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Voter Identification Laws: It's all in the Implementation

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Voter Identification Laws: It's all in the Implementation

Abstract:

For over a decade, stricter voter identification laws have been a point of contention in the United States. The increased passage of these laws began in the early 2000s, shortly after the 2000 Presidential election was decided by only 537 votes in the state of Florida (Peters and Woolley n.d.). This study involved interviews with various legislators, college professors, homeless advocates, and election officials. After these interviews, it is clear that every photo identification law is not created equally. Each law has a different impact, which is based on the way that it is implemented. I used the Commonwealth of Virginia as a case study for photo identification laws. Throughout the interview process, I encountered people with varying opinions, some confusion, and some misinformation. All in all, although stricter photo identification laws do cause the creation of an extra required step for voters, Virginia has taken significant steps to keep any added burden to voters at a minimum, which may be why the law has not been deemed unconstitutional, like the laws in Pennsylvania and Wisconsin (Underhill 2014).

Background

This research was completed between May and August of 2014 as a case study of the voter identification law that was passed by the Virginia State Legislature and signed by Governor Bob McDonnell on March 25, 2013 ("SB 1256"). Virginia was a premier state in which to carry out a case study because the recent passage of the law provided an environment in which debate

was still fresh and emotions on both sides of the debate were still strong. Additionally, because the law was implemented on July 1, 2014, the application of the law to Virginia voters was able to be observed and any confusion or critiques of the implementation stage of the process were taking place as the research was ongoing. This very recent implementation also provides the opportunity to continue to follow the effects of the voter identification law as it becomes a more central part of voters' experiences.

This study was completed using a qualitative interviewing approach. Interviews were conducted in Virginia, Washington, D.C., and Connecticut, and took place between July 9, 2014 and August 12, 2014. Those interviewed included two Virginia state legislators, Democrat State Senator Donald McEachin and Republican Delegate John O'Bannon. Additional interviewees were two college professors from the University of Richmond, Dr. Daniel Palazzolo and Dr. Ernest McGowen, and one law professor from the University Of Richmond School Of Law, Professor Henry Chambers. Each of these professors provided a scholarly prospective to the research. Michael Stoops and Scott McNeilly, both Washington, D.C. homeless advocates, and Maurice Robinson, a Richmond area homeless advocate, provided an elite perspective of the impacts of voter identification laws on poor voters. I also spoke to an election official from the Virginia State Board of Elections, who chose to remain unidentified. Current and former federal legislators from Connecticut were interviewed, including Former Democratic Senator Joseph Lieberman and current Democratic Congressman John Larson and Jim Himes. Attorney Donald Bell, legal fellow for Senator Christopher Murphy (D-CT) offered an interview, as well as an attorney for the Connecticut Secretary of the State's office, who chose to remain unidentified. (See Appendix A for a table listing the interviewees.)

The interviewees were asked a series of questions, ranging from general to specific, regarding voter identification laws. Questions solicited responses from participants' unique perspectives and areas of expertise. (See Appendix B for a list of general questions that were asked of participants.) In addition, the study included research of political science articles, political science books, news articles, Wisconsin, Pennsylvania, and Connecticut state law; court opinions, and other sources, which are cited throughout this article.

The Help America Vote Act of 2002

The confusion of the 2000 Presidential election caused many legislators to take a serious look at the way elections were run in the United States. According to Tova Andrea Wang (2012), observers of the election came to the realization that elections in the United States involved many different ways of voting, depending on where citizens lived. Many Democrats also saw an issue with the alleged disenfranchisement of voters that was caused by problems such as faulty machines and inaccurate voter registration lists. Meanwhile, Republicans targeted fraud as a significant issue. The Help America Vote Act was signed in 2002 with the intention of making elections more uniform and secure, while cutting down on confusion. Because of a specific provision within the law, Wang (2012) cites HAVA as the reason for the increased passage of voter identification laws. This provision states that people who are registering to vote by mail or who are registering for the first time in a certain jurisdiction must either present identification during the registration process or when voting. Although the provision did not require that form of identification to be a photo ID, HAVA made it clear that this was a "minimum standard" and that states had the power to enact stricter standards (Wang 2012).

There is also the claim that the voter identification requirement in the Help America Vote Act was a Republican response to the National Voter Registration Act, which was signed by Bill

Clinton in 1993 (Minnite 2013). Minnite (2013) claimed that some Republicans had an “obsession” with the bill, which allowed people to register to vote by mail and is commonly referred to as the “motor voter” law. Republicans claimed that there was a potential for fraud with the NVRA that had not existed before. Minnite (2013) also mentions that, although the voter identification requirement in HAVA is not controversial, it still validated Republican claims that fraud existed. Whether or not Minnite’s claims about motivation and effect are accurate, the Help America Vote Act provided an avenue for the passage of stricter voter identification requirements by states.

Voting: A Right or a Privilege?

The ability to vote is often described as one of the most sacred rights Americans hold. But, is voting truly a right, or is it a privilege? It is helpful to first have a brief discussion about which category voting falls under. It is difficult for many to imagine describing voting as anything other than a right because it has been rhetorically described as such throughout America’s history. Many of the people interviewed throughout this research confidently stated that the reason why voting is different from other commonplace activities, such as driving and buying alcohol and tobacco, which may require forms of identification, is because voting is a right. However, a compelling argument for why voting is a privilege was made by Dr. Ernest McGowen, an Assistant Professor in the Department of Political Science at the University of Richmond. According to Dr. McGowen, voting is not a right, but is rather a privilege bestowed upon people by the state. He continued that the privilege of voting cannot be taken from you if you are eligible to vote, but that the state chooses who is eligible. Other arguments for why voting is a privilege include the examples of how felons are not allowed to vote in certain areas and how people only gain the ability to vote after they reach the age of 18. Dr. McGowen argued

that the privileged status of voting is why voter identification laws are allowed to stand in many states. However, he added that when the state violates the protections of people identified under the fourteenth and fifteenth amendments to the Constitution, the laws become an issue and the Supreme Court strikes them down. The fourteenth amendment gives citizenship to everyone who is either “born or naturalized in the United States.” It also makes clear that states cannot abridge a citizen’s right to vote and grants citizens “equal protection under the laws” (“Legislative Landmarks”). The fifteenth amendment states that citizens cannot lose the franchise because of “race, color, or previous condition of servitude.” However, the amendment did not prohibit states from creating and implementing voter qualifications. Yet, still the qualifications had to be administered equally to all races (“Legislative Landmarks”). Later on, in 1964, Lyndon Johnson signed the Civil Rights Act, which ended many discriminatory practices that had not been clearly prohibited by either amendment (“Legislative Landmarks: Civil Rights Act”). It should be noted that the claim that voting is a privilege has been challenged by many, including Garrett Epps, who points out in an article in *The Atlantic*, that the constitution mentions the “right to vote” more than any other right, and that the right is protected by the Constitution, even if not proclaimed explicitly for all people (Epps 2012). Congressman Jim Himes (D-CT), also wholeheartedly defended voting as a right. He was quick to point out that all of our Constitutional rights, including free speech can be regulated. Still, this does not mean that they are classified as privileges.

Alexander Keyssar (2000) claims that by 1975, America had gone through a revolution, which established a “national franchise.” He argues that prior to this revolution, referred to as “the Second Reconstruction,” regulation of suffrage had been controlled by the states. However, the Voting Rights Act and other Supreme Court cases of that time period gave the *right* to vote a

nationally recognized standard. He also writes that the reason that states still had the ability to enact practices such as poll taxes and literacy tests, despite the Fourteenth, Fifteenth, and Nineteenth Amendments, is because the founding fathers chose to allow existing policies used by former colonies to stand.

Minnite (2013) provides a type of middle ground to the debate over whether voting is a right or a privilege. While she acknowledges that there is not an explicit right to vote that can be found in the U.S. Constitution, she also notes that several state constitutions clearly substantiate voting as a right and guarantee it to citizens. Furthermore, she mentions that a “common law right” has been established by the decisions of federal courts, and that the Fourteenth Amendment describes the right to vote as both “fundamental” and “preservative.”

An entire article could discuss the philosophical, ethical, and rhetorical implications of classifying voting as either a privilege or a right. For our purposes, it will suffice to conclude that however voting is classified, it is unconstitutional to administer laws that intentionally unequally impact people based on race. The question of the constitutionality of voter identification laws is closely related to whether or not this standard is being upheld.

Motivations

It is difficult and perhaps even politically inflammatory to presume motivations in the passage of voter identification laws. This reality was evident throughout the interviews that were conducted as part of this research. Many of the legislators, scholars, and election officials were hesitant to presume the motivations behind passing stricter photo identification laws. The main exceptions to this were the legislators who had actually voted on these laws in the state of Virginia. But, even though motivations may be unclear and difficult to decipher, they are still an important point of discussion surrounding these laws. The motivations behind passing voter

identification laws can have profound impacts on the political nature, constitutionality, and controversy surrounding the laws.

