



VOTER SUPPRESSION IN VIRGINIA

7 STRATEGIES TO SUPPRESS VOTERS:

1. Voter photo ID
2. Database cross-checking
3. Off-year elections
4. No early voting
5. Restricted absentee ballot voting
6. Reduction in the number of polling places
7. Disenfranchise citizens with past criminal records

The Republican-controlled legislature in Virginia has either adopted or has attempted to adopt all of these strategies.

Supreme Court case that made it easier for states to pass voter suppression laws:

Shelby County v. Holder

Re: Section 5 of the Voting Rights Act

2013 decision—States/counties that had a history of racial discrimination no longer have to get approval from federal gov't. before changing voting laws.

Nine states (Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, Virginia) plus counties in California, Florida, New York, North Carolina (very long list of counties), South Dakota, and Michigan

PHOTO ID

33 states have voter ID laws—17 require photo IDs, 16 require other IDs.

2013—Republican-controlled state legislature in Virginia passed bill SB1256 requiring voters to present photo ID when voting in person at polls; signed by then-Republican governor.

ID with photo must be issued by a gov't. agency, Virginia school, or employer.

Acceptable IDs include:

- Virginia drivers license or DMV-issued photo ID card (may be expired up to 12 months)
- U.S. passport
- U.S. military ID
- Valid student ID from public or private school, college, or university located in Virginia
- Tribal ID
- Valid employee ID card
- Free voter photo ID card issued by Virginia Department of Elections



U.S. Court of Appeals upheld Virginia's voter ID law while those of other states were not. (ex. North Carolina, Texas, Wisconsin)

Differences between VA law and laws of other states:

- More types of IDs accepted
- Provisional ballot provided to voters who show up at polls w/o acceptable ID
- Free voter IDs issued at registrar offices

Obstacles for poor and minorities:

- Often don't have driver's license, passport, college ID, or the type of job with an employee ID
- Must go in person to registrar's office to obtain free voter ID; only one office per county (transportation issues); limited weekday hours (have to take time off work); application form requires SSN (not everyone has a SSN)
- Provisional ballot = extra hurdle; registrar must receive copy of photo ID by fax, mail, email, or in person by noon of the following Monday after election

Court cases:

- Lee v. Virginia State Board of Elections
Upheld by 4th Circuit U.S. Court of Appeals
- North Carolina NAACP v. McCrory
Circuit court struck down ID laws; U.S. Supreme Court denied review
Ex.—North Carolina allowed driver's license but not public assistance card
- Texas NAACP v. Steen
2014—District court ruled that TX voter ID law discriminated against blacks and Hispanics; 2016—Circuit court upheld decision; Jan. 2017—DOJ (Sessions) dropped discrimination claim; April 2017—District court again ruled that laws were discriminatory; June 2017—Status conference regarding remedies
Ex.—TX allowed concealed handgun license but not student ID
- One Wisconsin Institute v. Nichol/Thomsen
On appeal in 7th Circuit
(another WI court case—Frank v. Walker)

DATABASE CROSS CHECKING

HAVA (Help America Vote Act—2002)

Enacted in response to 2000 presidential election (Bush vs. Gore—chads in Florida)

Goal = modernize voting systems and establish uniform election standards

Required states to create centralized digital voter database

Funded purchase of electronic voting machines



Purposes of database cross checking:

- Purge voter registration records of ineligible voters (moved out of jurisdiction, died, convicted of felony, ruled incompetent)
- Prevent fraud (identify individuals registered to vote in multiple jurisdictions)

Problem = database matching prone to errors; high percentage of false positives; risk of disenfranchising a significant number eligible voters

Interstate Cross Checking

States share their voter registration databases and cross check them against each other to identify voters potentially registered to vote in more than one state.

