ID laws have tried to make sure voters are informed about the laws to avoid confusion at the polls. Indiana spent $1.25 million for the 2006 election on advertisements to help people to understand the new laws that were going into effect for that election (Mycoff).
In Indiana, the Bureau of Motor Vehicles is responsible for distributing appropriate voter identification cards to eligible voters. These cards will expire after six years and then the voter will be required to go and get a new card. The average visit to the BMV is eight minutes and there are 146 branches statewide. This figure does not account for the time it takes a person to get to the office. Between January 1, 2007 and May 6, 2008, the BMV in Indiana issued 257,100 voter identification cards (Mycoff).

Based on a study of states in the 2000, 2002, 2004 and 2006 elections, voter ID laws showed no statistical significance on the number of people who turned out to vote. This is likely due to the fact that individuals who were likely to have voted before the laws went into effect in 2006, were still the same people who obtained necessary ID and voted in 2006. Only 22 out of 36,421 people questioned said they were kept from voting because of ID problems, amounting to 0.2% of potential voters. And of this 0.2%, there was no clear demographic pattern present. Low voter turnout is often due to people's busy schedules, with one-third of Indiana residents who did not vote citing that they were too busy as the reason for their absence at the polls. The authors of The Empirical Effects of Voter-ID Laws: Present or Absent? said that "this is not to say that actually requiring a more strict form of identification is not on its face discriminatory; it is, and the laws deserve to be scrutinized." (Mycoff). A study done by Nate Silver at the New York Times' FiveThirtyEight blog estimates that voter ID laws could decrease voter turnout anywhere from 0.8 to 2.4% (Lee).
The reality of the situation is that it is not completely clear yet what effect voter ID laws will have on turnout. People, statistically, are much more likely to vote in Presidential elections than in midterm elections and the only two Presidential elections that have occurred since the first implementation of these laws were 2008 and 2012. As time progresses, a clearer picture of the true burden of these laws will emerge.

**Policy Proposal**

Education about the issues is an incredibly important aspect of life, but in the political arena, it is important that education lead to some type of action. The obvious solutions to the controversy of voter ID laws are to either say yes they are okay or no they are never okay. It may quickly become more complicated when examining the difference between strict and non-strict and photo versus non-photo. That is an opinion that readers have to make for themselves and should try to do so based upon their own values and understanding of the reality of the situation. The author of this paper has included the following policy proposal as one example of the kind of initiative that may help to solve some of the issues with voter ID laws in Indiana. The proposal is set up to be presented to members of legislative bodies in a format that they are used to receiving documents. If you feel strongly in agreement with the policy proposal that follows, please feel encouraged to send it to your own representatives in government.
A Bipartisan Agreement on Voter ID Laws

Members of both parties have very strong opinions on the effect of voter ID laws that require voters to show a photo ID at the polls. The Republican Party is enacting these laws to try and prevent potential fraud at the polls and Democrats are opposing them because they disenfranchise many voters, especially those in poverty and African Americans, that do not have access to appropriate forms of ID.

In 2005, Indiana passed a law that required all voters to show photo identification before voting in any election. Civil rights groups launched a lawsuit, *Crawford v. Marion County Election Board*, where the Supreme Court in 2008 ruled the law Constitutional. Though the Court upheld the right of the Indiana State Government to require photo IDs, Justice Scalia wrote in a consenting opinion that the law is justified as long as it does not impose a “severe and unjustified overall burden upon the right to vote, or is intended to disadvantage a particular class.” Republicans tend to favor the ID law as a way to eliminate fraud at the polls and Democrats tend to disfavor them because they disenfranchise voters that do not have access to proper ID.

Options

- Keep the law as is
  - Pro: Voters in Indiana will be put at ease that voter fraud is being targeted and reduced.
  - Con: Many potential voters will be ineligible because they cannot obtain an ID
- Repeal the law completely
  - Pro: Potential voters that are not able to obtain ID will be able to vote
  - Con: People will continue to be in fear of voter fraud
- Offer a free and simple way for all citizens to obtain appropriate ID
  - Pro: The law could remain in place to alleviate people’s concerns and more people would be able to obtain IDs and vote.
  - Con: Programs and ID distribution would be costly.
Recommendation

I recommend that the Government of Indiana offer free and simple ways for all citizens to obtain appropriate ID that can be used to vote based on the current state law.

Though voter fraud proves not to be a significant problem in this country, many citizens are under the false impression that it is. If the law currently upheld by the Supreme Court works to alleviate those fears, then it can be assessed that lawmakers are following the will of the majority by keeping those laws in place. This is acceptable as long as the state works to provide free and convenient ways for people to obtain identification cards that will be accepted at the polls. I suggest that the government set up areas around the state that provide legitimate voter ID for free to anyone who comes to it and also offers voter registration at that location. Free buses should be offered to this location and a service where citizens can call ahead and ask for a bus to come pick them up directly from their home or work should be available. These services should be available for multiple weeks and preferably at an early enough date that should a potential voter need to obtain a birth certificate or other proof of their identity, they would have time to do so. In the situation that they need to obtain proof of identity, these locations should have the resources to allow the citizen to request the forms for free and have access to obtaining them. These people should also be offered the option to be given a free ride to a location where they can obtain voter ID after they receive the documentation that they need. This will allow underprivileged people to obtain ID's,
thus allowing them to vote, and will still alleviate any fears that citizens may have of
voter fraud. These programs will be costly, due to the potential increase in the
number of IDs printed and the transportation, but I suspect that volunteers will be
available to work these locations under the supervision of an employee. This
solution will allow both parties to have their interests’ protected and will allow
many more citizens to vote.


