



Strengthening Our Democracy by Expanding Voting Rights

Scott Keyes December 18, 2012

The past two years were not kind to those who hold dear one of our most cherished rights—the right to vote. After the Republican wave of 2010, which saw conservative majorities swept into governors’ mansions and state legislatures, more than a dozen states—including Wisconsin, Florida, and Texas—passed legislation making it more difficult for voters to cast a ballot.¹ The conservative cause celebre became legislation enacting voter ID, shortening early voting, and requiring citizens to show a birth certificate or passport in order to register to vote. In the face of this assault on suffrage, voting-rights advocates fought back and were able to block or modify a number of the worst new laws, including voter ID laws in Wisconsin, Texas, and South Carolina, as well as laws in Ohio and elsewhere shortening early voting periods.²

With the 2013 legislative session approaching, voting rights advocates have an opportunity to shift their effort from simply stopping bad laws to proposing good ones. It’s time to stop playing defense and start going on offense.

Suffrage that is equally accessible to all Americans is the very backbone of our democracy. We rightfully take pride in the fact that no matter how privileged or seemingly disadvantaged someone is, each person’s vote counts equally. Our voting laws should reflect this fundamental belief, making the ballot box equally accessible for all. After all, our elections are best when the electorate closely mirrors society. If students and the poor, for example, tended to vote at higher rates—rates more representative of their numbers—it would be more difficult for politicians to ignore their issues. In essence, more voters means more legitimacy.

This paper briefly details 11 pieces of legislation that lawmakers can enact to strengthen voting rights in their state. A number of these policies would make registering to vote more accessible, including online voter registration, Election Day registration, and requiring public schools to help register voters. Others would make it simpler for citizens to cast a ballot, such as expanding early voting, permitting citizens to vote at any polling location, and allowing no-excuse absentee voting. States can also discourage those trying to suppress the vote by outlawing voter caging, strengthening penalties for

knowingly deceiving voters, and reforming the voter-challenge process. Finally, legislators can pass other pro-voting policies, such as restoring voting rights to ex-felons and enacting constitutional language affirming an equal right to vote.

These are not partisan pieces of legislation. States as ideologically opposed as New York and Utah have passed online registration legislation, and states as large as California and as small as New Hampshire allow citizens to register on Election Day. These are simply good-government bills. With voting rights under attack³ in state legislatures across the country and voters in many states enduring long lines⁴ and other hurdles⁵ before they can cast a ballot, here are 11 ways for voting rights advocates to turn the tide and help ensure that every American can exercise his or her right to vote. First let's look at voter registration.

Online voter registration

Nowadays most government forms can be filed online. The Internal Revenue Service allows you to e-file your taxes. Many states permit you to register your vehicle on the Internet. Seniors can even apply for Social Security and Medicare online. And all of it is done safely and securely. Yet the vast majority of states still don't allow their citizens to register to vote on the web.

According to Project Vote,⁶ less than 63 percent of Americans aged 18-34 were registered to vote in 2009, yet a Nielsen survey⁷ found that these young citizens were by far the most electronically connected, with 88 percent having an Internet connection at home. Modernizing the voter-registration process and allowing people to register online would be a boon for the overall number of voters in our country.

States with online voting registration: Arizona,¹³ California,¹⁴ Colorado,¹⁵ Delaware (upcoming),¹⁶ Connecticut (implemented by 2014),¹⁷ Hawaii (implemented by 2016),¹⁸ Indiana,¹⁹ Kansas,²⁰ Louisiana,²¹ Maryland,²² Nevada,²³ New York,²⁴ Oregon,²⁵ South Carolina,²⁶ Utah,²⁷ and Washington.²⁸

A handful of states are bringing voting rights into the 21st century. Already 16 states have passed bills permitting their citizens to register online, and lawmakers in other states are pushing online voter-registration as well.⁸ The Brennan Center at New York University School of Law, a key player in the voting-rights discussion, backs online voter registration as a central tenet of modernizing our elections.⁹