Fraud Prevention

One of the most commonly used arguments in favor of passing stricter voter identification laws is the need to prevent voter fraud. Delegate John O'Bannon, a Republican in the Virginia legislature, cited the need for fraud prevention in elections. He stated that it was important that people be able to vote and that the vote be able to count. He also stated that to whatever extent there is fraud or misuse of the voting system, the votes of eligible voters lose some of their value. Senator Donald McEachin, a Democrat in the Virginia State Senate disagreed. According to Senator McEachin, the Republicans argued that there was voter fraud going on without any evidence of it. Because of this, he described voter identification laws as a "solution in search of a problem," implying that Republicans used voter fraud as the problem they were trying to solve, even though they really wanted to pass voter identification laws for different reasons. However, the claim that there is no evidence of voter fraud is challenged by other reports. For example, in a TownHall.com story from April 2014, Heather Ginsberg writes that voter ID laws are what are needed to put an end to voter fraud observed in 2012. In the article, she writes about a study conducted by The Virginia Voters Alliance, in which the group cross-checked voter rolls in Maryland and Virginia and found that over 40,000 voters were registered in both states. Ginsberg acknowledges that the number of voters who actually cast ballots in both states was only 164, but notes that this is still far too many. She also states that the group worked with the Virginia Privileges and elections committee to find 31,000 dead voters (Ginsberg 2014). The article does not tell how many dead voters actually had votes cast in their name. In an article in *The New Yorker*, Jane Mayer cited statistics that were recently reported to

her by Hans von Spakovsky. According to him, a study by the Pew Center on the States showed that over 1.8 million dead people were registered to vote in the United States and that 2.75 million people were registered in more than one state. Another study von Spakovsky reported to her was conducted by the *Journal-Constitution* and concluded that there had been 5,400 examples of dead people voting in Georgia between approximately 1980 and 2000 (Mayer 2012).

Yet, many argue that voter identification laws would not stop much of the real fraud that is committed. In a Talking Points Memo article from April of 2012, Ryan J. Reilly wrote about reporting done by the *Richmond Times-Dispatch* in which they found that a majority of voter fraud cases that they reviewed were cases in which felons voted when they should not have been allowed to do so. According to Reilly, these cases of fraud would not have been stopped by voter identification laws because they did not result from voters misrepresenting themselves. Still, Senator Thomas Garrett (R-VA) argued that voter identification laws would have prevented this fraud if they were coupled with a law that required registrars to remove convicted felons from the roles several weeks before the election (Reilly 2012).

Professor Henry Chambers, of the University Of Richmond School Of Law, stated that it was hard to imagine that stricter laws were just intended to prevent voter fraud because there really isn't much fraud going on. Additionally, he brought another argument into the equation, pointing out that committing voter fraud by absentee ballot is much easier than committing in-person fraud. According to Professor Chambers, absentee ballot fraud is an easier crime to commit in large quantities. For this reason, he stated that voter identification laws might make some people feel better, but that he was not convinced that they were required. When asked for further explanation, he explained that when you request an absentee ballot, you do not have to

provide very much information. Additionally, the information that is provided does not even have to be filled out by the person who is going to fill out the ballot. Chambers provided the example of if his wife was to be out of town on the day of an election and he was to fill out a ballot for her. Although he acknowledges that this would be unacceptable, he points out that many people would see the action as “alright” because his wife would have told him how she wanted to vote and would have voted anyways. This example is what he described as a more “innocent way,” but nonetheless is something that happens a “fair amount,” as he understands it. The less innocent way he described is the act of asking people to fill out the ballots, getting them, and voting as you wish. He continued that this is much easier than going to the polls, looking for someone’s name, misrepresenting yourself as that person, and then trying to vote using their identity. He added that this type of in-person fraud is time consuming and that you have to commit the crime repeatedly, rather than just asking a group to commit absentee fraud.

Statistics do show an extremely low amount of voter fraud convictions. In fact, between 2002 and 2005, only 26 cases of alleged voter fraud in the United States resulted in convictions or guilty pleas. These 26 violations of election law are just .00000013 percent of the 197 million votes cast in federal elections during that period (Bingham 2012). But, Delegate O’Bannon argues that while he understands that it is difficult to obtain hard data, there have certainly been examples of when people have voted more than once. He also vaguely mentioned studies, which were previously discussed in this article and reported that people were registered in multiple states. The registrars do have a process for “scrubbing” voter lists to remove ineligible voters, but O’Bannon contested that this process is still an “honor system.” When you have that sort of “honor system,” Delegate O’Bannon stated, it is “fair” to have a voter ID process with a photo. He continued that he does not believe that there is any data that “gets at the true rate of voter

fraud in this country.” An election official from the Virginia State Board of Elections, who shall remain nameless, made statements that concurred with this line of thinking. According to the official, the state did not have the tools needed to find a lot of the alleged fraud that could be taking place. He added that before this new law was implemented, it was difficult to find people who had allegedly committed fraud if they had just signed something saying that they were who they said they were. With the new law, he stated, at least you could file an incident report about election fraud. Delegate O’Bannon additionally cited the presence of anecdotal stories about voter fraud, which he believed were neither rare nor unique to Virginia. The Republican Delegate provided a Shakespearean quote, “Me thinks they doth protest too much,” which he believes describes the situation. According to O’Bannon, the large amount of “squealing” from the people that oppose voter identification laws is a sign that there really is a problem with voter fraud. This implies that O’Bannon believes that there is a problem that those who oppose stricter laws do not want to be solved because it may be to their political advantage to let it continue.

Maurice Robinson, a homeless advocate in the Richmond area, stated that it could be the case that voter identification laws were an attempt to prevent voter fraud, but added that fraud can be eliminated in different ways. One way that he suggested was through a system with more advanced technology, which would show who had already voted. An attorney from the Connecticut Secretary of the State’s office argued that Connecticut election laws, which are much looser than those in Virginia, are sufficient to fight fraud. In Connecticut, voters need only meet the burden of signing a statement under penalty of law that they are representing themselves correctly. The attorney asserted that the “paper trail” system, which can be manually audited, is sufficient. In addition, the SOTS counsel made the argument that people working at the polls know the people who vote as neighbors and friends, so they would be able to recognize

if someone tried to vote as a dead person because “they’re working on the same streets that they live on.” The attorney also made the point that there are plenty of people at the voting locations to challenge someone’s vote. But, the counterpoint remains that in many areas it could be very unlikely that poll workers know each person who walks in and votes on a given day.

Minnite (2013) asserts that Republicans engaged in “manufacturing a threat” through the “demonization of ACORN” (Minnite 2013). According to her, the Republican law firm of Rothstein, Rosenfeld, and Adler used the claims of Mac Stuart, an employee who had recently had his employment with ACORN terminated, to destroy ACORN. Stuart claimed that ACORN was committing voter fraud by committing acts, such as illegally copying registration cards, and that his firing was the result of a refusal to engage in criminal activity. He also claimed that ACORN withheld the voter registration cards of Republicans. But, Minnite (2013) argues that none of the allegations were true and that “Stuart’s case completely collapsed in court.” She further contests that later firings of nine U.S. Attorneys provided the opportunity for Republicans to use voter fraud against the Democrats and liberal groups like ACORN.

But, John Fund (2004) does not concur that the ACORN allegations were just used to manufacture a threat. In his book, *Stealing Elections: How Voter Fraud Threatens Our Democracy*, Fund points out that Mac Stuart was not the only former employee who accused ACORN of unethical activities. Former ACORN consultant, Joe Johnson, claimed that he quit his job at ACORN because he was concerned that the organization was not submitting complete voter cards. He adds that in 2007, three of the seven ACORN employees in Washington who were indicted on charges of voter fraud plead guilty, in a case that was deemed “the worst case of voter-registration fraud” in Washington state history by Secretary of the State Sam Reed

(Fund 2004). Fund further details ACORN scandals in other states, which shed light on the incidents as more than just manufactured threats to create the misperception of voter fraud.

In closing this discussion of voter fraud, I note that cases of voter fraud do exist in America, though the majority of hard data evidence that has been gathered thus far suggests it is quite rare. The questions that must be considered by states when passing stricter registration laws are: (1) whether or not the cases are widespread enough to justify burdening voters with new restrictions, (2) whether or not in-person fraud, which voter identification laws attempt to eliminate, is an issue when absentee ballot fraud could be easier to commit, (3) whether or not states even have the protections and tools in place to measure the true rate of in-person fraud, and (4) if the answer is “no” to question (3), is it worth the burden to voters to put such protections in place. The answers to these questions vary from state to state, depending on the opinions and priorities of the individual legislatures.

Possibility of Racism

Senator Donald McEachin (D-VA) was very clear about his belief that voter identification laws were a “visceral reaction” to the election and reelection of Barack Obama as America’s first African American President. McEachin stated that those who support voter identification laws in Virginia did not expect Barack Obama to become President of the United States and that they certainly did not expect him to be elected and reelected with the help of Virginia’s Electoral College votes. He argued that he has been in the legislature long enough to know that this did not happen before Barack Obama was President. The implications in these words by one of Virginia’s leading Democratic legislators suggest a definite racial undertone in the motivations of Republicans when passing voter identification laws. Racial accusations are often made because of the fact that poor people are less likely to have forms of photo

identification than wealthier people, and, as Dr. Ernest McGowen pointed out, a greater percentage of minority people are poor than the percentage of white people that are poor. However, Delegate John O'Bannon denied this accusation, stating that he "would not agree" with the claim that race played a role in the passage of the bill in Virginia. He added that he thinks the law "treats everyone equally."