Two different programs available for this purpose:

- Interstate Crosscheck system—Created by Kansas Gov. Kris Kobach
Compares first name, last name, date of birth
30 states as of May 2016
- ERIC (Electronic Registration Information Center)—Created by Pew Charitable Trust
Matches more data points (e.g., last 4 digits of SSN, mailing address, DMV info) and uses contextual matching system
20 states and D.C. as of July 2016

Estimated 24 million voters have mismatched name, address, signature, or clerical error on voter registration form that could cause name to be deleted from voter rolls. (Pew)

Factors for errors:

- Poor database matching protocols
- Typos/data entry errors
- Common names (more prevalent in communities of color—ex. Jose Garcia)
- Nicknames (ex. Kate/Katherine)
- Maiden/married names (affects women)
- Hyphenated names/double surnames (more prevalent among Hispanics and women)
- Reversal of first and last names (more likely with ethnic names)
- Jr./Sr. suffix

May disproportionately affect racial minorities:

- One analysis showed 1 in 6 Hispanics, 1 in 7 Asian Americans, and 1 in 9 African Americans appeared on lists in Crosscheck states.
- Another study showed no discriminatory pattern nationally or by state, but systems sometimes had disproportionate effects in local communities.

Examples of Interstate Crosscheck errors:

- Florida governor Rick Scott deemed “dead” in 2006 database matching



- Chesterfield County, VA – 17% error rate
- Ada County, Idaho had to reinstate 750 eligible voters who were deleted from voter rolls

Virginia participates in both Interstate Crosscheck and ERIC.

2017—Republican-controlled Virginia legislature passed bill HB2343 requiring state dept. of elections to provide local registrars with a list of voters registered in their locality who are identified by an interstate database exchange as being registered to vote in another state. Democratic governor vetoed it.

Intrastate Cross Checking

State dept. of elections cross checks its own voter registration database against other gov't. databases (SSA, DMV) to identify potentially ineligible voters (moved, died, incompetent, convicted of felony) and purge them from state voter rolls.

- 28.5% error rate when SSA database cross checked against voter registration database
- SSA wrongfully declares 14,000 Americans dead annually

Ex. Wisconsin test—20% error rate; 4 members of the Gov't. Accountability Board who conducted the test were deemed ineligible, including retired judge.

Remedy:

State mails notice (postage prepaid, forwardable, with pre-addressed return card) to potentially ineligible voter asking her/him to provide current address. If postcard not returned within 30 days and voter does not vote in next two consecutive federal elections, name is removed from voter registration records.

National Voter Registration Act of 1993

Federal list maintenance law

Voter cannot be cancelled unless:

- 1) Voter confirms in writing change of residence outside of jurisdiction, OR
- 2) Voter doesn't respond to mailed notice AND has not voted in any election from the date of the notice to the day after the second consecutive federal general election; mailing must be postage prepaid, forwardable, with pre-addressed return card on which person can state current address.

Flaws with remedy:

- Notice mailed only if ineligibility due to address change or inconsistency
- Poor, students, young adults often change apartments--never receive notice
- Whites more likely to reply than Hispanics or African Americans
- Homeowners more likely to reply than renters
- Older people more likely to reply than young people
- Concern that states may purge names without waiting for 2 election cycles



Some states use database matching to prevent citizens from registering to vote. “No Match, No Vote” laws—If a state is unable to match the information on a voter’s registration application with information in an existing government database, the application is denied outright—even though many non-matches are the result of errors outside of the applicant’s control, such as typographical data entry errors, flaws in existing governmental databases, and poor database matching protocols.

2017—Republican-controlled Virginia legislature passed bill SB1581—an apparent attempt to adopt a No Match, No Vote law. The bill required registrars to verify the name, DOB, and SSN on voter registration applications with the info in the SSA (or other state-approved) database. If the info did not match, a notice would be sent to the applicant informing her/him that the application had been denied. The bill also required cross checking of the state voter registration database against the SSA (or other state-approved) database on an annual basis. Democratic governor vetoed it.