Another upside of online registration is that it isn't just good for voters—it's good for state budgets as well. In Maricopa County, Arizona, for instance,¹⁰ processing a paper application costs taxpayers approximately 83 cents; an electronic application will cost them just 3 cents. The state of Washington found that the introduction of online registration reduced overall data entry time by 80 percent in some counties.¹¹

One final benefit of registering online is that it prevents many clerical snafus that often result in voters being disenfranchised. In Arizona the number of human and data-entry errors fell significantly because voters could enter and double-check their own information electronically.¹²

Election Day registration

Because voting in the United States is a two-step process—you must register to vote before you can actually vote—many citizens can’t cast a ballot because they miss the registration deadline. Though less than two-thirds of eligible Americans typically vote in our presidential elections, the turnout rate among those who have registered to vote is typically between 75 percent and 90 percent.²⁹

It’s not difficult to see why this is the case. Most states bar their residents from registering in the weeks just before an election—at a time when media coverage is at a fever pitch and less-engaged citizens are just starting to tune in. Some states, such as Pennsylvania, stop allowing people to register 30 days before an election.³⁰ There were surely thousands of Philadelphia Phillies fans who were paying more attention to their team’s 2008 World Series run than they were to the state’s voter-registration deadline that October. Procrastination is not a crime and shouldn’t preclude one from voting. Certainly dawdlers have as much a right to vote as anyone.

That is why 10 states and Washington, D.C. enable their residents to avoid such deadlines by allowing their citizens to register to vote right up to and on Election Day. This forward-thinking group includes states ranging Wyoming to Wisconsin and New Hampshire to Iowa. In 2008 alone, more than 1 million individuals registered on Election Day in these states. Studies have found that Election Day registration boosts turnout on average by 7-percentage points³¹ to 14-percentage points.³²

Recent momentum has been building for Election Day registration. In 2012 both California and Connecticut passed Election Day registration legislation, coming on the heels of Iowa in 2007 and Montana in 2005. Still, challenges remain. In 2011 Maine legislators tried to eliminate the state’s 38 year-old Election Day registration law. A petition drive forced the matter to a statewide referendum, where voters overwhelmingly rebuked the move and reinstated Election Day registration.

States with Election Day registration: California,³³ Connecticut,³⁴ Idaho,³⁵ Iowa,³⁶ Minnesota,³⁷ Montana,³⁸ New Hampshire,³⁹ Rhode Island (in presidential years),⁴⁰ Washington DC,⁴¹ Wisconsin,⁴² and Wyoming.⁴³

Require public schools to help register voters

Young Americans continue to vote at far lower rates than the rest of the citizenry. This year, for instance, only half of the voting-eligible population between the ages of 18 and 24 cast a ballot, compared to more than two-thirds of senior citizens.⁴⁴

One simple way to encourage students to vote is for states to require that public schools provide voter-registration services. Currently, at

States with public school voter registration: California, Connecticut, Georgia, Kentucky, Louisiana, Massachusetts, New Jersey, North Carolina, Ohio, and Rhode Island.⁴⁷

least 10 states⁴⁵ require public high schools and colleges to either facilitate registration drives or provide voter-registration forms and accept completed applications.

Though not a state typically known for strong voting protections, Kentucky does an admirable job helping students register to vote. As Project Vote notes,⁴⁶ high school principals across the state work in conjunction with the State Board of Elections to provide voter-registration resources to all students eligible to vote.

Let's turn next to the issue of voting legislation.

Expand early voting

Arguably the most successful election reform in the past decade has been the advent of early voting. After widespread voting problems in the 2000 election, many states passed legislation to open up polling sites for more than one month leading up to Election Day. The move has been a win-win for states and voters. Citizens get more flexibility to vote at their convenience—not everyone can take off an hour or two from work on the first Tuesday of November—which leads to higher turnout, something former Florida Gov. Jeb Bush (R) called “wonderful.”⁴⁸ Meanwhile, early voting allows election officials to spread the process of counting ballots over a number of days or weeks, rather than getting inundated all at once.