Besides Senator McEachin, most of the other interviewees were very hesitant to claim racism as a motive for passing voter identification laws. Two interviewees who exhibited such hesitation were Maurice Robinson and Professor Ernest McGowen. Robinson said that he could not say that there was definitely racism involved and that he did not think that it was a factor. McGowen stated that he could not assume a racial motive and that if he were to do so, he would be claiming that Bob McDonnell, the former Governor of Virginia, was a racist. This was not a charge that he was comfortable making. He added that this was an issue specifically for poor people, who may have difficulty obtaining a form of photo identification, and that this was not an issue for rich minority voters. This sentiment was echoed by Maurice Robinson, who expressed that the burden would more fittingly apply to poor voters rather than poor and minority voters. Yet, still McGowen acknowledged that there is a greater proportion of minority people that are poor than the proportion of white people that are poor.

One study that attempted to examine the role of race in the passage of voter identification laws was conducted recently by the University of Southern California. In their study, researchers sent emails to legislators in various states. The emails stated that the constituent of the legislator had "heard a lot in the news lately about identification being required at the polls." They then went on to tell the legislator that they did not have a driver's license and then ask if they could still vote in November. The emails were sent using two different constituent names: Jacob Smith

and Santiago Rodriguez. According to the researchers, the laws in all of the states to which the legislators belonged allowed forms of identification besides driver's licenses. Therefore, each legislator could have responded with a simple, "Yes." However, the results of the study showed that legislators who supported voter identification laws were much more likely to respond to the constituent named "Jacob Smith" than to the voter named "Santiago Rodriguez." The study notes that both supporters and opponents of the laws were more likely to respond to the Anglophone name than to the Latino name, but that the difference in response was much greater for supporters of stricter voter ID laws. This is reported as "strong evidence that 'discriminatory intent underlies legislative support for voter identification laws'" (Ingraham 2014). When asked about this study, one law school professor who had not read about it, but was given a brief description of it, stated that he was not sure that it contained specific evidence to show bias. He added that he suspected that part of the difference in responses may have depended on who the representatives felt were the most underserved members of their constituencies.

While many interviewees were not quick to say that racism played a role in the passage of stricter photo identification laws, many did state their belief that past racism in the South plays a role in the controversy that surrounds the laws. According to Dr. Ernest McGowen, making sure that someone is who they say they are should not be an issue. He explained that we should know who someone is whether they are voting for someone to fill a position at as high of a level as President or as low of a level as dog catcher. However, he added that when laws are observed on top of past discriminatory practices such as poll taxes, literacy tests, voter intimidation, and the threat of being lynched or fired, there is an issue because those laws were also race neutral at first glance. Former Senator Joseph Lieberman had a unique perspective on the effect that past discriminatory policy has on the controversy surrounding current laws because he served as a

Freedom Rider during the civil rights movement of the 1960s. Senator Lieberman pointed out that the history of prohibiting certain people from voting is close enough in our national history that there is “no question that civil rights groups today have a palpable sensitivity to these voter ID laws as having the purpose or affect not so much of reducing fraud as reducing the turnout of minority voters.” This, Lieberman explained, was the reason behind why they oppose the laws so much. Senator McEachin (D-VA) contributed that former members of the Senate, who helped fight civil rights battles, passed down a passion that is still present in the Virginia Senate Democratic caucus. When asked about the effect of past discriminatory laws on the current controversy, Maurice Robinson, a homeless advocate, stated that there was a definite impact and added that the news media was stirring up emotions from the 60s with this issue. As he described it, it was a ploy that the liberal media and Democrats were using to stir up emotion.

While many interviewees supported the idea that past voter discrimination played a role in the current controversy, there was much less support for the notion that current efforts to enact stricter voter identification laws were comparable to past discriminatory practices. Delegate John O’Bannon stated that there are many people who “continue to be wary of the voting process” because of its history and that he is respectful of that position. But, he expressed a hope that this concern could be “put behind us.” He continued that “so long as everyone is treated equally by this process,” there isn’t likely to be a problem.

Dr. Ernest McGowen concurred that past discriminatory practices could not be equated to current laws because in the past, people actually died because of racist policies. He pointed out that there was no presence of an integrity argument with practices like poll taxes, literacy tests, and voter intimidation. Instead, they served the sole purpose of preventing people from voting. In contrast, there is an argument today that current laws are actually securing the electoral process.

McGowen added that although these laws can be intimidating, registering to vote can also be intimidating to some people. Therefore, every voting law can be perceived as a burden.

There were some respondents who described at least loose similarities between past and current laws. Michael Stoops, a Washington, D.C. homeless advocate who works for the National Coalition for the Homeless, stated that these laws were discriminatory, but stopped short of equating them to the discriminatory laws of the past. Stoops expressed that these laws do not include the type of hateful racism that was observed in the 1960s. Instead, they are discriminatory because Republicans assume that minorities are Democrats. When asked about the subject, Senator Joseph Lieberman responded that the current laws are more “nuanced” and “subtle” than past discriminatory laws. But, he cautioned that there is a danger that they may have the same effect. Lieberman made a comparison between the current situation and how during segregation there was jury by law and by defacto. He added that it is “probably not fair” to make that comparison, but continued that although the laws do not seem to be aimed at actually discriminating against a class of voters, they may still have that effect.

Following a study on the matter, Rocha and Matsubayashi (2013) concluded that although some people are committed to preserving “hierarchical pluralism” based on “ascriptive traits,” such as race, the “politics of voting rights is more complicated.” They continue on to say that discriminatory patterns are “less likely to be present” when orders are in place to “protest policies promoting hierarchy.” Additionally, they find that the effects of photo ID laws do not “vary by race or ethnicity,” and also note that factors such as educational, mobilization, and cost-reducing efforts may play a role in this. Further, they suggest that factors like these may be why a strong relationship does not exist between voter ID and turnout.

Political Motivations

For the most part, voter identification laws are passed through Republican-controlled legislatures. According to the Brennan Center for Justice, of the 22 states that created new voting restrictions between 2010 and 2014, 18 had the restrictions pass entirely through Republican legislatures. Illinois and Rhode Island are two states that passed new restrictions, but did not have legislatures controlled by Republicans. Both of these states passed what the Brennan Center calls “much less severe restrictions.” Another state that was not included in the group of 18 was Mississippi, a state where the law was passed by a referendum of voters in the state (Weiser and Opsal 2014).

One possible explanation for this phenomenon of support coming largely from Republican legislatures is that stricter voter identification requirements are what Dr. Ernest McGowen describes as a good “red meat” issue for Republican legislators to bring back to their constituents. There is data to support Dr. McGowen’s characterization of the laws, with one study showing that 94% of Republicans and 90% of self-described conservatives support voter identification laws. In contrast, only 62% of Democrats and 58% of self-described liberals supported the laws (Wilson and Brewer 2013). The difference in support between party and political ideology may be the result of differences in perceptions of voter fraud. The same study, conducted by Wilson and Brewer (2013), showed that 53% of Republicans and 54% of self-described conservatives reported a belief that fraud was either “common” or “very common.” Just 37% of Democrats and 30% of self-described liberals reported feeling the same way.

It is important to discuss the broad public support for voter identification laws, as well. In 2013, Wilson and Brewer reported that 78% of the 906 adults surveyed in the continental United States either favored or strongly favored these laws. The majority of those surveyed still supported the laws after being given an argument used by opponents of the laws. 82% of those

surveyed who were told that voter identification laws “are unnecessary because voter fraud is very rare” still supported them. A lower proportion (67%) of people who were surveyed still favored voter identification laws after being told the argument that the laws “can actually prevent people who are eligible to vote from voting” (Wilson and Brewer 2013). But, the fact that the majority of adults surveyed still supported the laws shows that they were not persuaded by the argument. Virginia’s public opinion of voter identification laws followed the national trend fairly closely, with a February 2013 poll indicating that 75% of voters believe that a photo ID should be required to vote. Only 23% opposed this belief (“Virginia Voters Back Photo ID”).

This leads us to the question: If the public, in general, supports voter identification laws, then why are being passed, in large part, with the sole support of Republicans? This can be explained, at least in part, by a difference in priorities between the United States’ two major political parties. Simply put, this difference is between the prioritization of expanding the electorate by making it easier to vote and the prioritization of securing elections by putting the necessary safeguards in place. Statements made by Democratic legislators suggest that they prioritize the former. Although Former Democratic Senator Joseph Lieberman expressed that he presumes that people who recommend that there be a requirement for a photo ID to avoid fraud have “worthy motivations,” he also stated that he puts “a higher premium on...making voting easier.” Similarly, while Congressman Jim Himes (D-CT) acknowledged that there is the possibility that some more fraud may exist than is reported, he questioned whether laws that are designed to stop a presumably small amount of voter fraud were worth disenfranchising many people. Representative Himes expressed his desire to be able to believe that everyone started with the premise that “every American should be facilitated in voting.” Congressman John Larson (D-CT) acknowledged the that there is an argument to be made that with today’s

technology, there ought to be some way to eliminate fraud, but spoke about making voting for eligible voters “as easy as possible” and added that “the most ennobling thing you get to do as a citizen is vote.” State Senator Donald McEachin (D-VA) conveyed concern for groups that might be disenfranchised. When speaking about the fact that Virginia currently has a Democratic Governor and Democratic State Board of Elections, said “we’re not trying to leave anyone behind” when it comes to educating voters about the new laws. Delegate John O’Bannon (R-VA) seemed to prioritize the latter of the two principles, stating that he thinks most people want to be able to vote when they’re able to and to “have an assurance that the vote will be counted and properly tallied and won’t be diluted by anyone who is trying to misuse the system.” This implies that voter confidence in the electoral system and election legitimacy may be another priority for supporters of voter identification laws and thus, a motivation for passing them.