OFF-YEAR ELECTIONS

Virginia’s timing of state-level elections favors Republicans. Virginia schedules state-level elections in non-presidential election years.

- House delegates every 2 years in odd-numbered years
- State senators every 4 years in odd-numbered years
- Governor every 4 years in odd-numbered years
- County, school board, other local offices appear every year due to staggered terms

Voter turnout much lower in non-presidential election years. (Ex. Virginia data)
Republican turnout higher than Democrats in off years.

2016	2015	2014	2013	2012	2011	2010	2009	2008
72 %	29 %	42 %	43%	71 %	29 %	44 %	40 %	74 %

ABSENTEE/EARLY VOTING

No-excuse early voting and voting by absentee ballot increase voter participation. Convenience of voting by absentee ballot:

- Absentee ballot comes in mail; removes transportation issues
- No advance planning/no advance knowledge of schedule needed
- Can vote even if unexpectedly sick or called out of town at last minute

No early voting in Virginia
No absentee voting in Virginia without a valid excuse

List of approved excuses (some require supporting information):

- 1) Attending college out of jurisdiction
- 2) Business trip



- 3) Vacation
- 4) Work/commute for 11 or more hours on election day during hours when polls are open
- 5) Disability/illness
- 6) Pregnancy
- 7) Religious obligation
- 8) Armed services
- 9) Caretaker of family member confined to home
- 10) First responders
- 11) In jail awaiting trial or in jail convicted of misdemeanor
- 12) Election official
- 13) Living temporarily outside U.S.

Some provisions for emergency situations (bereavement, sudden illness) but cumbersome

Process for voting absentee with excuse:

1. Apply in person
 - Go to registrar's office within 45 days of election
 - Fill out form
 - Show photo ID
 - Vote on machine
2. Apply by mail, fax, or email attachment
 - Download and fill out application (form requires SSN)
 - Send to registrar by mail, fax, or email attachment
 - Dept. of Elections mails ballot
 - Fill out ballot and return by mail

No photo ID required if voting by mail, but absentee ballot application requires SSN.
Most first-time voters not allowed to vote absentee.
Cannot register to vote and cast vote on same day (5 days waiting period).

POLLING PLACES

Fewer polling places result in:

- Longer distance to polls (transportation issues)
- Longer lines (long wait times)

Study of 381 of 800 counties covered by Section 5 of Voting Rights Act revealed at least 868 fewer polling places in 2016 election.

Lack of transparency—Many state websites did not have number of polling place readily accessible, so study could not analyze all 800 counties.



Arizona examples:

- Cochise County (30% Latino)—reduced from 50 to 18
- Pima County—reduced from 280 to 218
- Mariposa County—1 poll for every 21,000 voters

Virginia—No data on number of polls but reports of long wait times in 2012

- 30% of voters waited 30 or more minutes
- Several precincts in Prince William County (40% black and Hispanic) reported 2-hour wait times; in one precinct voters waited in line to vote up to 5 hours after polls closed

Purported reasons given for closing polling places:

- Population changes
- Cost of staff and equipment
- Noncompliance with ADA (not disabled accessible)
- Popularity of early voting/absentee ballot voting

DISENFRANCHISE FORMER OFFENDERS

- Virginia constitution permanently disenfranchises citizens with past felony convictions but grants governor the authority to restore voting rights.
- Those provisions were retained in the 1902 revision of the state constitution with the intent to restrict black voting power.
- Felon disenfranchisement affects blacks disproportionately (1 in 13 African Americans nationally, 1 in 5 in Virginia—4 times rate of other Americans).
- April 2016—Democratic governor signed executive order restoring voting rights to all convicted felons who had served sentences and completed probation and parole requirements (approximately 200,000).
- July 2016—VA Supreme Court ruled blanket executive order unconstitutional.
- August 2016—Governor started restoring voting rights on individual basis.
- By April 2017—Voting rights restored to 156,000 former offenders.
- Continued restoration depends on discretion of governor elected in 2017.

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