States with early voting: Alaska,⁵⁰ Arkansas,⁵¹ Arizona,⁵² California,⁵³ Colorado,⁵⁴ Florida,⁵⁵ Georgia,⁵⁶ Hawaii,⁵⁷ Idaho,⁵⁸ Illinois,⁵⁹ Indiana,⁶⁰ Iowa,⁶¹ Kansas,⁶² Louisiana,⁶³ Maine,⁶⁴ Maryland,⁶⁵ Montana,⁶⁶ Nebraska,⁶⁷ Nevada,⁶⁸ New Mexico,⁶⁹ North Carolina,⁷⁰ North Dakota,⁷¹ Ohio,⁷² Oklahoma,⁷³ South Dakota,⁷⁴ Tennessee,⁷⁵ Texas,⁷⁶ Utah,⁷⁷ Vermont,⁷⁸ Washington DC,⁷⁹ West Virginia,⁸⁰ Wisconsin,⁸¹ and Wyoming.⁸²

Early voting has been a major boon for minority turnout. Many African American churches, for instance, participate in a “souls to the polls” voting drive on the Sunday before Election Day helping boost black early voting rates. In Cuyahoga County, Ohio a study found that the early vote rate among African American residents was more than 20 times greater the rate for white voters in 2008.⁴⁹

At present 32 states and Washington, D.C. offer some form of in-person early voting with the length of the early-voting period differing from state to state. Leading the way are states like Iowa and South Dakota, which begin their early voting periods in late September, giving their citizens more than one month to vote. Pulling up the rear is Florida, which cut its early voting period from 14 days to just 8 thanks to Gov. Rick Scott (R) and the 2011-12 Republican dominated state legislature. The 16 states that have yet to embrace in-person early voting include some historically progressive states like Minnesota, New York, and Massachusetts.

Advocates looking to expand early voting should target not only the 16 states that don't offer early voting at the moment, but also states—such as Florida, Texas, and Illinois—with relatively short voting periods.

Allow county residents to vote in any polling location

In the past decade some U.S. counties have begun testing an innovative pilot project called “voting centers.” Rather than restricting voters to one assigned precinct where they must cast their ballot, a handful of counties now allow residents to vote at any polling location in their home county. Travis County, Texas, home to Austin, for example, conducted a study of its new policy after it was introduced in 2011 and found that allowing voters to cast a ballot at any of the county’s 207 polling locations led directly to a 1.4 percent increase in turnout.⁸³ Approximately one in three voters ended up going to a different polling location than their usual one.

States with countywide voting: Arizona,⁸⁴ Colorado,⁸⁵ Indiana,⁸⁶ New Jersey,⁸⁷ New Mexico,⁸⁸ South Dakota,⁸⁹ Texas.⁹⁰

It’s not difficult to grasp why the program is popular. If a voter lives on one side of town but works in another, it’s far more convenient for her or him to vote at a location close to his or her job. In addition, polling locations often change between elections, potentially confusing some voters. Providing flexibility could make the difference for many citizens as they decide whether or not they can take time during the day to vote.

Though elections are largely conducted at a county level in the United States, states can encourage counties to allow resident voting at any polling location by providing funding, pilot programs, and studies showing the policy’s efficacy.

No-excuse absentee voting

For many Americans taking time off during the work day to vote is not an option. Fortunately for them an increasing number of states are enacting “no-excuse absentee” laws that allow anyone who requests an absentee ballot to receive one, not just individuals who will be out of town or have another reason barring them from voting on Election Day.