While we are on the topic of voter confidence, it is important to note that an opinion by a Wisconsin District Court Judge, which struck down the Wisconsin voter ID law, included testimony by two witnesses who claimed that unsubstantiated claims of voter fraud lessened confidence in the electoral system. The judge ruled, as well, that the law undermined confidence by leading people to believe that certain people were being disenfranchised, and as a result, the voice of the full electorate was not being heard. (*Frank, et. al. v. Walker*). Therefore, voter identification laws could have the effect of lessening voter confidence by alleging fraud without the hard data evidence to support allegations.

The national major party platforms generally support and coincide with the statements made by members of their respective parties. There, too, is the difference in priorities apparent. The *Voting Rights* section of the 2012 Democratic Party platform begins with, “We believe the right to vote and to have your vote counted is an essential American freedom.” Later in the

passage the party boasts “a proud history of standing up for the right to vote” (“The Democratic Party Platform”). In stark contrast, the 2012 Republican Party platform’s section titled *Voter Integrity to Ensure Honest Elections* begins with, “Honest elections are the foundation of representative government.” The party continues on to describe voter fraud as “political poison” and writes that it “strikes at the heart of representative government” (“2012 Republican Platform”).

Another explanation for why voter identification laws are passed with mostly Republican support despite widespread general public support is the polarization effect (Zaller 1992; Wilson and Brewer 2013). This concept concludes that people take signals from political elites, but that “the extent to which an individual follows these signals...should depend upon that individual’s likelihood of receiving them in the first place” (Wilson and Brewer 2013). Therefore, according to Wilson and Brewer (2013), divide in opinion increases as awareness increases. Extrapolating from this, they conclude that it may be expected that the largest divide in opinions about voter identification laws should occur among people who know the most about the laws. It is reasonable to assume that legislators will be most familiar with voter identification laws; therefore, there should be a much higher polarization among them than among other citizens. Thus, this could explain why Virginia public opinion, in terms of favoring or opposing voter identification laws, is proportionally different from that of the Virginia legislature, where a 20-20 tie had to be broken in the Senate by the Lieutenant Governor. The discrepancy in awareness is further supported by the previously conducted study by Wilson and Brewer (2013), which showed that only 24% of those surveyed considered themselves “very familiar” with voter identification laws, while 34% considered themselves “not at all” familiar.

Intentional Disenfranchisement

Bentele and O'Brien (2013) claim that voter identification laws are passed with the intention of suppressing certain groups of voters. They claim that the Republican Party has done this because of changing demographics in the United States, election results that have not been favorable to the party, and a rightward shift in the ideologies of those at the core of the Republican Party. These claims are supported by studies that indicate that in 2011, voter identification laws were passed in states with "unencumbered Republicans" (meaning that the Republicans were able to pass legislation freely without major threats to their majority power), "larger proportions of minority voters or African-American residents, more reported cases of voter fraud, and more accessible election systems." Their findings showed that the association between the racial composition of either the population of a state or the state's active electorate and the passage or proposal of "voter restriction legislation" is both "substantial and significant." They also conclude that voter fraud was only a minor contributing factor to the passage of these laws (Bentele and O'Brien 2013).

Other opponents of voter identification laws generally agree with the arguments made by Bentele and O'Brien (2013) regarding voter suppression by Republicans. Wang (2012) makes the case that voter identification laws are an attempt to suppress voting by groups that usually vote Democrat. She continues on to say that Republican claims about voter fraud are "unsubstantiated at best and instances of political gamesmanship at worst." Wang (2012) also mentions a quote from Judge Terrence T. Evans's dissenting opinion in a case that upheld Indiana's voter ID law. Evans wrote that the law was a "not-too-thinly-veiled attempt to discourage election-day turnout by certain folks believed to skew Democratic."

Quotes by prominent Republicans are also often cited as ways of attempting to prove that they are trying to pass laws that suppress voters. Wang (2012) mentions that Royal Masset, a

former political director for the Texas Republican party is quoted as saying that a voter ID law “could cause enough of a drop-off in legitimate Democratic voting to add 3 percent to the Republican vote.” Another quote that is commonly referred to and mentioned by Bentele and O’Brien (2013) was spoken by Republican Representative Mike Turzai. He was serving as the Pennsylvania House Majority Leader in 2012 when he stated that the Pennsylvania voter ID law would “allow Governor Romney to win the state of Pennsylvania” (Johnson 2012). Many people perceive this to mean that Turzai believed that the law would successfully suppress voters to the benefit of Republicans. However, it is important to note that the full meaning behind the quote is unclear. It is within the realm of possibilities that Turzai believed that Democrat-benefiting voter fraud was such an issue that Mitt Romney could not carry the state without the elimination of such fraud. In this case, the quote would not be an indication of intent to suppress voters at all.

Delegate John O’Bannon (R-VA) expressed his belief that the law “treats everyone equally.” He was quick to mention that many accommodations have been made as concerns have been raised. These accommodations include funding a process in which local registrars can provide an ID to anyone who does not already have it. As will be examined more carefully in later sections, I argue that these accommodations, which lower the burden to voters, are a main reason why the Virginia voter identification law has not been struck down in the courts. These accommodations also help to take away some of the steam behind the argument that Virginia legislators are just trying to disenfranchise voters. Therefore, in the specific case of the Virginia voter identification law, which is the main focus of this study, sufficient accommodations have been made to pass the Burdick standard (Minnite 2013). The Burdick standard will also be discussed in later sections of this report.

Difficulty in Proving Motivations

While Bentele and O'Brien (2013) do make a compelling argument that voter suppression is a driving force behind the passage of voter identification laws, it is still extremely difficult to prove these motivations in the passage of individual state laws. It is important to note that the data collected by Bentele and O'Brien (2013) focused mainly on national trends. As a result, it is difficult to take a national trend and apply it to the motivations behind a single state passing a specific law. Simply concluding that there is a significant national association between the racial composition of state residents or electorates and the passage or proposal of voter identification laws does not allow researchers to confirm that Virginia, for example, is passing laws to purposely suppress voters.

Some interviewees did suggest that voter identification laws, in general, were an attempt to suppress voters. For example, as previously discussed, Senator Donald McEachin expressed his belief that Virginia voter identification laws were passed as a response to the election and reelection of President Barack Obama. Congressman John Larson spoke about how an Ohio State Senator who was leading the charge for voter identification moved around voting districts in an attempt to make it more difficult for people to get to their polling locations and vote. He added that there was "mischief" going on at the state level. Dr. Ernest McGowen of the University of Richmond, while stopping short of accusing Republicans of having a racial motive, did note that it is feasible that Republicans came together to create a bill that makes it so that less Democrats vote. Additionally, Washington, D.C. homeless advocate Michael Stoops stated that an intention behind passing voter identification laws was to suppress the homeless vote. He added that he wished supporters of these laws would just be honest about their intentions.

Yet, other interviewees were more hesitant to provide a judgment of the motive behind the passage of voter identification laws. Former Senator Joseph Lieberman stated that it was hard

for him to “judge peoples’ motivations” and that he presumes that people have “worthy motivations in recommending that there be a requirement for a photo ID to vote to avoid fraud.” Professor Henry Chambers, a professor at the University Of Richmond School Of Law, expressed a similar sentiment when he stated that, “the motivation of the legislature is very difficult to figure out.” In addition, he expressed that, “chances are pretty good that you’re not going to be able to find evidence that’s so clear about intent.”

Constitutional Implications of Motivations

Within my interview with Professor Henry Chambers, who has an expertise in the field of constitutional law, we discussed the constitutionality of voter identification laws. Dr. Chambers stated that much of the constitutionality of the laws depends on the motivation of the legislature. If it was the legislature’s desire for the law to have an effect on voting and on minority voters in particular, Dr. Chambers explained, then the law would be unconstitutional. However, as was discussed in the preceding section, this is very difficult to prove. Dr. Chambers also spoke about a statutory perspective, in which statutory violations are in play. He stated that if the legislature had a fairly accurate idea of what the effects of the law might be and passed it anyway, then over time, it may become apparent that the law was a violation of the Voting Rights Act.

In recent decisions regarding voting laws, the U.S. Supreme Court has proven that motivations do matter when evaluating laws related to voting rights. This is because the Court has employed a way of evaluating laws known as the “Burdick standard” or the “Burdick test” (Minnite 2013). As Minnite (2013) explains it, the Burdick standard, as we will refer to it here, is a flexible evaluation tool, which takes into account many factors, rather than a “blanket approach of strict scrutiny.” She further describes that there is no set way of sorting rules regarding elections prior to evaluating the effects the laws might have on voting rights. During the case of

Crawford v. Marion County Election Board, Justice John Paul Stevens wrote about the Court's use of the Burdick standard in previous cases. He explains that in *Anderson v. Celebrezze*, the Supreme Court decided that it must analyze the State's interests as justifications for passing electoral laws rather than applying a test that would "neatly separate valid from invalid restrictions." He further explains that in this case, the Court confirmed that "evenhanded restrictions that protect the integrity and the reliability of the electoral process itself" are not "invidious." According to Stevens, the case of *Burdick v. Takushi* reaffirmed that courts are required to "weigh the asserted injury to the right to vote" against the State's interests put forward as "justifications for the burdens imposed by its rule." One example of a case in which the Courts did not believe that the State's interest justified the electoral rules it was attempting to impose was *Norman v. Reed* (2008; Minnite 2013).