Making absentee voting more accessible doesn’t just benefit voters who work on Election Day, it also allows citizens to research candidates and ballot issues while they have the actual ballot in their hands. With recurring voting machine snafus and long lines at the ballot box, millions of Americans have taken advantage of their state’s absentee voting option.⁹¹

States with no-excuse absentee voting: Alaska, Arizona, California, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Maine, Maryland, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, Utah, Vermont, Washington DC, Wisconsin, and Wyoming.⁹²

Currently, 27 states and Washington, D.C. allow for no-excuse absentee voting. Others states such as Pennsylvania and Michigan require voters to have a certain excuse for requesting an absentee ballot, such as a physical disability preventing them from reaching the polls. All 50 states should allow their citizens to vote absentee if they so choose.

Let’s turn now to the serious issue of voter suppression.

Strengthen penalties for knowingly deceiving voters

Though voter fraud is largely a myth,⁹³ one form of actual election hijinks occurs when individuals or groups purposefully deceive certain voters about when or how to vote. Such deceptive practices are unfortunately commonplace. Here is a small sample of such instances from the past decade:

- Robocalls to California Latino voters in 2010 reminding them to vote on November 3 (the election was held on November 2, that year)⁹⁴
- Fliers or robocalls in several states telling people that because of anticipated massive turnout, Republicans are instructed to vote on Tuesday while Democrats should show up at the polls on Wednesday⁹⁵
- Signs at polling places telling voters that photo ID is required when no such requirement actually exists
- A fictional organization called the Milwaukee Black Voters League in 2004 put out flyers in the city's minority areas warning anyone who has "ever been found guilty of anything [that] you can't vote in the presidential election." Doing so could "get ten years in prison and your children will get taken away from you."⁹⁶

States outlawing deceptive voting practices:

Florida,⁹⁷ Connecticut,⁹⁸ Illinois, Kansas, and Minnesota.

States should not only specifically ban deceptive practices, but classify them as a felony. Currently, just five states outlaw deceiving voters about the election. (At least 39 states have laws that bar certain forms of voter intimidation, but they would do well to add clear and specific language banning deceptive practices.)

Outlaw "voter caging"

Voter caging is when an operative or group sends letters to a "target's" home and uses any returned mail to challenge that voter's eligibility on the presumption that they don't live at the listed residence. For years, political operatives have used voter caging as a tactic to suppress turnout among largely minority populations.⁹⁹ In 2004 alone hundreds of thousands had their eligibility challenged as part of voter-caging operations in states as widespread as Nevada, Ohio, Louisiana, and North Carolina. More recently, voters in Florida, Kansas, Montana, Michigan, and California were targeted by voter caging attacks.¹⁰⁰

States with strongest legislation banning voter caging: Minnesota,¹⁰² Washington.¹⁰³

States should affirmatively ban the practice of voter caging. It's a process that is riddled with problems.¹⁰¹ There are dozens of reasons why a piece of mail

would be returned that are more plausible than a voter intending to commit voter fraud, including as clerical errors or military deployment, and serves primarily to suppress legitimate voters.

At least two states have adopted legislation banning voter caging, but it is clear that more states need to follow suit.

Reform the voter-challenge process

Poll watchers became a household term in the 2012 election as campaigns and outside groups like True The Vote trained thousands of volunteers to challenge voters' eligibility anytime they suspected irregularities. Because volunteers often approached the duty with ulterior motives, frivolous challenges have become commonplace, with voters sometimes being targeted just because of their accent or skin color.

This is not altogether surprising. Like poll taxes and literacy tests, laws allowing for poll challengers have their roots in the Reconstruction Era as a means of suppressing the vote of newly freed slaves. These barriers to the ballot were used extensively to threaten and ultimately suppress black turnout. If poll-challenger laws can't be eliminated entirely, there are still ways to reform and improve them.

When a poll watcher makes a challenge most states place the burden of proof on the voter to prove he or she is eligible to cast a ballot, a process that does little to disincentivize frivolous challenges. States therefore should pass legislation shifting the burden of proof from the voter to the challenger. In addition, states should impose penalties on individuals and groups who make frivolous challenges. For instance, Florida law classifies frivolous challenges as a first-degree misdemeanor punishable by up to one year in prison and a \$1,000 fine.¹⁰⁴

States placing the burden on the challenger: Arizona, California, Delaware, Georgia, Idaho, Indiana, Maine, Montana, North Carolina, Rhode Island, Washington, and Washington DC.¹⁰⁵

States that penalize frivolous challenges: Florida, Rhode Island, South Dakota, and Vermont.¹⁰⁶

Here are some other measures that will go a long way in making suffrage equally accessible to all Americans.

Restore voting rights to ex-felons

Felons in most states aren't just barred from voting while in prison; a handful of states strip them of their voting rights for the rest of their life, even after completing their sentence. As a result, 3.1 million Americans were disenfranchised in 2008.¹⁰⁷

If we as a society want to reintegrate people with felony convictions back into society after they finish their prison terms, it makes little sense to permanently brand them with a scarlet letter.

In all, 11 states disenfranchise certain classes of felons for life.¹⁰⁸ Four of those states permanently strip all felons of their right to cast a ballot. Passing legislation to restore voting rights for individuals in these states would rectify this injustice and help ex-felons become good-standing members of society once more. Currently, only two states allow prisoners to vote (Maine and Vermont); 18 states allow probationers to vote; and 19 states allow felons who have completed their entire sentence to vote.

Enact constitutional language affirming an equal right to vote

When Wisconsin passed voter ID legislation in 2011 the only thing stopping its implementation in the 2012 election was the state constitution's language affirming Wisconsin residents' right to vote. "Voting is a constitutional right," wrote Judge David Flanagan in March 2012, striking down Wisconsin's controversial voter ID law. Flanagan pointed to the state constitution's provision on voting rights—"Every United States citizen age 18 or older who is a resident of an election district in this state is a qualified elector of that district"—and noted that any legislation which denies a qualified elector his or her ballot, such as voter ID, is unconstitutional.

Every state constitution has different language regarding the right to vote. Still, the most important thing voting-rights advocates can proactively do to prevent further attacks on voting rights such as voter ID is to strengthen their state's constitutional language regarding the right to vote.

Admittedly, this can be a difficult task, as a state's constitution is only as good as the judges who interpret it and even the most carefully drafted constitutional amendment cannot defend fully against a state supreme court hostile to voting rights. Nevertheless, voting-rights advocates can mitigate this problem by choosing language that carefully maps the words that the U.S. Supreme Court has used to describe rights deserving the highest degree of constitutional protection, such as stating explicitly that the right to vote is a "fundamental right" and that any burden on this right will be subject to the most exacting constitutional scrutiny. An ideal amendment would also specifically name common voter-suppression techniques, such as voter ID laws, and explicitly forbid them.

States that allow ex-felons to vote: Alaska, Arkansas, California, Colorado, Connecticut, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Washington, Washington DC, West Virginia, and Wisconsin.¹⁰⁹

States with model constitutions: Wisconsin.¹¹⁰

Conclusion

The right to vote is so fundamental in the United States that it's easy to take for granted. After the rapid spread of voter-suppression laws over the past two years, however, complacency is no longer an option. If there's one lesson to take away from the recent attacks on voting rights, it's this: progressives can't just get in the game when they need to play defense.

Each one of the 11 pieces of legislation in this paper goes a long way to increasing access to the ballot box and making our elections as fair and equitable as possible. No one piece is a panacea, but neither is any a pipe dream. Every law has already been tested in states across the nation and been proven effective.

Now, with progressives back in control of state legislatures like Oregon, Maine, Colorado, and Minnesota, voting-rights advocates have a real opportunity to spread voter protection laws. If 2011 and 2012 are immortalized as the years when Jim Crow-style voter-suppression tactics re-emerged, progressives now have an opportunity to make 2013 the most important year for voting rights since the 1960s.

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Endnotes

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