Impacts

Since the Virginia voter identification law was just implemented in July of 2014, it is too early to tell what many of the impacts of the law will be. However, it is still possible to have a discussion about the impacts that have already taken place, the political ramifications, and some of the anticipated consequences of the law.

Confusion

One consequence of the new voter identification laws in Virginia is that there has already been some confusion over the laws. This is a product of people not knowing exactly what kind of identification they can use to vote. Both State Senator Donald McEachin (D-VA) and Professor Henry Chambers raised concerns about this confusion. Senator McEachin talked about how there were some special elections coming up in August, which he described as "before the new law takes place." He expressed concern that people would be confused about what they had to

present in August, before the law's implementation, and what they had to present in November, after the law's implementation. He stated that Progress Virginia, a progressive group had already started sending out emails to do away with this confusion. However, Senator McEachin's statements demonstrate a certain sense of confusion by their content alone because the law went into effect on July 1, 2014. This is according to a representative from the Virginia State Board of Elections and a summary of the bill on the Virginia Legislative Information System's website ("SB 1256"). Senator McEachin added that he believed that there would probably be a lot of provisional ballots cast in this first year of the law's implementation and that more effort would be needed to get people to the polls because of the need for more education about what is needed to vote.

Professor Henry Chambers spoke about how confusion can lead to longer lines and people believing that they cannot vote. He stated that if the Virginia State Board of Elections is not clear about what is an acceptable form of identification, then people might leave line because they do not believe that they are going to be able to vote. Another source of confusion mentioned by Dr. Chambers was the question of whether or not expired forms of identification would be allowed at polling locations. According to Dr. Chambers, the State Board of Elections originally suggested that expired IDs would be allowed, but that Senator Mark Obenshain (R-VA) questioned whether or not this should be the case. The *Washington Post* reports that Senator Obenshain sent a letter to the State Board of Elections asking them to look into the matter "immediately" and to open it to public comment. The Virginia State Board of Elections did not pass down an official ruling until Wednesday, August 6th, when it ruled that expired forms of identification would be accepted as long as they had not expired more than 12 months prior to the day of the election (Portnoy 2014). With the ruling coming down more than a month after the

law was implemented and less than two weeks before a special State Senate election for Virginia's 38th District, it is understandable that this could cause significant confusion (Igo 2014). Dr. Chambers continued on to say that confusion could arise from certain poll workers getting information that is different from the information that other poll workers are getting. He did not think that the implementation of the law was set up to purposely cause this confusion. Rather, he spoke about how whenever a new law is passed and you have to decide how to apply it, there are going to be questions regarding implementation. Additionally, it is important to point out that a Virginia State Board of Elections official stated that a lot of people thought that they already needed a photo ID, so he was not sure how much confusion there would actually be.

Political Impacts

As was discussed in previous sections, the voter identification law in Virginia has sparked heated debate between supporters and opponents of the law. Supporters, like Delegate John O'Bannon, have claimed that the laws are an attempt to solve the problem of voter fraud. Delegate O'Bannon even suggested that opponents of the law were protesting them, in part, because they knew that there was a problem with fraud and did not want to solve it. Opponents of the law, like Senator Donald McEachin, claim that supporters came up with a "solution in search of a problem." He even claimed that the law was a reaction to President Obama being elected twice as the first African-American President and carrying Virginia both times.

While many accuse Republicans of passing laws that would benefit them politically, Dr. Ernest McGowen suggested that members of the Republican Party of Virginia did not appreciate the backlash that they would receive because of the new voter identification law. According to Dr. McGowen, people vote against things more than they vote for things. He spoke about how people were just lukewarm about voting for President Obama in 2012, but that voting for the

President became voting against the Republican establishment. McGowen described the Republican establishment as having been made to be the “boogeyman” for about the past half century. He continued on to say that this played a role in bringing more young people and ethnic groups out to vote and probably played a role in swinging the Virginia Governor’s mansion into Democratic hands. However, he was quick to point out that there were several factors that could have affected this.

Dr. McGowen mentioned that these laws could be intimidating to people, but that registering to vote, on its own, can also be intimidating to people. So, this brings into question whether or not voter intimidation will take place. With the law just having been implemented on July 1, 2014, it is too early to definitively say whether or not voters will be intimidated by the policies. However, I argue that even the perception of intimidation would be enough to have a political impact on Virginia because it would stir up some of the emotions of voter intimidation tactics of the past. The perception of intimidation could come about if people believe that there is an undue burden being placed on voters that disproportionately and purposely affects specific groups of people. As will be discussed further in later sections, the Virginia law lowers the burden for voters in a way that could dispel accusations of politically motivated voter intimidation. Still, some of the misinformation and confusion that currently exists could lead to this perception. For example, Senator Donald McEachin spoke about how elderly people would be disenfranchised because they may have been born in a time when birth certificates were not produced. Yet, according to a Virginia State Board of Elections official, a birth certificate is not required to receive a photo identification card from the state of Virginia. Instead, as is written on GotIDVirginia.com, a website sponsored by Progress Virginia, what you need is the last four digits of your social security number, your birth date, and your signature (“Got ID Virginia?”).

With this type of confusion, it is feasible that voters could be intimidated by the process, but it is important to reiterate that just registering to vote can be intimidating to some voters.

Disenfranchisement and the Case of Virginia Voter ID

The threat of disenfranchisement caused by the voter identification law in Virginia has been diminished and minimized by the way the law and policies surrounding it have been written. The election code has been changed so that the valid forms of identification are as follows: a valid Virginia driver's license, a valid U.S. passport, any other photo identification issued by the Commonwealth of Virginia, one of its political subdivisions, or the United States; any student ID that includes a photo and is issued by an institution of higher education within Virginia, and any valid employee identification card that contains a photograph of the voter which is issued by the employer of the voter in the ordinary course of business. This certainly limits the forms of identification which can be used by disallowing Virginia voter registration cards that do not contain a photo, social security cards, concealed handgun permits, copies of current utility bills, bank statements, government checks, and paychecks. However, if a person does not have one of the required forms of identification, they have the option of filling out a provisional ballot pursuant to Section 24.2-653 of the Virginia election code. They have three days to provide one of the required forms of identification, which can be done by facsimile, electronic mail, timely U.S. Postal Service delivery or in-person submission ("24.2 Code of Virginia"). Other states have passed similar laws, but Virginia's laws are set apart in ways that will be described in greater detail later in this section. The differences include the ability of the voter to obtain a free ID without any documents and the mobilization of registrars' offices.

There has been some question about how much a provisional ballot is actually worth. One report that digs deeply into this question by looking into the 2012 Indiana Primary was

conducted by Michael J. Pitts (2013). Indiana has been requiring a photo ID to vote since 2006. Pitts (2013) found that only 22.1% of provisional ballots that were cast for identification related reasons were counted. Therefore, it could be possible that the burden for voters to verify provisional ballots in that state is too high because they still have to come back to the election office after the election to submit a form of photo identification. Pitts (2013) suggests that it might be better to put more of the burden on the election officials for verifying ballots through some form of signature matching, for example. However, he notes that of the 957,272 ballots cast in the primary, only 122 provisional ballots (or .012%) were cast because of ID related reasons. This could suggest that the actual disenfranchisement of voters was very low. He adds that this measure of disenfranchisement only measured those who did not have provisional ballots cast and did not measure those who stayed home because they did not have one of the required forms of identification. But, he states that there is no evidence to show that thousands of people stayed home because they did not have what was needed to vote. Pitts (2013) also looks at the other side of the argument and acknowledges that it is easy to conclude that the Indiana voter ID law does “more harm than good” because it is very possible that the actual disenfranchisement that results from the law accounts for many more votes than those that would be wrongly accounted for by in-person fraud.

Pitts (2013) raises an important issue regarding voter deterrence that is caused by voter identification laws. He added that there are few studies that study this issue. However, he also critiques the 2008 Survey of the Performance of American Elections, which attempted to gauge how many people stayed away from the polls because of voter identification laws, because it “did not find a single person in Indiana who reported that not having proper voter identification was the reason for avoiding the polls.” This is despite the fact that Indiana has one of the strictest

voter identification laws in the nation. Still, homeless advocate Scott McNeilly argues that for the homeless population, which is more politically active than some might think, just surviving is a struggle, so any added burden at all could potentially disenfranchise voters. As a result of this burden and any confusion that accompanies the voting process, these voters could be deterred from voting.

Furthermore, the Commonwealth of Virginia has funded a free form of identification for any person who does not have one. This is the example that was given by Delegate John O'Bannon when discussing the "reasonable accommodations" that have been made under the new voter identification law. To decrease the burden on the voter even further, no forms (such as birth certificates or documents proving residence) are required to apply for the free ID. Additionally, an official from the Virginia State Board of Elections confirmed that registrar's offices are being developed to become mobile. I argue that this is one of the main reasons why the Virginia voter ID law has not been struck down by a court challenge.

In other states that have enacted similar laws, state-funded identification cards have similarly been provided, yet the laws have still been struck down. But, the official that I spoke to from the Virginia State Board of Elections stressed that if there was any burden placed on voters by the new voter identification law, it was very minimal. He continued on to say that he, as someone who had helped to write the new regulations, wanted the new standards to meet constitutional muster because he had seen what had happened in other states. As a result, it was the intent to put as low of a burden as possible when asking for an ID. To dig deeper into whether or not the burden is actually lower than that which was placed on voters in other states, we will now discuss what differentiates the Virginia law from the laws of Pennsylvania and Wisconsin, which were both struck down in state or federal courts.

It is important to discuss whether a “free” ID still has burdens and costs associated with it. First, we will discuss the Wisconsin free ID program in comparison to the Virginia free ID program. In Wisconsin, under the new law, which is not currently in effect due to a state court ruling, voters can receive a free ID from a Department of Motor Vehicles location that issues state ID cards. When a citizen applies for their first Wisconsin State ID card, they must present documents that prove their name, date of birth, legal presence, identity, and Wisconsin residency. Just to prove their name and date of birth, a resident can present an armed forces ID card, valid U.S. passport, tribal ID card, Wisconsin driver license, certificate of naturalization, Wisconsin state ID, certified birth certificate, certificate of citizenship, valid foreign passport, court order for adoption, divorce, name or gender; or TSA worker ID (“Getting a Wisconsin State ID Card”). To list all of the ways of proving residence, identity, and legal presence would be exhaustive, but the ways of proving name and date of birth suffice to show that a significant burden is placed on the voter if they are attempting to obtain a state ID. Even a birth certificate can be extremely difficult to obtain. As Senator McEachin discussed, some people are born outside of the country or in some place other than a hospital, so no birth certificate was produced. For some people, age can add difficulty to obtaining a document such as this. Additionally, even if someone knows where to find a birth certificate, it may be costly and burdensome to obtain it and/or have it certified.

In a decision that struck down the Wisconsin state law, U.S. District Court Judge Lynn Adelman stated that the law “erects a more substantial barrier” for people whose lives had not exhibited any need to obtain in the past, than for those people who already possessed a valid form of photo identification (Ramde 2014; *Frank, et. al. v. Walker*). He added that they “must do whatever it takes to gather the necessary documents and make a special trip to the DMV in order

to procure an ID that they will expect to use for no purpose other than to vote.” He also opined that since some people will likely only use the ID to vote, they have different perceived benefits of obtaining the ID and thus, a unique burden. The result of this is a greater chance that these people would be deterred from voting. An additional concern that the judge raised was that people who have to gather documents may not be able to get them in order in time for an upcoming election. This may be due to difficulties obtaining them or unforeseen issues that arise (*Frank, et. al. v. Walker*).

Virginia’s voter ID law differs from that of Wisconsin because prospective Virginia voters are not required to show any of the documents to obtain a free ID that are required in Wisconsin. Furthermore, although a Virginia State Board of Elections official acknowledged that a cost associated with obtaining a free ID could be traveling to the general registrar’s office, he also noted that registrar’s offices are being developed to become mobile. He stated that at the time of our interview, the mobile registrar’s offices were still in the beta testing stage, but that they would be going mobile within the next month. These mobile registrars’ offices would be going to places such as nursing homes and homeless shelters in order to help people to register to vote more easily. People can call and request this service, but the election official cautioned that he could not guarantee that every registrar’s office could comply with every request. While it should be noted that not every registrar’s office has the capability to go mobile due to cost restraints, the actions taken by the Commonwealth to facilitate such a process demonstrate a concerted effort to minimize the burden that this law could potentially place on voters. The lack of need for documents at the time of obtaining a photo ID and the efforts by the Commonwealth of Virginia to minimize or eliminate any costs associated with traveling to registrars’ offices make it so that the two main burdens in Judge Lynn Adelman’s decision are arguably not

applicable to the Virginia law. If Virginia proves that it can truly successfully relieve any travel burden on voters through these mobile registrar's offices, it can strengthen to an even greater degree the law's ability to stand up to a constitutional or statutory challenge.

The incongruity between the stricken Pennsylvania voter ID law and the Virginia voter ID law, in terms of the minimization of burden to eligible voters through the providing of a free form of photo identification, is less apparent. The Pennsylvania law was similar to the Virginia law because it established that a free ID be given to voters who did not have one. It was also like the Virginia law because prospective Pennsylvania voters did not need the documents that were required under the Wisconsin law to obtain a free ID from the Department of State. Instead, in order to obtain the "DOS ID," they would need to fill out an application, which included their Social Security number, and an affirmation form that was created by the Department of State (*Applewhite, Et Al. v. Commonwealth*). However, Pennsylvania State Court Judge Bernard McGinley still struck down the law based, in part, on the premise that the DOS ID was not guaranteed to voters because the Secretary of the Commonwealth was not explicitly granted the authority to issue such IDs. Judge McGinley raised additional concerns about the fact that voters had to travel to one of 71 locations throughout the state to obtain a free ID as opposed to the 9,300 polling locations in which they vote (*Applewhite, Et Al. v. Commonwealth*).

In contrast, the Virginia law does give explicit authority to the State Board of Elections to issue free photo voter identification cards. Section 24.2 – 404 of the Virginia state election code states that:

In order to operate and maintain the system, the Board shall:

Provide to each general registrar, voter registration cards for newly registered voters and for notice to registered voters on the system of changes and corrections in their registration records and polling places and voter registration cards containing the voter's photograph and signature for free for those voters who do not have one of the forms of identification specified in subsection B of § 24.2-643.

This part of the election code makes it so a key tenet of Judge McGinley's argument does not apply. The previously discussed role of mobile registrars' offices diminishes the relevance of another of Judge McGinley's concerns about the burden placed on the voter to travel to an ID-issuing office to obtain an ID. Adding to this, according to the Virginia election official that was interviewed, there is at least one general registrar's office in each of Virginia's 133 localities. This provides for almost twice the amount of ID-issuing offices than are present in Pennsylvania and could potentially lessen the burden on voters even further, especially when considering that Virginia has a smaller land area than Pennsylvania by 3,280 square miles ("Pennsylvania: Facts"; "Virginia: Facts").

While the differences between the Virginia voter ID law and other stricken state laws do not single-handedly eliminate the chances of the Virginia law being struck down by the Court, they do reduce the burden in a way that makes it more likely for the law to stand. This is because if the law were to face a Court challenge, it would likely have to pass the Burdick standard. This test has been used as precedent for recent cases and as I stated before, requires the court to "weigh the asserted injury to the right to vote" against the State's interests put forward as "justifications for the burdens imposed by its rule" (Minnite 2013). By lessening the "asserted injury to the right to vote," Virginia has lowered the level of the burdens that they must justify.

This of course, does not guarantee that the Virginia law would stand up to any court challenge, especially with the difficulty in proving in-person fraud as a justification due to the lack of hard supporting data. But, I still argue that the steps taken by the Commonwealth to minimize the burden have significantly improved the law's chances of holding off a court challenge.

Water Filter Model

Minnite (2013) asserts that, "All rules governing access to the ballot and the voting process place what can reasonably be described as 'burdens' on voters." This statement begs the following questions: (1) If every electoral law is a burden to voters, then at what point is the burden too high? (2) At what point do these laws warrant the accusation of causing "disenfranchisement" or a "disproportionate effect on poor and minority voters?" It can be extrapolated from an examination of the Burdick standard that the answer to these questions is: when an undue burden is placed on voters that is unwarranted or inadequately warranted by a sufficient cause.

When speaking about the impacts that voter identification laws may have on elderly voters, Professor Henry Chambers stated that we have to be "careful" about saying that people are disenfranchised because that may not necessarily be the case. What may actually be the case is that certain people have to jump through "higher hoops" and have a more difficult time voting than others. If this is the case, then is it not true that every election regulation affects people in different situations in different ways? The election code in Virginia provides specific terms for who can qualify for an absentee ballot. If a rich voter and a poor voter both do not qualify for absentee ballots, is it not true that this affects the poor voter in a way that could be completely foreign to the rich voter? I assert that the answer to both of these questions is an affirmative answer. If every rule is seen as a burden, and every burden affects people differently based on

their wealth, location, work schedule, and countless other factors, then where do state legislatures draw the line with election regulations? I propose that a new model, which we will refer to as the “Water Filtration Model,” is useful when observing the actions states take regarding voter identification laws.

The goal of a water filtration system, in general, is fairly simple. It is to move water from one end to the other and to produce pure water as efficiently as possible, while filtering out as much dirt and bacteria as possible and leaving as little water in the filter as possible. Now, imagine that the filtration system is an election system in a state. The unfiltered water is the group of prospective voters, whether eligible or ineligible, prior to having any laws applied to them. The dirt and bacteria that are supposed to be filtered out of the water by the filtration system are ineligible, fraudulent, and repeat voters. The water that comes out of the filtration system, which you trust to be pure, is the electorate of presumably eligible, non-fraudulent voters. Within the filtration system, there are multiple filters with progressively smaller holes as they get deeper into the filtration system. Each one represents a different voting restriction or lack of accommodation that would make it easier for some people to vote. At the beginning of the filtration system are the filters with large holes, representing the least burdensome restrictions. Towards the other end of the filtration system are the filters with smaller holes, representing more burdensome restrictions. Any pure water that is left in the filtration system after the filtration process is complete represents any voters who would have been eligible had it not been for that specific restriction or lack of accommodation.

A progression of filters from larger holes to smaller holes might look like this:

- Required voting
- Required voter registration
- Required to travel to polls and vote in-person on Election Day if not eligible for absentee ballot

- Required to sign a form of identity under penalty of law
- Weekday voting
- One-day voting
- Voting only allowed for a certain set of hours during the day
- Lack of online registration
- Lack of same-day registration
- Disenfranchisement of felons
- Absentee ballots restricted to only those eligible under strict criteria
- Lack of early voting
- Required to present form of non-photo identification at the polls (provided for free by state)
- Required to present form of non-photo identification at the polls (not provided for free by state)
- Required to present form of photo identification at polls (provided for free by state)
- Required to present form of photo identification at polls (not provided for free by state)

Note: This list could be re-ordered depending on the state which it is applied to.

Some restrictions (or filters) might be burdensome to a greater number of people in some states than in others.

Each filter in the filtration system leaves some pure water behind in the same way that each electoral restriction produces a burden that will prevent a certain amount of voters who should be eligible to vote from voting. As Dr. Ernest McGowen expressed, even registering to vote can be intimidating for some people. Perhaps just registering to vote is too time consuming for some people who are busy trying to raise a family or make a living, so they do not do so. But, it can be assumed that this step in the process of securing a legitimate electorate prevents less people from voting than requiring a form of photo identification because it is less burdensome to people. More specifically, more people feel little or no burden than in the case of photo identification laws.

It is up to each state to decide how many filters they would like to insert into their filtration system. It is up to the courts to ensure that each state is inserting filters in a manner that is fair, equitable, and justified. Past discriminatory policies, such as poll taxes and literacy tests,

are examples of when legislatures inserted filters that purposely filtered out pure water. Put literally, these legislatures purposely restricted large groups of eligible voters from voting. The courts have made it so that these filters cannot be used any longer.

It is relatively easy to see where a state legislature's priorities are based on how many filters they have inserted (how many regulations they have passed) and which filters they have chosen to insert. Legislatures who value things like fraud prevention, voter confidence, and secure elections more highly are likely to have more regulations. In other words, legislatures that put a higher value on the purity of the water after it has made its way through the filtration system are likely to insert more filters. Whereas legislatures that value things like ease of access to the ballot, open elections, and a wider electorate are more likely to have less restrictions. In other words, legislatures that are more concerned about not leaving any pure water behind in the filter are likely to insert fewer filters.

This model provides a clearer picture of why Republican-controlled legislatures have been trending towards stricter voter identification laws, while legislatures that are controlled by Democrats have eased restrictions by enacting policies that allow for practices such as same-day voter registration and online voter registration.

Conclusion

Voter identification laws continue to be an issue of controversy in the United States. After being signed in 2013, a Virginia photo identification law was implemented on July 1, 2014. As was to be expected, controversy and disagreement surround the new restrictions, which require that a valid form of photo identification be shown when voting in-person.

On both sides of the issue, there have been accusations of malicious motivations for either supporting or opposing the laws. Through a qualitative case study of the new Virginia

laws, I conclude that motivations are much more difficult to discern than political talking points might suggest. After examining a variety of possible motivations, it is clear that there are definite political advantages to supporting these laws for Republicans, including that this issue is considered to be “red meat” for conservatives. There are also political advantages to opposing these laws for Democrats, who can galvanize support by claiming that Republicans are trying to bring the nation back to the 1960s. While the motivations behind the passage of these laws have extremely significant implications for determining the constitutionality and statutory viability of them, Professor Henry Chambers points out that we are unlikely to find evidence that proves intent by the legislature. Findings by Bentele and O’Brien (2013), which support their claim that voter identification laws are put in place to suppress specific groups of voters, focus primarily on national trends rather than the motivations of a specific state legislature. The question of whether fraud presents a justifiable motivation for stricter election regulations must be decided on a state-by-state basis and depends heavily on the extent of the burden put forth by the laws.

The anticipated impacts of the Virginia voter identification laws are still up for debate, but it is clear that some confusion and political effects have already been experienced. Confusion arises primarily out of the questions surrounding how the law will ultimately be interpreted and out of the expediency with which the laws in Virginia have changed. A key part of the political impact that has already been observed is a backlash against Republicans who supported the law, which may have had the effect of increasing voter turnout in certain left-leaning groups. As Dr. Ernest McGowen described, people vote against things more than they vote for things.

The lengths that the Commonwealth of Virginia has gone to in order to minimize the burden placed on prospective voters, including providing a free ID that does not require documents to obtain and adapting registrars’ offices to be mobile, set this law apart from other

state laws that have been struck down by courts. By providing accommodations that are advanced compared to states like Pennsylvania and Wisconsin, policy makers in Virginia have positioned this law to have a better chance of standing up to a court challenge. This is primarily because they have put it in a better position to pass the Burdick standard, which weighs the states interests and justifications against the burden imposed by increased regulation.

In closing, I propose a model that can be used to observe voter identification laws. The “Water Filtration Model,” provides a clearer image of what the purposes of voter regulations should be and how states adjust their regulations based on their priorities. Provided that they pass laws that are constitutional and not in statutory violation of laws such as the Voting Rights Act, it is up to each state to decide how they filter their voters and to what extent they do so. The way in which each state legislature adjusts its “filtration system” is extremely reflective of the diverse priorities of the people across this nation when the issue is voting: the most sacred right we hold as Americans.

Appendix A. List of Participants

Name	Position
Fmr. Sen. Joseph Lieberman	Former U.S. Senator from Connecticut
Rep. Jim Himes	U.S. Congressman from Connecticut's 4 th District (D-CT)
Rep. John Larson	U.S. Congressman from Connecticut's 1 st District (D-CT)
Michael Stoops	Washington, D.C. area Homeless Advocate
Scott McNeilly	Washington, D.C. area Homeless Advocate and Attorney
Maurice Robinson	Richmond, VA area Homeless Advocate
Attorney Donald Bell	Legal Fellow, Office of U.S. Senator Chris Murphy (D-CT)
State Sen. A. Donald McEachin	Virginia State Senator (D)
Delegate John O'Bannon	Virginia State Delegate (R)
Dr. Daniel Palazzolo	Chair, Dept. of Political Science, University of Richmond
Professor Henry L. Chambers, Jr.	Professor of Law, University Of Richmond School Of Law
Dr. Ernest B. McGowen III	Asst. Professor, University of Richmond
Unidentified	Attorney, Connecticut Secretary of the State's office
Unidentified	Election Official, Virginia State Board of Elections

Appendix B. General Interview Questions

For Virginia Legislators, Party Officials, and Election Officials:

Primary part of research being examined: What motivates legislators to pass voter identification laws?

1. How would you describe laws requiring citizens to present a form of photo identification in order to vote?
2. How would you describe the need or lack of need for photo identification laws?
3. In what ways, if any, do these laws affect the legitimacy of the electoral system?
4. How would you describe the reason for passing laws requiring voters to present a form of photo identification?
 - a. Follow up questions (on reserve), if the legislators mention any of the following topics:
 - i. What role, if any, does voter fraud play in passing stricter voter identification laws?
 - ii. What role, if any, does public opinion play in passing stricter voter identification laws?
 - iii. What role, if any, does legitimacy of elections play in passing stricter voter identification laws?
 - iv. What role, if any, does voter confidence play in passing stricter voter identification laws?
5. Follow up questions (on reserve), if the legislators mention any of the following topics:
 - a. How does the legitimacy of elections [in Virginia] after the passage of laws requiring voters to present a form of photo identification compare to the legitimacy of elections prior to the passage of such laws?
 - i. How would you describe the legitimacy of elections [in the state of Virginia] prior to the passage of laws requiring voters to present a form of photo identification when voting?
 1. How many cases of voter fraud were there?
 - ii. How would you describe the legitimacy of elections [in the state of Virginia] after the passage of laws requiring voters to present a form of photo identification when voting?
 1. How have the cases of voter fraud changed, if at all?
 - b. How does voter confidence in the electoral system after the passage of laws requiring voters to present a form of photo identification compare to voter confidence prior to the passage of such laws?
 - i. How would you describe voter confidence in the electoral system [in the state of Virginia] prior to the passage of laws requiring voters to present a form of photo identification when voting?
 - ii. How would you describe voter confidence in the electoral system [in the state of Virginia] after the passage of laws requiring voters to present a form of photo identification when voting?
6. Follow up questions (on reserve), if the legislators mention disenfranchisement:
 - a. Which people are being disenfranchised?

- b. How are these people being disenfranchised?
 - c. How many people are being disenfranchised?
7. Follow up questions (on reserve), if legislators mention racism:
- a. Which people are affected by racism in voter identification laws?
 - b. How are these laws racist against these people?
 - c. How many people are affected by racism in these laws?

Further questions for Democratic legislators and other opponents of voter identification laws:

- 8. Some say that these are simply an attempt to reduce voter fraud. How do you respond to this?
- 9. Some say that these laws improve voter confidence. How do you respond to this?
- 10. Proponents of Voter ID laws argue that providing a form of photo identification is necessary for many commonplace activities in our society, such as buying tobacco and alcohol, driving a car, checking into a hotel, and getting a job. How, if at all, do you think voting should be any different? Why?
- 11. Some supporters of voter identification laws claim that obtaining a form of photo identification is not a burden and is merely a simple process. Do you agree or disagree? Why?
- 12. Some supporters of voter identification laws claim that voter identification laws that do not require a form of photo identification are not sufficient. How do you respond to this?
- 13. How do you respond to claims that poor and minority voters are disproportionately affected by voter identification laws because they are less likely to have forms of photo identification?

Further questions for Republican legislators and other opponents of voter identification laws:

- 14. Citing that in the United States, only 26 convictions or guilty pleas resulted from cases of alleged voter fraud originating between 2002 and 2005, some opponents of voter identification laws claim that there is not enough voter fraud to warrant strict photo identification laws. How do you respond to this?
- 15. Some opponents of stricter voter identification laws state that laws that do not require a form of photo identification are sufficient. How do you respond to this?
- 16. How do you respond to studies that have shown that in the 10 states that had restrictive voter ID laws by July of 2012, 11% of legitimate voters lack a proper form of photo identification?
- 17. How do you respond to studies that have shown that in the 10 states that had restrictive voter ID laws by July of 2012, nearly 500,000 eligible voters in the United States did not have access to a vehicle and live more than 10 miles from the nearest state ID-issuing office?
- 18. How do you respond to studies that have shown that in the 10 states that had restrictive voter ID laws by July of 2012, 1.2 million eligible black voters and 500,000 eligible Hispanic voters live more than 10 miles from their nearest ID-issuing office open more than two days a week?
- 19. How do you respond to claims that in those 10 states, ID-issuing many ID-issuing offices are placed in rural areas, which are further from many poor and minority voters?
- 20. How do you respond to claims that poor and minority voters are disproportionately affected by voter identification laws because they are less likely to have forms of photo identification?

For the Connecticut Secretary of the State's office and Connecticut state and federal legislators:

Primary part of research being examined: What motivates legislators to pass voter identification laws?

1. How would you describe laws requiring citizens to present a form of photo identification in order to vote?
2. How would you describe the need or lack of need for photo identification laws?
3. In what ways, if any, do these laws affect the legitimacy of the electoral system?
4. How would you describe the reason for passing laws requiring voters to present a form of photo identification?
 - a. Follow up questions (on reserve), if the legislators mention any of the following topics:
 - i. What role, if any, does voter fraud play in passing stricter voter identification laws?
 - ii. What role, if any, does public opinion play in passing stricter voter identification laws?
 - iii. What role, if any, does legitimacy of elections play in passing stricter voter identification laws?
 - iv. What role, if any, does voter confidence play in passing stricter voter identification laws?
5. Follow up questions (on reserve), if interviewee mentions disenfranchisement:
 - a. Which people are being disenfranchised?
 - b. How are these people being disenfranchised?
 - c. How many people are being disenfranchised?
6. Follow up questions (on reserve), if interviewee mentions racism:
 - a. Which people are affected by racism in voter identification laws?
 - b. How are these laws racist against these people?
 - c. How many people are affected by racism in these laws?
7. How would you assess the legitimacy of the electoral system in the State of Connecticut without the presence of voter identification laws?
 - a. How would you assess the ability of voter identification laws to improve the electoral system in the State of Connecticut?
 - b. How would you assess the ability of voter identification laws to alleviate controversy, such as that experienced in Bridgeport in the 2010 gubernatorial election?

Further questions for Democratic legislators and other opponents of voter identification laws:

1. Some say that these are simply an attempt to reduce voter fraud. How do you respond to this?
2. Some say that these laws improve voter confidence. How do you respond to this?
3. Proponents of Voter ID laws argue that providing a form of photo identification is necessary for many commonplace activities in our society, such as buying tobacco and alcohol, driving a car, checking into a hotel, and getting a job. How, if at all, do you think voting should be any different? Why?

4. Some supporters of voter identification laws claim that obtaining a form of photo identification is not a burden and is merely a simple process. Do you agree or disagree? Why?
5. Some supporters of voter identification laws claim that voter identification laws that do not require a form of photo identification are not sufficient. How do you respond to this?
6. How do you respond to claims that poor and minority voters are disproportionately affected by voter identification laws because they are less likely to have forms of photo identification?

Further questions for Republican legislators and other proponents of voter identification laws:

7. Citing that in the United States, only 26 convictions or guilty pleas resulted from cases of alleged voter fraud originating between 2002 and 2005, some opponents of voter identification laws claim that there is not enough voter fraud to warrant strict photo identification laws. How do you respond to this?
8. Some opponents of stricter voter identification laws state that laws that do not require a form of photo identification are sufficient. How do you respond to this?
9. How do you respond to studies that have shown that in the 10 states that had restrictive voter ID laws by July of 2012, 11% of legitimate voters lack a proper form of photo identification?
10. How do you respond to studies that have shown that in the 10 states that had restrictive voter ID laws by July of 2012, nearly 500,000 eligible voters in the United States did not have access to a vehicle and live more than 10 miles from the nearest state ID-issuing office?
11. How do you respond to studies that have shown that in the 10 states that had restrictive voter ID laws by July of 2012, 1.2 million eligible black voters and 500,000 eligible Hispanic voters live more than 10 miles from their nearest ID-issuing office open more than two days a week?
12. How do you respond to claims that in those 10 states, ID-issuing many ID-issuing offices are placed in rural areas, which are further from many poor and minority voters?
13. How do you respond to claims that poor and minority voters are disproportionately affected by voter identification laws because they are less likely to have forms of photo identification?

Further questions for Senator Joseph Lieberman:

1. How, if at all, did your experience losing a very close Presidential election in 2000 affect your views on voter identification laws?
 - a. Some proponents of stricter voter ID laws claim that there must be stricter fraud prevention because of extremely close elections like the Presidential election of 2000. How do you respond to this?
2. How, if at all, have your experiences as a freedom rider during the civil rights movement affected your views on voter identification laws?
3. How, if at all, have your experiences as a freedom rider during the civil rights movement affected your views on how difficult it is for poor people and people of color to register to vote?

For the National Coalition for the Homeless, other homeless advocates, and college professors:

Primary part of research being examined: Do voter identification laws make it more difficult for poor people and minorities to vote?

1. How would you describe laws requiring citizens to present a form of photo identification in order to vote?
2. How would you describe the need or lack of need for photo identification laws?
3. In what ways, if any, will a law requiring voters to present a form of photo identification affect the voting experiences of poor and minority voters?
 - a. In what ways, if any, will a law requiring voters to present a form of photo identification affect poor and minority election participation in future elections?
4. In what ways, if any, will a law requiring voters to present a form of photo identification affect the value that poor and minority voters perceive their votes to have in an election?
5. What ways are available for voters to access a form of photo identification?
 - a. How would you describe the accessibility of information about ways to obtain a form of photo identification?
6. How does the ability of poor and minority voters to obtain a form of photo identification compare with their ability to vote in an election?
 - a. How many of them have a form of photo identification?
 - i. How difficult is it for them to obtain a photo id?
 - b. In what ways, if any, will the ability to obtain a form of photo identification affect how difficult it will be for poor and minority voters to vote in upcoming elections?
 - c. In what ways, if any, will the ability to obtain a form of photo identification affect how affordable it be for poor and minority voters to vote in upcoming elections?
7. In what ways, if any, do voter identification laws affect poor and minority voters' confidence in the electoral system?
 - a. In what ways, if any, do voter identification laws affect the legitimacy of the electoral process?
8. Follow up questions (on reserve), if interviewee mentions disenfranchisement:
 - a. Which people are being disenfranchised?
 - b. How are these people being disenfranchised?
 - c. How many people are being disenfranchised?
9. Follow up questions (on reserve), if interviewee mentions racism:
 - a. Which people are affected by racism in voter identification laws?
 - b. How are these laws racist against these people?
 - c. How many people are affected by racism in these laws?

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2. Some say that these laws improve voter confidence. How do you respond to this?
3. Proponents of Voter ID laws argue that providing a form of photo identification is necessary for many commonplace activities in our society, such as buying tobacco and alcohol, driving a car, checking into a hotel, and getting a job. How, if at all, do you think voting should be any different? Why?
4. Some supporters of voter identification laws claim that obtaining a form of photo identification is not a burden and is merely a simple process. Do you agree or disagree? Why?
5. Some supporters of voter identification laws claim that voter identification laws that do not require a form of photo identification are not sufficient. How do you respond to this?
6. How do you respond to claims that poor and minority voters are disproportionately affected by voter identification laws because they are less likely to have forms of photo identification?

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7. Citing that in the United States, only 26 convictions or guilty pleas resulted from cases of alleged voter fraud originating between 2002 and 2005, some opponents of voter identification laws claim that there is not enough voter fraud to warrant strict photo identification laws. How do you respond to this?
8. Some opponents of stricter voter identification laws state that laws that do not require a form of photo identification are sufficient. How do you respond to this?
9. How do you respond to studies that have shown that in the 10 states that had restrictive voter ID laws by July of 2012, 11% of legitimate voters lack a proper form of photo identification?
10. How do you respond to studies that have shown that in the 10 states that had restrictive voter ID laws by July of 2012, nearly 500,000 eligible voters in the United States did not have access to a vehicle and live more than 10 miles from the nearest state ID-issuing office?
11. How do you respond to studies that have shown that in the 10 states that had restrictive voter ID laws by July of 2012, 1.2 million eligible black voters and 500,000 eligible Hispanic voters live more than 10 miles from their nearest ID-issuing office open more than two days a week?
12. How do you respond to claims that in those 10 states, ID-issuing many ID-issuing offices are placed in rural areas, which are further from many poor and minority voters?
13. How do you respond to claims that poor and minority voters are disproportionately affected by voter identification laws because they are less likely to have forms of photo identification?

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